

HIPAA REQUIREMENTS**1. CONTRACTOR'S RESPONSIBILITIES REGARDING USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION ("PHI")**a. General: Contractor agrees to

- (1) hold all Protected Health Information ("PHI") confidential except to the extent that disclosure is required by Federal or State law, including the Texas Public Information Act, Chapter 552, Texas Government Code. TEX. GOV'T CODE ANN. §§ 552.001 *ET SEQ.*, AS AMENDED. PHI is defined in 45 CFR § 164.501 and is limited to information created or received by Contractor from or on behalf of County.
- (2) be bound by all applicable Federal and State of Texas licensing authorities' laws, rules, and regulations regarding records and governmental records, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), PL 104-191, the HIPAA regulations (codified at 45 CFR Parts 160 and 164), and Chapter 181, Texas Health and Safety Code, as amended, collectively referred to herein as "Privacy Requirements."
- (3) cooperate with the Texas Medicaid Fraud Control Unit and to make appropriate personnel available for interviews, consultation, grand jury proceedings, pre-trial conference, hearings, trial, and in any other process, including investigations that are required as a result of Contractor's Services to County. Compliance with this paragraph is at Contractor's own expense.

b. Representations: Contractor represents that Contractor is familiar with the Privacy Requirements, and with State and Federal requirements relating to HIV/AIDS information, mental health information, and drug/alcohol-related health information.c. Business Associate: Contractor is a "Business Associate" of County as that term is defined under the Privacy Requirements. Contractor agrees:

- (1) *Nondisclosure of PHI:* Not to use or disclose the PHI received from County or created, compiled, or used by Contractor pursuant to this Agreement other than as permitted or required by this Agreement, or as otherwise required by law.
- (2) *Limitation on Further Use or Disclosure:* Not to further use or disclose the PHI received from County or created, compiled, or used by Contractor pursuant to

this Agreement in a manner that would be prohibited by the Privacy Requirements of HIPAA if disclosure was made by County, or if either Contractor or County is otherwise prohibited from making such disclosure by any present or future State or federal law, regulation, or rule.

- (3) *Safeguards*: To use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or as required by State or federal law, regulation, or rule.
- (4) *Reporting Unauthorized Disclosures*: To report to County any use or disclosure of PHI that is not authorized by this Agreement immediately upon becoming aware of such unauthorized use or disclosure.
- (5) *Subcontractors and Agents*: To make all reasonable efforts to ensure that any subcontractor or agent to whom Contractor provides PHI received from County or created, compiled, or used by Contractor pursuant to this Agreement agrees to the same restrictions and conditions that apply to Contractor with respect to such PHI.
- (6) *Mitigation*: To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor or by a subcontractor or agent of Contractor resulting from a violation of this Agreement.
- (7) *Notice – Access by Individual*: To notify County in writing within three business days of any request by an individual for access to the individual's PHI and to, upon receipt of such request from an individual, provide access to the degree required or permitted by law or, if County maintains the requested records, direct the individual to County for access to the individual's PHI.
- (8) *Notice – Request for Amendment*: To notify County in writing within three business days of any request by an individual for amendment to the individual's PHI and to, upon receipt of such request from an individual, make such amendments as required or permitted by law, or if County maintains the records, direct the individual to County to request amendment of the individual's PHI.
- (9) *Notice – Request for Accounting*: Upon receipt of any request from an individual for an accounting of disclosures made of the individual's PHI, to provide such an accounting as required or permitted by law, and to notify County in writing within three business day of any such request; or if County maintains the records, direct the individual to County for an accounting of the disclosures of the individual's PHI. Pursuant to 45 CFR 164.528(a) an individual has a right to receive an accounting of certain disclosures of PHI in the six years prior to the date on which the accounting is requested.

