

## **SUNNYSIDE HEALTH SERVICES**

### **HIPAA BUSINESS ASSOCIATE PRIVACY AGREEMENT**

THIS AGREEMENT is made as of this \_\_\_\_\_, by and between Sunnyside Health Services (herein "Covered Entity") and \_\_\_\_\_ (herein "Business Associate").

WHEREAS, Covered Entity is a licensed and certified nursing home operating in Sarasota, Florida and is a health care provider as defined by 42 CFR Part 164 as amended from time to time;

WHEREAS, Business Associate is a legal entity engaged in a service necessary or desirable for Covered Entity to provide appropriate and quality care to its residents in accordance with state and federal law;

WHEREAS, Covered Entity has an existing relationship or intends to enter into a new relationship with Business Associate, as evidenced by that certain underlying contract between the parties entered into previously, and any future amendments thereto;

WHEREAS, in the course of carrying out the terms of that underlying Agreement, Business Associate will likely be given access to protected health information as defined by 45 CFR Parts 160 and 164 as currently exists and as shall be amended from time to time; and

WHEREAS, federal law requires that the parties enter into a Business Associate Agreement in order to protect confidential health care information;

#### **THE PARTIES AGREE:**

- I. **DEFINITIONS**-as used in this Agreement, the following words have the definition as set out in HIPAA rules and regulations. Each party hereby agrees that it has read these definitions and understands their meaning in the context of this business arrangement.
  - a. **Breach** means the unauthorized acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, where an unauthorized person to whom such information is disclosed would not reasonably have been able to obtain such information. (Section 134000 HITECH ACT) (See exceptions in Act).
  - b. **Business Associate** shall generally have the same meaning as that term is defined at 45 CFR 160.103, and in the context of this Agreement shall mean the person or entity entering into the underlying Agreement with Covered Entity.
  - c. **Covered Entity** shall generally have the same meaning as that term is defined at 45 CFR 160.103 and in this context shall mean Sunnyside Health Services.
  - d. **Data Aggregation** means information received by a business associate from this Covered Entity which is combined with information received from another covered entity by the business associate in accordance with its relationship to that covered entity which is combined to permit data analyses relating to the operations of the respective covered entities. (For official definition see 45 CFR 164.501.)
  - e. **Disclosure** is defined in 45 CFR 160.103.

- f. Health Care Operations for the purposes of this agreement means activities of the Covered Entity as set out in 45 CFR 164.501.
- g. HIPAA rules shall mean the Rules found at 45 CFR Part 160 and Part 164.
- h. Individual means the person who is the subject of Protected Health Information.
- i. 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, as amended from time to time.
- j. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, transmitted or maintained in any other form or medium. (See regulations for exceptions and official definition at 45 CFR 160.103).
- k. Required by law (See 45 CFR 164.501)
- l. Secretary means the Secretary of HHS.
- m. Security Incident or breach means attempted or successful unauthorized acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information. (See definitions HITECH Act for official language)
- n. Underlying Agreement means that Agreement entered into between the parties on a prior date, which may be modified or its terms extended. Any such change to that Agreement shall become part of the Underlying Agreement as used in this document.

Any term not defined in this section shall be defined by its plain meaning in the English language except if it is defined in HIPAA law that definition shall be used. The definition of any term defined herein shall be amended automatically if its definition is inconsistent or is changed in rule or law.

## II. Responsibilities and Activities of Business Associate

Business Associate Agrees to:

- a. Use Protected Health Information only for the purposes set out in the underlying Agreement between the parties.
- b. Not disclose any Protected Health information other than as permitted by this underlying Agreement.
- c. Notify Covered Party immediately if there is any suspected breach of the HIPAA requirements for protecting Protected Health Information, including use of that information for other than the purposes set out in the underlying Agreement.
  - i. Notification of a potential breach shall be made immediately but no later than 2 hours after the potential breach has been identified. Potential breach shall include but not be limited to inappropriate use of Protected Health Information within Business Associate's operations, release of such information not properly secured in accordance with 45 CFR 164.410 or any other security incident. Business Associate shall include with this notification the time of the potential breach, the manner in which the breach occurred the parties involved in the breach, the identity of the individual(s) whose information may have been

disclosed and the steps Business Associate is taking to investigate the breach and prevent further breach.

