

This Agreement is entered into by the California Department of Health Services (DHCS), Integrated Systems of Care Division (ISCD), and the Provider Electronic Data Interchange (PEDI) Liaison applicant to implement the Children's Medical Services Network (CMS Net) PEDI. This Agreement is entered into notwithstanding that both DHCS and the PEDI Liaison are Covered Entities as defined in 45 Code of Federal Regulations (CFR) Section 160.103. The purpose of this agreement is to provide the PEDI Liaison with access to Service Authorization Requests (SARs), Denial Letters and Notices of Action issued to the PEDI Liaison in the Children's Medical Services Network. These disclosures to the PEDI Liaison are being made for purposes of treatment, payment, and health care operations and are limited to the amount of information that is reasonably necessary to achieve these purposes in accordance with the provisions of 45 CFR Sections 164.506 and 164.514. Notwithstanding any other provision of this Agreement, DHCS can terminate the Agreement without cause at any time by informing the PEDI Liaison of such termination in writing.

## **1. Recitals**

- A. This Agreement has been determined to constitute a PEDI Liaison relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. DHCS wishes to disclose to PEDI Liaison certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. Under this Agreement, the PEDI Liaison of DHCS and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS and uses or discloses PHI.
- E. DHCS and PEDI Liaison desire to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- F. The purpose of the Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- G. The terms used in this Agreement, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

## **2. Permitted Uses and Disclosures of PHI by PEDI Liaison**

- A. *Permitted Uses and Disclosures.* Except as otherwise indicated in this Addendum, PEDI Liaison may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHCS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHCS.

B. *Specific Use and Disclosure Provisions.* Except as otherwise indicated in this Addendum, PEDI Liaison may:

*Use and disclose for management and administration.* Use and disclose PHI for the proper management and administration of the PEDI Liaison or to carry out the legal responsibilities of the PEDI Liaison, provided that disclosures are required by law, or the PEDI Liaison obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be 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 PEDI Liaison of any instances of which it is aware that the confidentiality of the information has been breached.

### **3. Responsibilities of PEDI Liaison**

PEDI Liaison agrees:

- A. *Nondisclosure.* Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. *Safeguards.* To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information, including electronic PHI, that it creates, receives, maintains or transmits on behalf of DHCS; and to prevent use or disclosure of PHI other than as provided for by this Agreement. PEDI Liaison shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the PEDI Liaison's operations and the nature and scope of its activities. PEDI Liaison will provide DHCS with information concerning such safeguards as DHCS may reasonably request from time to time.
- C. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to PEDI Liaison of a use or disclosure of PHI by PEDI Liaison or its subcontractors in violation of the requirements of this Agreement.
- D. *Reporting of Improper Disclosures.* To report to DHCS within twenty-four (24) hours during a work week, of discovery by PEDI Liaison that PHI has been used or disclosed other than as provided for by this Agreement.
- E. *PEDI Liaison's Agents.* To ensure that any agents, including subcontractors, to whom PEDI Liaison provides PHI received from or created or received by PEDI Liaison on behalf of DHCS, agree to the same restrictions and conditions that apply to PEDI Liaison with respect to such PHI; and to incorporate, when applicable, the relevant provisions of this Agreement into each subcontract or subaward to such agents or subcontractors.
- F. *Availability of Information to DHCS and Individuals.* To provide access as DHCS may require, and in the time and manner designated by DHCS (upon reasonable notice and during PEDI Liaison's normal business hours) to PHI in a Designated Record Set, to DHCS (or, as directed by DHCS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DHCS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS health plans; or those records used to make decisions about individuals on behalf of DHCS. PEDI Liaison shall use the forms and processes developed by

DHCS for this purpose and shall respond to requests for access to records transmitted by DHCS within 15 days of receipt of the request by producing the records or verifying that there are none.

- G. *Amendment of PHI.* To make any amendment(s) to PHI that DHCS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DHCS.
- H. *Internal Practices.* To make PEDI Liaison's internal practices, books and records relating to the use and disclosure of PHI received from DHCS, or created or received by PEDI Liaison on behalf of DHCS, available to DHCS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS or by the Secretary, for purposes of determining DHCS's compliance with the HIPAA regulations.
- I. *Documentation of Disclosures.* To document and make available to DHCS or (at the direction of DHCS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. *Notification of Breach.* During the term of this Agreement, to notify DHCS immediately upon discovery of any breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person. Immediate notification shall be made to the DHCS duty officer by pager at 916-328-3605. Written notice shall be provided to the DHCS Security Officer and the DHCS Privacy Officer within two (2) business days of discovery. PEDI Liaison shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. PEDI Liaison shall investigate such breach and provide a written report of the investigation to the DHCS Privacy Officer within thirty (30) working days of the discovery of the breach at the address below:

Privacy Officer  
c/o Office of Legal Services  
California Department of Health Care Services  
P.O. Box 997413, MS 0011  
Sacramento, CA 95899-7413

PEDI Liaison shall additionally provide a copy of the written report of investigation to:

Chief, CMS Network Section  
CA-MMIS Division  
830 Stillwater Road, MS 4727  
West Sacramento, CA 95605

- K. *Employee Training and Discipline.* To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of DHCS under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment.

#### **4. Obligations of DHCS**

DHCS agrees to:

- A. *Notice of Privacy Practices.* Provide PEDI Liaison with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices: <http://www.dhcs.ca.gov/hipaa>.
- B. *Permission by Individuals for Use and Disclosure of PHI.* Provide the PEDI Liaison with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the PEDI Liaison's permitted or required uses and disclosures.
- C. *Notification of Restrictions.* Notify the PEDI Liaison of any restriction to the use or disclosure of PHI that DHCS has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the PEDI Liaison's use or disclosure of PHI.
- D. *Requests Conflicting with HIPAA Rules.* Not request the PEDI Liaison to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS.

#### **5. Audits, Inspection and Enforcement**

From time to time, DHCS may inspect the facilities, systems, books and records of PEDI Liaison to monitor compliance with this Agreement. PEDI Liaison shall promptly remedy any violation of any provision of this Agreement and shall certify the same to the DHCS Privacy Officer in writing. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, PEDI Liaison's facilities, systems and procedures does not relieve PEDI Liaison of its responsibility to comply with this Agreement, nor does DHCS's:

- (a) Failure to detect or
- (b) Detection, but failure to notify PEDI Liaison or require PEDI Liaison's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHCS's enforcement rights under this Agreement.

## 6. Termination

- A. *Termination for Cause.* Upon DHCS's knowledge of a material breach of this Agreement by PEDI Liaison, DHCS shall either:
- (1) Provide an opportunity for PEDI Liaison to cure the breach or end the violation and terminate this Agreement if PEDI Liaison does not cure the breach or end the violation within the time specified by DHCS;
  - (2) Immediately terminate this Agreement if PEDI Liaison has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither cure nor termination are feasible, the DHCS Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. *Judicial or Administrative Proceedings.* DHCS may terminate this Agreement, effective immediately, if (i) PEDI Liaison is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the PEDI Liaison has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws is made in an administrative or civil proceeding in which the PEDI Liaison is a party.
- C. *Effect of Termination.* Upon termination or expiration of this Agreement for any reason, PEDI Liaison shall return or destroy all PHI received from DHCS (or created or received by PEDI Liaison on behalf of DHCS) that PEDI Liaison still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of PEDI Liaison.

## 7. Miscellaneous Provisions

- A. *Disclaimer.* DHCS makes no warranty or representation that compliance by PEDI Liaison with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for PEDI Liaison's own purposes or that any information in PEDI Liaison's possession or control, or transmitted or received by PEDI Liaison, is or will be secure from unauthorized use or disclosure. PEDI Liaison is solely responsible for all decisions made by PEDI Liaison regarding the safeguarding of PHI.
- B. *Amendment.* The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS's request, PEDI Liaison agrees to promptly enter into negotiations with DHCS concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DHCS may terminate this Agreement upon thirty (30) days written notice in the event (i) PEDI Liaison does not promptly enter into negotiations to amend this Agreement when requested by DHCS pursuant to this Section or (ii) PEDI Liaison does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

- C. *Assistance in Litigation or Administrative Proceedings.* PEDI Liaison shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting PEDI Liaison in the performance of its obligations under this Agreement, available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers or employees for claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy based upon actions or inactions of the PEDI Liaison and/or its subcontractor, employee, or agent, except where PEDI Liaison or its subcontractor, employee or agent is a named adverse party.
- D. *No Third-Party Beneficiaries.* Nothing express or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than DHCS or PEDI Liaison and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. *Interpretation.* The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. *Regulatory References.* A reference in the terms and conditions of this Agreement to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.* The respective rights and obligations of PEDI Liaison under Section 6.C of this Agreement shall survive the termination or expiration of this Agreement.
- H. *No Waiver of Obligations.* No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.