- (10) *HHS Inspection:* Upon written request, to make available to the Secretary of Health and Human Services ("HHS") or his designee, Contractor's internal practices, books, and records relating to the use and disclosure of PHI received from or held for County in a time or manner designated by the Secretary for purposes of the Secretary determining Contractor's compliance with the Privacy Requirements.
  - (11) *County Inspection:* Upon written request, to make available to County during normal business hours Contractor's internal practices, books, and records relating to the use and disclosure of PHI received from or held for County in a time and manner designated by County.
  - (12) *PHI Amendment:* To incorporate any amendments, corrections, or additions to the PHI received from or created, compiled, or used by Contractor pursuant to this Agreement when notified by County that the PHI is inaccurate or incomplete or that other documents are to be added as required by or allowed by the Privacy Requirements.
  - (13) *Documentation of Disclosures:* Contractor agrees to document disclosure of PHI and information related to such disclosures as is necessary for County to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 as amended.
  - (14) *Termination Procedures:* Upon termination of this Agreement for any reason, to transfer to County all PHI received from County or created, compiled, or used by Contractor pursuant to this Agreement or, if specially requested to do so by County in writing, to destroy all such PHI. This provision applies when Contractor maintains PHI from County in any form. If Contractor determines that transferring or destroying the PHI is infeasible, Contractor shall (i) provide to County notification of the conditions that make transfer or destruction infeasible; (ii) extend the protections of this Agreement to such PHI; and (iii) limit any further uses and disclosures of such PHI to those purposes that make the return or transfer to County or destruction infeasible.
  - (15) *Notice-Termination:* Upon written notice to Contractor, County may terminate any portion of the Agreement under which Contractor maintains, compiles, or has access to PHI. Additionally, upon written notice to Contractor, County may terminate the entire Agreement if County determines, at its sole discretion, that Contractor has repeatedly violated a Privacy Requirement.
  - (16) *Security Incidents:* Contractor shall report any security incident to County.
- d. Survival of Privacy Provisions: Contractor's obligations with regard to PHI shall survive the termination of this Agreement.

- e. Amendment Related to Privacy Requirements: The Parties agree to take such action as is necessary to amend this Agreement if County, in its reasonable discretion, determines that amendment is necessary for County to comply with the Privacy Requirements of HIPAA and TEX. HEALTH & SAFETY CODE ANN. §§181.001 *et seq.*, as amended, and any other law or regulation affecting the use or disclosure of PHI. Any ambiguity in this Agreement shall be resolved to permit County to comply with the Privacy Requirements of HIPAA and TEX. HEALTH & SAFETY CODE ANN. §§ 181.001 *et seq.*, as amended.
- e. Indemnification. *Contractor agrees to indemnify and hold harmless to the extent allowed by law County and its directors, officers, employees, and agents (individually and collectively "County Indemnitees") against any and all losses, liabilities, judgments, penalties, awards and costs (including costs of investigation and legal fees and expenses) arising out of or related to (1) a breach of this Agreement relating to the Privacy Requirements by Contractor, or (2) any negligent or wrongful acts or omissions of Contractor or its employees, directors, officers, subcontractors, or agents, relating to the Privacy Requirements including failure to perform their obligation under the Privacy Requirements.*

## 2. Access to Books and Records of Contractor

Contractor agrees to keep a separate record of all funds received and disbursed under this Agreement and provide the County or its designee all information, records, papers, reports, and other documents regarding any aspect of the services furnished as requested by County or its designee, and shall make records, books, documents, and papers of Contractor that relate in anyway to the services provided available for inspection, audit, examination, and copying by the County or the County's representative. Contractor agrees to allow the Comptroller General of the United States, the Department of Health and Human Services ("HHS"), the County Auditor, and their duly authorized representatives, access to contracts, books, documents, and records necessary to verify the nature and extent of the costs of the services provided by Contractor. Contractor agrees to allow such access until the expiration of four (4) years after the services are furnished under the contract or subcontract or until the completion of any audit or audit period, whichever is later. Such access will be provided in accordance with the regulations of the Centers for Medicare and Medicaid Services ("CMS") and 42 CFR 420.302, as amended. Contractor agrees to allow similar access to books, records, and documents related to contracts between Contractor and organizations related to or subcontracted by Contractor, as defined by the regulations of CMS. No records shall be destroyed that are required to be kept by federal, state, or county statute, law, rule, ordinance, or order, or by application of conditions of Medicaid or Medicare provider agreements or by other applicable agreements, including grant applications and requirements entered into between the County or state and a third-party payer. Contractor shall keep all protected health information, as defined herein, and records relating to disclosure of PHI for six years after the last date of service or, at County's option, shall transfer such records to County upon termination of this Agreement.