



JEFFERSON COUNTY PUBLIC HEALTH

Consent Agenda

615 Sheridan Street ♦ Port Townsend ♦ Washington ♦ 98368
www.jeffersoncountypublichealth.org

December 26, 2013

JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA REQUEST

TO: Board of County Commissioners
Philip Morley, County Administrator

FROM: Jean Baldwin, Director

DATE: February 3, 2014

SUBJECT: Agenda Item – HIPAA Business Associate Agreement with Kitsap Public Health District in connection with Nightingale Notes Software Sublicense contract #1210; February 1, 2014 – until terminated; \$-0-

STATEMENT OF ISSUE:

Jefferson County Public Health, Community Health, requests Board approval of the HIPAA Business Associate Agreement with Kitsap Public Health District in connection with Nightingale Notes Software Sublicense contract #1210; February 1, 2014 – until terminated; \$-0-

ANALYSIS/STRATEGIC GOALS/PRO'S and CON'S:

This agreement complies with the provisions of the Federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Health Information Technology for Economic and Clinical Health Act (HITECH). This agreement is submitted in connection with the Kitsap Public Health District contract for the purchase of Nightingale Notes Software licenses. Nightingale Notes software is an electronic medical records system and will be used by JCPH Maternal Child Health team.

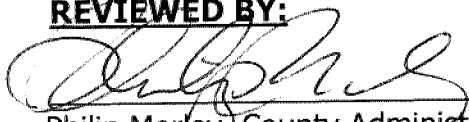
FISCAL IMPACT/COST BENEFIT ANALYSIS:


There is no fiscal impact to the department.

RECOMMENDATION:

JCPH management request approval of the HIPAA Business Associate Agreement with Kitsap Public Health District in connection with Nightingale Notes Software Sublicense contract #1210; February 1, 2014 – until terminated; \$-0-

REVIEWED BY:


Philip Morley, County Administrator


Date

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HIPAA BUSINESS ASSOCIATE AGREEMENT

Between Jefferson County Public Health And the Kitsap Public Health District

This Agreement ("Agreement") is entered into between the Kitsap Public Health District ("Covered Entity") and Jefferson County Public Health ("Business Associate").

Section I: Purpose

The purpose of this Agreement is to comply with the provisions of the Federal Health Insurance Portability and Accountability Act of 1996, set forth in 45 C.F.R. Parts 160 and 164 (commonly known as "HIPAA"), as amended, and the Health Information Technology for Economic and Clinical Health Act, (commonly known as the HITECH Act), as set forth in 42.U.S.C. §17921 et. seq.

Covered Entity and Business Associate have entered into Agreement 1210 to provide certain services, effective February 1, 2014, and a Business Associate Agreement dated January 1, 2014. As a result of amendments to HIPAA, this Agreement supersedes any previously signed Business Associate Agreements.

Section II: Terms and Conditions

This Agreement sets forth the Terms and Conditions under which Protected Health Information (PHI) is created, used, disclosed, maintained, provided or received on behalf of Covered Entity by the Business Associate.

Section III. Definitions

General. Terms used, but not otherwise defined, in this Agreement shall have the same meaning given to those terms by the HIPAA Final Omnibus Rule and the HITECH Act.

1. Business Associate: "Business Associate" shall mean a person or entity, other than a member of the Covered Entity's workforce, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information. A "Business Associate" is also a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another Business Associate.
2. EPHI. "EPHI" shall mean "Electronic Protected Health Information" and shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, limited to the information that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity.

2. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
3. PHI. "PHI" shall mean "Protected Health Information," and shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
4. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in the HITECH Act, Section 13402(h)(1).

