



May 2014

The following ten (10) pages represent the entirety of the “Medicaid Data Sharing and Confidentiality Agreement” (Business Associate Agreement [BAA]) that Community Behavioral Health Centers (CBHCs) will need executed in order to access certain patient identified information through the OhioMHAS SPMI health home web portal and/or directly from the Ohio Department of Medicaid (ODM).

Currently Certified/Pending Health Home Service Providers

CBHCs that are already certified by OhioMHAS or CBHCs that have a certification application pending with OhioMHAS, please keep the following in mind when completing the three (3) copies of the agreement:

- 1) This agreement must be used and submitted to OhioMHAS in conjunction with the OhioMHAS health home service rule affirmation checklist.
- 2) The agreement must be signed in the form presented, without change.
- 3) The signature of the health home representative must be in blue ink.
- 4) Three (3) original signed copies must be submitted. Upon execution, one will be sent to the health home service provider (with their OhioMHAS certification if applicable), one will be kept on file with OhioMHAS and one will be kept on file at ODM.

Providers Applying for Initial Health Home Service Certification

CBHCs applying to OhioMHAS for initial health home service certification, please keep the following in mind when completing the three (3) copies of the agreement:

- 1) This agreement must be used and submitted in conjunction with applying for certification for the health home service to OhioMHAS.
 - 2) The agreement must be signed in the form presented, without change.
 - 3) The signature of the health home representative must be in blue ink.
 - 4) Three (3) original signed copies must be submitted. Upon execution, one will be sent to the health home service provider with their OhioMHAS certification, one will be kept on file with OhioMHAS and one will be kept on file at ODM.
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MEDICAID DATA SHARING AND CONFIDENTIALITY AGREEMENT

D-1415-07-_____

This Agreement is entered into by and among the Ohio Department of Medicaid (ODM), the Ohio Department of Mental Health and Addiction Services (OhioMHAS), collectively referred to below as "the State," and _____ (Health Home). Health Home is a Community Behavioral Health Center (CBHC) that is enrolled as an Ohio Medicaid provider, and certified to provide the Health Home service by OhioMHAS in accordance with OAC Section 5122-29-33.

ARTICLE I - PURPOSE AND LEGAL AUTHORITY

This Agreement outlines the responsibilities of each of the parties in the shared coordination of the Medicaid Health Home Program (Program), a specialized care management program for Ohio Medicaid recipients identified with serious and persistent mental illness (SPMI). CBHC responsibilities include, but are not limited to, providing comprehensive care coordination to program enrollees. For purposes of this Agreement, "health home" shall have the meaning provided in Section 2703, "State Option to Provide Health Homes for Enrollees with Chronic Conditions," of the Affordable Care Act, citing to Section 1945 of the Social Security Act. Those programs, administered by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, allow health homes to enroll populations with chronic conditions, including those with SPMI, as defined by the State of Ohio.

The authority to release this data is 42 CFR 431.302, 431.305, 431.306, 431.307, 435.945, 45 CFR 164.402(e) and 164.504.

The ODM Agreement Manager is Mary Haller. The OhioMHAS Agreement Manager is Douglas Day.

ARTICLE II - DESCRIPTION OF RECORDS OR DATA TO BE PROVIDED

A. Responsibilities of the State.

The State will provide Medicaid and state psychiatric hospital data containing protected health information (PHI) to the CBHC. OhioMHAS will host a web portal that CBHC will use to enroll clients into the Health Home service and to obtain eligibility and enrollment data files and ODM will provide data files via the Medicaid Information Technology System (MITS) provider web portal. The State will generate and share with the CBHC client specific utilization profiles for the Medicaid recipients that are currently enrolled in the Program through the CBHC.

