

**BUSINESS ASSOCIATE AGREEMENT BETWEEN
THE CITY OF MILWAUKEE AND
WISCONSIN PHYSICIANS SERVICE INSURANCE CORPORATION**

This Agreement is made as of April 14, 2003 by and between the City of Milwaukee, on behalf of its Basic Health Plan, and Wisconsin Physicians Service Insurance Corporation;

RECITALS

Whereas, the City of Milwaukee and Wisconsin Physicians Service Insurance Corporation have previously entered into three separate agreements, each dated as of January 1, 2002, with respect to claims administration, utilization review, and a preferred provider network for the City of Milwaukee's Basic Health Plan under which Business Associate performs services on behalf of the Plan (as defined below) and, in the course of doing so, regularly Uses (as defined below), Discloses (as defined below), receives, creates and maintains Protected Information (as defined below).; and

Whereas, the Department of Health and Human Services ("HHS") has promulgated Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and 164, subparts A and E (the "Privacy Rules").

The Plan is a covered entity, as defined in 45 CFR §160.103, for purposes of the Privacy Rules.

Business Associate is a business associate, as defined in 45 CFR §160.103, of the Plan for purposes of the Privacy Rules;

The Privacy Rules provide, among other things, that a covered entity is permitted to Disclose Protected Health Information (as defined below) to a business associate, and allow the business associate to Use, Disclose, receive, create and maintain Protected Health Information on behalf of the covered entity, if the covered entity obtains satisfactory assurances, in the form of a written contract meeting the requirements of 45 CFR §164.504(e), that the business associate will appropriately safeguard the Protected Health Information.

This Agreement sets forth the terms and conditions pursuant to which Business Associate will handle Protected Health Information that Business Associate creates, receives from the Plan, or receives from others on behalf of the Plan. The purpose of this Agreement is to allow the Plan to comply with the Privacy Rules.

In consideration of the foregoing and the mutual covenants and agreements set out in this Agreement, Business Associate and the Plan agree to supplement the Services Agreements with the terms of this Agreement as set forth herein. Except as specifically required to implement the terms of this Agreement, or to the extent inconsistent with the Agreement, all terms and conditions of the Services Agreement remain in full force and effect. In the event of a conflict or inconsistency between the terms of this Agreement and the terms of the Services Agreements, the terms of this Agreement shall prevail. In the case of ambiguity, this Agreement and the Services Agreements shall be interpreted in a manner that results in compliance and/or consistency with the terms of HIPAA and the Privacy Rules.

I. Definitions

Business Associate. "Business Associate" shall mean Wisconsin Physicians Service Insurance Corporation.

Covered Entity. "Covered Entity" shall mean the City of Milwaukee's self-funded Basic Health Plan.

Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

Plan Sponsor. "Plan Sponsor" shall mean the City of Milwaukee.

Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Services Agreements. “Services Agreements” shall mean the agreement between the City of Milwaukee and the Business Associate dated as of January 1, 2002 with respect to administrative services for the Plan; the agreement between the City of Milwaukee and the Business Associate dated as of January 1, 2002 with respect to utilization review/case management services for the Plan; and the agreement dated as of January 1, 2002 between the City of Milwaukee and the Business Associate with respect to a preferred provider network for the Plan.

Any other terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

II. Obligations and Activities of Business Associate

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to :
 1. to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the

requirements under 45 CFR § 164.524, no later than 30 after so directed in writing by the Covered Entity..

2. to make PHI, maintained by Business Associate or its agents or subcontractors in Designated Record Sets, available to an individual who is the subject of such PHI for inspection and copying in accordance with 45 CFR section 164.524.

g. Business Associate agrees:

1. to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, no later than 30 after so directed in writing by the Covered Entity.
2. to make PHI, maintained by Business Associate or its agents or subcontractors in Designated Record Sets, available to an individual who is the subject of such PHI for amendment, in accordance with 45 CFR section 164.526.

h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. no later than 30 days after so directed in writing by the Covered Entity,.

- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

j. Business Associate agrees:

1. to provide to Covered Entity or an Individual, , information collected in accordance with Section II.i._ above, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected

Health Information in accordance with 45 CFR § 164.528, no later than 30 days after so directed in writing by the Covered Entity.

2. to make available, to an individual who is the subject of PHI maintained by Business Associate or its agents or subcontractors, the PHI required to provide an accounting of disclosures in accordance with 45 CFR Section 164.528.

k. Business Associate agrees to comply with the requirements of the transactions and code sets regulations promulgated pursuant to HIPAA.

III. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreements, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

- a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).

- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

IV. Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

VI. Indemnification

Business Associate agrees to indemnify, defend, and hold harmless each of the Covered Entity and its sponsor, the City of Milwaukee, and their employees and officers, (each an "Indemnified Party"), against any and all losses, liabilities, costs, fines, penalties, and expenses (including attorney's fees) the Indemnified Party may incur arising out of or in connection with any violation by Business Associate of any of the provisions of this Agreement, or breach of any warranty or representation made by Business Associate herein, or from any negligent or wrongful acts or omissions of Business Associate. Business Associates agrees to accept the tender of defense of any claim or action falling within the scope of this indemnity.

The City of Milwaukee agrees to indemnify, defend, and hold harmless the Business Associate against any and all losses, liabilities, costs, fines, penalties, and expenses (including attorney's fees) the Business Associate may incur arising out of or in connection with any action taken at the direction of the Covered Entity pursuant to sections II f.1, II g. 1 and II j.1. of this Agreement, to the extent that such direction is inconsistent with the determinations and actions of Business Associate pursuant to its obligations under sections II f. 2, II g.2. and II j.2. of this Agreement.

VII. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of April 14, 2003, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section VII.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Services Agreements if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 2. Immediately terminate this Agreement and the Services Agreements if Business Associate has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of

Business Associate. Business Associate shall retain no copies of the Protected Health Information.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon such notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

VIII. Amendment

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

This Agreement may not be modified or amended, nor shall any provision hereof be deemed waived, unless such modification, amendment or waiver is set out in a writing that is signed by the authorized representative of each of the Parties hereto and specifies the exact nature and extent of such modification, amendment or waiver. The failure of any Party to insist upon strict adherence to any term or condition of this Agreement on one or more occasions shall not be construed as a waiver of such term or condition, and shall not in any way deprive such Party of the right thereafter to insist upon strict adherence to such term or condition or any other term or condition of this Agreement. A waiver with respect to any one event shall not be construed as continuing, or as a bar to, or waiver of, any right or remedy as to subsequent events.

IX. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- c. Survival. The respective rights and obligations of Business Associate under Section [Insert Section Number Related to "Effect of Termination"] of this Agreement shall survive the termination of this Agreement.

d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

(a) Governing Law. This agreement shall be governed by and construed in accordance with the laws of the state of Wisconsin, to the extent not pre-empted by federal laws.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement.

CITY OF MILWAUKEE

By: _____

Michael J. Brady
Employee Benefits Manager

Date: _____

WISCONSIN PHYSICIANS SERVICE INSURANCE CORPORATION

By: _____

Name:

Title:

Date: _____

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