Section IV. Responsibilities of Business Associate

1. Use and Disclosure. Business Associate may use or disclose PHI to perform its obligations for, or on behalf of, Covered Entity provided that such disclosures shall comply with the provisions of this Agreement relating to privacy and security of PHI and all present and future provisions of HIPAA and the HITECH Act and applicable Washington state laws as they relate to the privacy and security of PHI and that are applicable to Covered Entity and/or Business Associate.
2. Appropriate Safeguards. Business Associate agrees to use appropriate administrative, physical, and technical safeguards to prevent the use or disclosure of PHI and EPHI other than as provided for by this BA Agreement
3. Agents and Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom Business Associate provides PHI or EPHI has executed a Business Associate Agreement containing substantially the same terms as this Business Associate Agreement, including the same restrictions and conditions that apply to Business Associate with respect to such PHI.
4. Reporting. Business Associate will promptly report to Covered Entity any use or disclosure of PHI or EPHI not provided for in this agreement of which Business Associate becomes aware within fourteen (14) business days of such prohibited use or disclosure. In addition, Business Associate agrees to promptly notify Covered Entity following the discovery of a breach of Unsecured PHI. Any notice of a security incident or breach of Unsecured Protected Health Information shall include the identification of each Individual whose Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Security Incident or Breach as well as any other relevant information regarding the Security Incident or Breach.
 - 2.3. Reporting. Business Associate agrees to report to Covered Entity any use or disclosure of Protected Health Information not permitted by this BA Agreement of which Business Associate becomes aware.

2.4. Mitigation. 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 or its employees, officers or agents in violation of the requirements of this BA Agreement (including, without limitation, any Security Incident or Breach of Unsecured Protected Health Information). Business Associate agrees to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this BA Agreement and/or any Security Incident or Breach. Business Associate shall also reasonably cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, a regulatory body or any third party required to be made under HIPAA, HIPAA Regulations, the HITECH Act, or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.

2.5. Agents. Business Associate shall 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 BA Agreement to Business Associate with respect to such information.

2.6. Access to Designated Record Sets. To the extent that Business Associate possesses or maintains Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the 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 HIPAA Regulations. If an Individual makes a request for access to Protected Health Information directly to Business Associate, Business Associate shall notify Covered Entity of the request within three (3) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

2.7. Amendments to Designated Record Sets. To the extent that Business Associate possesses or maintains Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to HIPAA Regulations at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity. If an Individual makes a request for an amendment to Protected Health Information directly to Business Associate, Business Associate shall notify Covered Entity of the request within three business (3) days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

2.8. Access to Books and Records. Business Associate agrees to make its 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, in a time and manner designated by the Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

2.9. Accountings. 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 HIPAA, HIPAA Regulations and the HITECH Act.

2.10. Requests for Accountings. Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with Section 2(i) of this BA 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 HIPAA, HIPAA Regulations and the HITECH Act. If an Individual makes a request for an accounting directly to Business Associate, Business Associate shall notify Covered Entity of the request within three business (3) days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

ARTICLE III Permitted Uses and Disclosures by Business Associate

3.1. Services Agreement. Except as otherwise limited in this BA 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 Agreement, provided that such use or disclosure would not violate HIPAA, HIPAA Regulations or the HITECH Act if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2. Use for Administration of Business Associate. Except as otherwise limited in this BA 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.

3.3. Disclosure for Administration of Business Associate. Except as otherwise limited in this BA Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that (i) disclosures are Required by Law, or (ii) 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.

ARTICLE IV Permissible Requests by Covered Entity

Except as set forth in Section 3 of this BA Agreement, 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.

ARTICLE V
Term and Termination

5.1. Term. This BA Agreement shall be effective as of the date of this BA Agreement 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.

5.2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of the terms of this BA Agreement, Covered Entity shall either:

(a) Provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, Covered Entity shall terminate: (i) this BA Agreement; (ii) all of the provisions of the Services Agreement that involve the use or disclosure of Protected Health Information; and (iii) such other provisions, if any, of the Services Agreement as Covered Entity designates in its sole discretion;

(b) If Business Associate has breached a material term of this BA Agreement and cure is not possible, immediately terminate: (i) this BA Agreement; (ii) all of the provisions of the Services Agreement that involve the use or disclosure of Protected Health Information; and (iii) such other provisions, if any, of the Services Agreement as Covered Entity designates in its sole discretion; or

(c) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

5.3. Effect of Termination.

(a) Except as provided in this Section 5, upon termination of this BA 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.