- II. Business Associate shall have a system in place to investigate all potential breaches which shall be supplied to Covered Party at its request.
- III. Business Associate will keep Covered Party apprised of the progress of the investigation whenever significant information has been gathered but not less often than every 7 days.
- IV. At the conclusion of the investigation, Business Associate shall submit to Covered Party a complete packet relating to the investigation including but not limited to:
  1. The identity of all persons involved, interviewed or investigated including contact information.
  2. The results of each interview and copies of all statements given.
  3. Copies of all investigative notes.
  4. Any other documentation prepared during and at the end of that investigation.
  5. The action taken by Business Associate to prevent further breaches and to mitigate any harm caused by the potential breach.
- d. Use appropriate safeguards, in accordance with federal requirements and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to protect information secured from Covered Party for use in carrying out the terms of the underlying Agreement.
- e. In the event that Business Associate uses subcontractors in accordance with the terms of the underlying Agreement to carry out its responsibilities, which subcontractors create, receive, review maintain or transmit Protected Health Information, Business Associate shall cause such subcontractor to agree to all of the terms, conditions and requirements of this Business Associate Agreement. If subcontractors are not contemplated and identified by the underlying Agreement, Business Associate must notify Covered Entity of the identity and proposed use of a subcontractor as well as the information to which subcontractor will be given access and secure permission from Covered Party in writing to utilize that subcontractor. No Protected Health Information will be released to that subcontractor prior to receipt by Business Associate of written permission from Covered Entity.
- f. Make available, immediately upon demand, Protected Health Information to Covered Entity to allow Covered Entity to satisfy its obligation under 45 CFR 164.524.
- g. Make any amendments to Protected Health Information as directed by Covered Entity. In the event that Business Associate receives a request directly from the individual or his legal representative in accordance with HIPAA requirements for an amendment to his/her records, Business Associate shall immediately notify Covered Entity to ensure

that amendments are made in accordance with law and coordinated between all parties having copies of said records. Amendments shall be made in accordance with timeframes established by law or practice, whichever is shorter.

- h. Maintain records of all activity relative to Business Associate's use of Protected Health Records and make all records of Business Associate relative to its use of these records available to Covered Entity with reasonable notice and as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.
- i. In the event that an individual seeks access to or copies of records of his/her Protected Health Information from Business Associate rather than Covered Entity, Business Associate will immediately contact Covered Entity to coordinate release of those records. In the event that Business Associate cannot reach Covered Entity or does not get a response from Covered Entity such that the individual will not get their records timely, Business Associate may release those records in accordance with law and notify Covered Entity that it has done so.
- j. If Business Associate is to carry out Covered Entity's obligations under Subpart E of 45 CFR Part 165, Business Associate shall do so in a timely and appropriate fashion.
- k. Make its practices, books, policies and procedures and records, relating to the use and disclosure of Protected Health Information available to the Secretary of HHS for the purposes of determining compliance with HIPAA. This shall include but not be limited to information received from Covered Entity and created or amended by Business Associate. Disclosure shall be in a timely and reasonable manner and Business Associate shall meet all timeframes set by the Secretary.
- l. Provide Covered Entity with the information in its possession necessary for an accounting of disclosures of that individual's Protected Health Information in accordance with 45 CFR 164.528.
- m. Upon termination or conclusion of the term of the underlying Agreement, Business Associate shall:
  - I. Destroy all Protected Health Information it secured or amended in its possession relating to the individual records supplied by Covered Entity in furtherance of the contract. If this option is chosen, Business Associate shall notify Covered Entity in advance to permit Covered Entity to secure the documents from Business Associate; or
  - II. Return all such documents to Covered Entity; or
  - III. If, and only if, Business Associate cannot destroy or return such document and has proven that it cannot to the satisfaction of Covered Entity, maintain and safeguard those records in accordance with a plan approved by Covered Entity which shall be in full compliance with HIPAA.
- n. In the event that Covered Entity is advised of a potential HIPAA violation or any governmental body begins an audit or investigation which involves Business Associate, Business Associate shall, at its own cost, prepare the information necessary for Covered Entity to respond to the issues.

