



Sample Confidentiality Agreement for Contract Providers

Designed for Ohio County Boards of Developmental Disability

HIPAA Covered Entities generally do not require either a Business Associate Agreement or any confidentiality agreement with another service provider who is a HIPAA Covered Entity. Any service provider who is themselves a HIPAA Covered Entity is subject to the full HIPAA regulations regarding confidentiality and ensuring HIPAA rights of individuals served.

However, not all service providers are Covered Entities! A service provider must submit electronic claims to a 3rd party payer to be a Covered Entity. Many Boards employ service providers on a contract basis - such as Physical Therapists, Speech Therapists, and Occupational Therapists – whose only “job” is working for the Board. These individuals do not submit any electronic claims to 3rd party payers – they get a check from the Board typically based on hours worked.

Such providers are also not HIPAA Business Associates – they don’t meet the definition. So a HIPAA Business Associate Agreement is not the appropriate solution either.

To ensure the confidentiality of individuals served, it is appropriate to place this type of provider under a confidentiality agreement which has provisions which are similar to a HIPAA Business Associate Agreement – but omits portions which are not relevant and/or are not appropriate. Below is a model agreement. Of course, always seek advice of your County Prosecutor for any legal issues and for final approval of any contract.

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is entered into by and between _____ (“SERVICE PROVIDER”) and _____ (the “COVERED ENTITY”).

RECITALS

- 1) The purpose of this Agreement is to comply with the HIPAA Privacy and Security regulations found at 45 C.F.R. Part 160 and Part 45 CFR § 164 as amended.
- 2) Terms used in this agreement, including but not limited to “covered entity”, “business associate”, “Protected Health Information (PHI)”, “unsecured protected health information”, “use”, “disclose”, “breach”, and “security incident”, shall have the same meaning as defined in most current versions of the above referenced regulations.
- 3) COVERED ENTITY is a covered entity and regulated by the HIPAA regulations.
- 4) Providers of medical and related services, if they submit electronic claims on their own behalf, are also HIPAA Covered Entities. Healthcare providers who do not transmit electronic claims are not subject to the HIPAA regulations, and consequently COVERED ENTITY is requiring the confidentiality assurances detailed in this agreement.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

- 1) **Covered Entities Attest to HIPAA Compliance.** If SERVICE PROVIDER is a HIPAA covered entity, SERVICE PROVIDER attests that it fully complies with all applicable HIPAA regulations.
- 2) **Allowed Uses and Disclosures of Protected Health Information.** The SERVICE PROVIDER provides services for the COVERED ENTITY. The SERVICE PROVIDER may use and disclose protected health information only as follows:



- A) SERVICE PROVIDER may use and disclose protected health information for the purposes specifically provided in Attachment A. In performance of the tasks specified in Attachment A, SERVICE PROVIDER may disclose PHI to its employees, subcontractors and agents, in accordance with the provisions of this agreement.
 - B) SERVICE PROVIDER may further use and disclose PHI, if necessary:
 - i) for the proper management and administration of the SERVICE PROVIDER's business, and/or
 - ii) to carry out the legal responsibilities of the SERVICE PROVIDER if the disclosure is either
 - a) required by law, or
 - b) SERVICE PROVIDER obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially 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 SERVICE PROVIDER of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3) **Responsibilities of SERVICE PROVIDER.** With regard to its use and disclosure of protected health information, SERVICE PROVIDER agrees to do the following:
- A) Use and/or disclose the protected health information only as permitted by this Agreement or as otherwise required by law; no further use or disclosure is permitted.
 - B) Use appropriate physical, technical and administrative safeguards to protect electronic PHI. These include:
 - i) Any PHI stored on any portable computer equipment owned by SERVICE PROVIDER must be encrypted.
 - ii) Text messaging with any information relating to individuals served shall be strictly limited to scheduling appointments.
 - iii) Records shall be removed from COVERED ENTITY's premises only with permission of COVERED ENTITY
 - C) Report to the COVERED ENTITY any security incident, and any use or disclosure not provided by this contract, including breaches of unsecured protected health information.
 - D) Require that subcontractors who create, receive, maintain or transmit ePHI on behalf of SERVICE PROVIDER agree to the same confidentiality provisions specified in this agreement.
 - E) Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to COVERED ENTITY if requested as part of COVERED ENTITY's compliance program.
 - F) Return to the COVERED ENTITY or destroy, as requested by the COVERED ENTITY, within 30 days of the termination of this Agreement, the protected health information in SERVICE PROVIDER's possession and retain no copies or electronic back-up copies. If this is not feasible, SERVICE PROVIDER will limit further uses and disclosures to the reason that return/destruction is not feasible, and to extend the protections in this agreement for as long as the protected health information is in its possession.
- 4) **Mutual Representation and Warranty.** Each party represents and warrants to the other party that all of its employees, agents, representatives and members of its work force, who services may be used to fulfill obligations under this Agreement, are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to fully comply with all provisions of this Agreement.
- 5) **Term and Termination.**
- A) Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, unless terminated as provided herein or by mutual agreement of the parties.



- B) **Termination.** COVERED ENTITY may immediately terminate this Agreement and any related agreement if it determines that the SERVICE PROVIDER has breached a material provision of this Agreement. Alternatively, the COVERED ENTITY may choose to: (i) provide the SERVICE PROVIDER with 30 days written notice of the existence of an alleged material breach; and (ii) afford the SERVICE PROVIDER an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of the Agreement.
- 6) **Survival.** The respective rights and obligations of SERVICE PROVIDER and COVERED ENTITY under the provisions of paragraph 3F above, detailing SERVICE PROVIDER's return and/or ongoing protections of protected health information, shall survive the termination of this Agreement.
- 7) **Amendment.** This Agreement supersedes any previously negotiated confidentiality agreements. Further, it may be modified or amended only in writing as agreed to by each party.
- 8) **Notices.** Any notices to be given hereunder shall be made via U.S. mail or express courier, or hand delivery to the other party's address given below as follows:

If to SERVICE PROVIDER

If to COVERED ENTITY:

IN WITNESS WHEREOF, the parties hereto hereby set their hands and seals as of _____.

SERVICE PROVIDER

COVERED ENTITY

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Attachment A – Permitted Uses and Disclosures

SERVICE PROVIDER is authorized to use protected health information for the purposes of

[INSERT A CLAUSE THAT DESCRIBES SERVICE PROVIDER's ALLOWED USES AND DISCLOSURES. THIS WILL VARY DEPENDING ON THE NATURE OF THE RELATIONSHIP. THE FOLLOWING IS AN EXAMPLE OF A CLAUSE FOR A BILLING SERVICE.]

Example Clauses:

Physical, Speech or Occupational Therapist: SERVICE PROVIDER is authorized to use and disclose protected health information for the execution of duties described under any other agreement with COVERED ENTITY and for providing therapy services to individuals, including any coordination of care and/or consultations with other medical professionals.