(b) 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 mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this BA 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.

ARTICLE VI
Indemnity

Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its employees, directors/trustees, members, professional staff, representatives and agents (collectively, the "Indemnitees") from and against any and all claims (whether in law or in equity), obligations, actions, causes of action, suits, debts, judgments, losses, fines, penalties, damages, expenses (including attorney's fees), liabilities, lawsuits or costs incurred by the Indemnities which arise or result from a breach of the terms and conditions of this BA Agreement or a violation of HIPAA, the HITECH Act or HIPAA Regulations by Business Associate or its employees or agents. Business Associate's indemnification obligations hereunder shall not be subject to any limitations of liability or remedies in the Service Agreement.

ARTICLE VII
Compliance with HIPAA Transaction Standards

When providing its services and/or products, Business Associate shall comply with all applicable HIPAA standards and requirements (including, without limitation, those specified in 45 CFR Part 162) with respect to the transmission of health information in electronic form in connection with any transaction for which the Secretary has adopted a standard under HIPAA ("Covered Transactions"). Business Associate will make its services and/or products compliant with HIPAA's standards and requirements no less than thirty (30) days prior to the applicable compliance dates under HIPAA. Business Associate represents and warrants that it is aware of all current HIPAA standards and requirements regarding Covered Transactions, and Business Associate shall comply with any modifications to HIPAA standards and requirements which become effective from time to time. Business Associate agrees that such compliance shall be at its sole cost and expense, which expense shall not be passed on to Covered Entity in any form, including, but not limited to, increased fees. Business Associate shall require all of its agents and subcontractors (if any) who assist Business Associate in providing its services and/or products to comply with the terms of this Article VII.

ARTICLE VIII
Miscellaneous

8.1. Regulatory References. A reference in this BA Agreement to a section in HIPAA, HIPAA Regulations, or the HITECH Act means the section as in effect or as amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.

8.2. Amendment. The Parties agree to take such action as is necessary to amend the Services Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations and the HITECH Act.

8.3. Survival. The respective rights and obligations of Business Associate under Sections 5.3 and Article VI of this BA Agreement shall survive the termination of the Services Agreement or this BA Agreement.

8.4. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HIPAA Regulations and the HITECH Act.

8.5. Miscellaneous. The terms of this BA Agreement are hereby incorporated into the Services Agreement. Except as otherwise set forth in Section 8.4 of this BA Agreement, in the event of a conflict between the terms of this BA Agreement and the terms of the Services Agreement, the terms of this BA Agreement shall prevail. The terms of the Services Agreement which are not modified by this BA Agreement shall remain in full force and effect in accordance with the terms thereof. This BA Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington, exclusive of conflict of law rules. Each party to this BA Agreement hereby agrees and consents that any legal action or proceeding with respect to this BA Agreement shall only be brought in the courts of the state where the Covered Entity is located in the county where the Covered Entity is located. The Services Agreement together with this BA Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein, and this BA Agreement supersedes and replaces any former business associate agreement or Agreement entered into by the parties. This BA Agreement may be executed in counterparts, each of which when taken together shall constitute one original. No amendments or modifications to the BA Agreement shall be effected unless executed by both parties in writing.

IN WITNESS WHEREOF, the parties have executed this BA Agreement as of the date set forth above.

KITSAP PUBLIC HEALTH DISTRICT

BUSINESS ASSOCIATE

By: _____
Name: Scott Daniels
Title: Administrator

By: _____
Name: John Austin
Title: Chair, Jefferson Board of County
Commissioners

Approved as to form only
David Alvarez 12/26/13
Jefferson Co. Prosecutor's Office
David Alvarez, Chief Civil DPA