- III. Permitted Uses and Disclosures by Business Associate.
- a. Business Associate may only use or disclose Protected Health Information as necessary to carry out its responsibilities as set out in the underlying Agreement. Any employee or agent who receives information in the course of carrying out the terms of the underlying Agreement shall be made aware of this agreement and HIPAA requirements and shall give assurances to Business Associate that it will comply with the terms of the agreement and HIPAA requirements. Business Associate shall have in place and utilize appropriate disciplinary methods of ensuring that compliance occurs.
  - b. If the parties agree to the use of Protected Health Information for other permitted purposes, the Business Associate shall remove individual identifying information in accordance with 45 CFR 164.514 (a)-(c).
  - c. Business Associate may disclose information as required by law.
  - d. Business Associate agrees to make use of, disclosure of and honor requests for information in accordance with law, this agreement and Covered Entity's policies and procedures.
  - e. Business Associate will not use or disclose Protected Health Information in any manner not specifically permitted herein and in accordance with Subpart E of 45 CFR Part 164 and only if such use or disclosure would be permitted by Covered Entity.

IV. Responsibilities of Covered Entity

Covered Entity shall:

- a. Make available to Business Associate all policies and procedures it has in place to ensure HIPAA Compliance.
- b. Notify Business Associate of any amendments made to records which are necessary to Business Associate in carrying out the terms of the underlying Agreement.
- c. Notify Business Associate of any restriction on the use or disclosure of Protected Health Information to which Covered Entity has agreed.
- d. Not make any request of Business Associate to disclose information in a manner inconsistent with the HIPAA requirements.
- e. Notify Business Associate of any revocation or amendment to permission by an individual to disclose Protected Health Information.

V. Termination

- a. In the event that this Agreement is breached the underlying Agreement may be terminated.
  - I. For minor breaches Business Associate will be given an opportunity to cure the breach in a time specified by Covered Entity, which time will be reasonable. Whether a breach is minor or material is within the sole direction of Covered Entity.
  - II. If a term is material or a cure is not possible termination will be immediate.
  - III. Material breaches shall be reported to the Secretary of HHS.

- b. Upon termination, Business Associate shall secure any copies of Protected Health Information from any subcontractor and proceed to return or destroy documents in accordance with Section II n above. In the event that any subcontractor does not immediately return such Protected Health Information, Business Associate shall take any steps necessary to effect return of the documents including legal action. Covered Entity will be notified immediately if a subcontractor refuses or fails to return Protected Health Information.

VI. Miscellaneous

- a. Consideration: The parties agree that the continuation or institution of the underlying Agreement and the release of Protected Health Information in accordance with the underlying Agreement are ample consideration for the parties to enter into this agreement. Further, Business Associate agrees that Covered Entity is relying upon adherence with this Agreement as an incentive to continue under or enter into the underlying Agreement and that this alone constitutes adequate consideration for this Agreement.
- b. Independent Contractor: The Business Associate is acting as an independent contractor and nothing herein creates an agency relationship.
- c. Law: This agreement shall be governed by Florida and federal law and whichever affords the most protection for the resident's privacy shall prevail.
- d. Venue: Venue for any action shall lie in the appropriate court for the jurisdiction in which the Covered Entity is located.
- e. Survival: The obligations set forth in this agreement shall survive the termination of the underlying Agreement.
- f. Amendment: This agreement shall automatically be amended to include any revisions to the HIPAA rules to reflect those changes.
- g. Ambiguity: Any ambiguity shall be interpreted to permit compliance with HIPAA rules.
- h. Inconsistencies: If any provision of this agreement is inconsistent with HIPAA requirements it shall be amended automatically to comply HIPAA.
- i. Modification: Modification other than to be in compliance with law may be made only by written agreement signed by both parties.
- j. Notice – Any notice required or authorized under this agreement shall be as follows:

**Covered Entity**

Sunnyside Health Services  
Attention: Alexandra Maliwacki, Administrator  
5201 Bahia Vista Street  
Sarasota, FL 34232

**Business Associate**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties have set their signatures below acknowledging acceptance and agreement to the terms and conditions set out herein.

SUNNYSIDE HEALTH SERVICES

BUSINESS ASSOCIATE

\_\_\_\_\_  
Alexandra Maliwacki, Administrator

\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_