

WASHINGTON STATE MEDICAL ASSOCIATION
2033 SIXTH AVENUE, SUITE 1100
SEATTLE, WASHINGTON 98121
(206) 441-9762

Business Associate Agreement

Section I Catch-all definition:

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

Specific definitions:

- a. Business Associate. "Business Associate" shall mean Washington State Medical Association.
- b. Covered Entity. "Covered Entity" shall mean _____.
Physician(s) Name or Practice
- c. 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).
- d. 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.
- 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.
- f. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- g. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Section 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 report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- d. 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.
- e. Business Associate agrees to provide access, at the request of Covered Entity, within ten (10) days 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 and RCW 70.02.080 (1).
- f. If the Covered Entity agrees to make any amendment to Protected Health Information in a Designated Record Set in the possession of the Business Associate, Business Associate reserves the right to transfer said Designated Record Set back to the Covered Entity so that the Individual may amend their records through the Covered Entity. If the Business Associate receives a request to amend Protected Health Information, Business Associate will notify Covered Entity as soon as practicable of this request and will forward the request to the Covered Entity. The Business Associate will direct the Individual to contact the Covered Entity with their request to amend their Protected Health Information so that the Covered Entity can determine whether to grant the request to amend the Protected Health Information. If the Covered Entity agrees to make any amendment to the Protected Health Information in the Individual's Designated Record Set, Business Associate reserves the right to transfer said Designated Record Set back to the Covered Entity so that the Covered Entity may amend the Designated Record Set. The Business Associate agrees to

make any amendment as directed in writing by the Covered Entity to the Protected Health Information under the Business Associate's control.

g. 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, within thirty (30) days of being requested or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

h. 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.

i. Business Associate agrees to provide to Covered Entity or an Individual, within thirty (30) days of the request, information collected in accordance with Section II of this Agreement, 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.

Section III Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity:

- To advocate on behalf of the covered entity with Health Plans, Third Party Administrator, and Government entities to resolve specific claims issues.

Section IV Specific Use and Disclosure Provisions

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.

Section V Obligations of Covered Entity

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- 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.

Section VI 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.

Section VII Term and Termination

- a. Term. The Term of this Agreement shall be effective as of the date this Agreement is signed by both the Covered Entity and the Business Associate, 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.

- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement 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 if Business Associate does not cure the breach or end the violation within a reasonable time period specified by Covered Entity;
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is 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 notification from the Business Associate 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.

Section VIII 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.
- b. 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.
- c. Survival. The respective rights and obligations of Business Associate under Section VI 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.

Signatures below indicate review and acceptance of this Agreement.

The Effective Date of this Agreement is _____.

Washington State Medical Association

Covered Entity

By: _____

By: _____

Name: Robert J. Perna

Name: _____

Title: Director, Health Care Economics

Title: _____

Date: _____

Date: _____