B. Responsibilities of the CBHC.

1. The CBHC agrees to receive Medicaid and state psychiatric hospital data only for persons that are eligible for enrollment or who are enrolled in the CBHC's Program, for the purpose of carrying out its responsibilities under this Agreement.
2. The CBHC agrees not to share recipient historic Medicaid data provided by the State with entities other than under the following exceptions:
 - a. If the data is used for fulfillment of the goal of coordinating health with the enrollee's authorization;
 - b. If, in emergency situations, the enrollee is unable to communicate or make decisions for himself or herself; or
 - c. If the enrollee agrees to share his or her pharmacological claims history with the primary care provider who is partnering with the CBHC to develop a comprehensive care plan for the enrollee.
3. The CBHC agrees to inform each Medicaid recipient who it enrolls in the Program that his or her enrollment is voluntary and explain how enrollment in the Health Home impacts other services, especially other care coordination services (e.g. CPST, MCP care management), and that enrollee may rescind his or her enrollment at any time.
4. The CBHC agrees to disenroll any enrollee who has informed the CBHC that he or she wants to be disenrolled. The CBHC must give notice to ODM within three (3) business days by performing the disenrollment function within the MITS provider web portal, Ohio's online Medicaid provider claims processing system.
5. The CBHC agrees that the terms of this Agreement apply only to those individuals enrolled in the Program.
6. The CBHC agrees to comply with all Ohio Administrative Code rules governing health home services for persons with serious and persistent mental illness: OAC 5101:3-27-02; 5101:3-27-05; and 5122-29-33.

ARTICLE III - CONFIDENTIALITY OF INFORMATION

A. The Health Home agrees that it shall not use any information, systems, or records made available to it for any purpose other than to fulfill the obligations specified herein. The Health Home specifically agrees to comply with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this Agreement exists, including, but not limited to:

1. United States Code - 42 USC 1320d through 1320d-8 (HIPAA);
2. Code of Federal Regulations - 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945, 45 CFR 164.502(e) and 164.504(e);
3. Ohio Revised Code - ORC 173.20, 173.22, 2305.24, 2305.251, 3701.243, 3701.028, 4123.27, 5101.26, 5160.39, 5160.45, 5160.46, 5160.48, 5160.481, 5112.21, 5111.61, 5119.28, and 5122.31; and
4. Corresponding Ohio Administrative Code rules.

- B. The Health Home shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of ODM and OhioMHAS against use or disclosure not provided for by this Agreement.
- C. The Health Home agrees that access to records and data provided by the State and described in ARTICLE II will be restricted to only those authorized employees, officials, subcontractors, and other persons who need it to perform duties related to this Agreement. The Health Home agrees to provide the ODM and OhioMHAS Agreement Managers with a complete listing of any and all persons who shall have access to the above referenced records and data.
- D. The Health Home agrees that the above described records and data and any records, reports, databases, and other derivative documents created from the information provided under this Agreement shall be stored in an area that is physically safe from access from unauthorized persons during duty and non-duty hours. Information provided under this Agreement shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means. No records will be accessed, tested, maintained, backed up or stored outside of the United States.
- E. The Health Home shall assure that all persons who have access to the above referenced information shall be fully apprised as to the confidential nature of the information, the safeguards required to protect the information, and the applicable civil and criminal sanctions and penalties associated with any intentional or non-intentional unauthorized disclosure. No subcontractor shall receive any information without a written agreement with the Health Home incorporating these assurances.
- F. The Health Home shall not disclose any of the above referenced information to any third party without the specific written authorization of the Director of ODM or the Director of OhioMHAS. However, the Health Home must copy the other agency in order to make them aware of the request.
- G. The Health Home shall permit onsite inspection by the State of Ohio (including, but not limited to ODM, OhioMHAS, the Auditor of the State of Ohio, the Inspector General of Ohio, or any duly authorized law enforcement officials) and by agencies of the United States government.
- H. ODM and OhioMHAS will prepare data pursuant to the security and encryption standards found in Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; and NIST Special Publication 800-53. The Health Home shall retain this encryption while the data is in a portable format (e.g. tape, laptop, flash/USB drive) and in transit.

- I. The terms of this ARTICLE III shall be included in all subcontracts executed by the Health Home for any and all work under this Agreement.

ARTICLE IV - TIME OF PERFORMANCE

- A. Upon approval by the Directors of ODM and OhioMHAS, this Agreement shall be in effect from the date of execution and shall remain in effect during the time that the Health Home has a current Medicaid provider agreement with ODM and current certification to provide health home services through OhioMHAS, unless this Agreement is earlier suspended or terminated pursuant to ARTICLE VI.
- B. The Confidentiality and Business Associate Requirements provisions of this Agreement shall survive the termination of this Agreement.

ARTICLE V - COST OF DATA PREPARATION

The parties agree that no reimbursement will be sought under the terms of this Agreement.

ARTICLE VI - SUSPENSION AND TERMINATION

- A. Upon thirty (30) days written notice to the other parties, any party may terminate this Agreement.
- B. Notwithstanding Section A of this ARTICLE, ODM and OhioMHAS may suspend or terminate this Agreement immediately upon delivery of written notice to the Health Home and the other state agency if ODM or OhioMHAS discovers any illegal conduct on the part of the Health Home or if there is any breach of the provisions of ARTICLE III or ARTICLE XI.
- C. Notice of termination or suspension under either Section A or B of this ARTICLE must be sent to: ODM at: 50 W. Town Street, Suite 400, Columbus OH 43215; to OhioMHAS at: OhioMHAS Bureau of Health Integration, 30 East Broad Street, 36th Floor, Columbus, Ohio 43215; and to Health Home's representative at the address appearing on the signature page of this Agreement.

ARTICLE VII - BREACH OR DEFAULT

- A. Upon breach or default of any of the provisions, obligations, or duties embodied in this Agreement, ODM or OhioMHAS may exercise any administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and ODM or OhioMHAS retains the right to exercise all remedies hereinabove mentioned.
- B. If any of the parties fails to perform an obligation or obligations under this Agreement and thereafter such failure(s) is(are) waived by the other parties, such waiver shall be limited

to the particular failure(s) so waived and shall not be deemed to waive other failure(s) hereunder. Waiver by ODM or OhioMHAS shall not be effective unless it is in writing signed by the respective Director.

ARTICLE VIII - AMENDMENTS

This Agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the Director of ODM, the Director of OhioMHAS, and the Health Home. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing a written amendment.

ARTICLE IX - INDEPENDENT CONTRACTOR

The Health Home agrees that no agency, employment, joint venture, or partnership has been or will be created among the parties hereto pursuant to the terms and conditions of this Agreement. The Health Home also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder. The Health Home agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio Tax Law, Workers Compensation law, and Unemployment Insurance law. The Health Home certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio have been obtained and are operative. If at any time during the contractual period the Health Home becomes disqualified from conducting business in Ohio, for whatever reason, the Health Home must immediately notify ODM and OhioMHAS of the disqualification and will immediately cease performance of its obligations hereunder, except those obligations to safeguard the information as set forth in ARTICLE IV.B.

ARTICLE X - LIMITATION OF LIABILITY: DUTIES OF THE HEALTH HOME

The Health Home agrees to defend, indemnify and hold ODM and OhioMHAS, their respective officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys' fees) or claims for personal injury, property damage, patent and copyright infringement, or for any liability or claims under Article XI below ("Business Associate Requirements Under HIPAA"), or any other type of claim that arises resulting from activities in furtherance of the work hereunder. Subject to Ohio Revised Code Section 109.02, the Health Home agrees to defend ODM and OhioMHAS against any such claims or legal actions if called upon by ODM and OhioMHAS to do so.

ARTICLE XI - BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA

- A. The definitions contained in this section are derived from federal law. Should there be any conflict between the meanings assigned in this Agreement and the meanings defined in applicable federal law (even in the event of future amendments to law that create such conflict), the definitions found in federal law will prevail.
1. **General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information and Use.
 2. **Specific Definitions.**
 - a. HIPAA means the Health Insurance Portability and Accountability Act of 1996, the American Recovery and Reinvestment Act of 2009 (ARRA) and any other applicable federal statute or regulation.
 - b. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - c. Covered Entity means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.
 - d. Business Associate means a person or entity that, on behalf of the Covered Entity, maintains, performs, or assists in the performance of a function or activity that involves the use or disclosure of "Protected Health Information" under 45 CFR 160.103.
 - e. Protected Health Information (PHI) means individually identifiable information including but not limited to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined under 45 CFR 164.501 and any amendments thereto, received or sent on behalf of the Department.
- B. Health Home acknowledges that ODM and OhioMHAS are Covered Entities under HIPAA. Health Home further acknowledges that it is a Business Associate of ODM and OhioMHAS, and, in carrying out the work described in this Agreement, agrees to comply with all of the following provisions:
1. **Permitted Uses and Disclosures.** Health Home will not use or disclose PHI except as provided in this Agreement or as otherwise required under HIPAA regulations or other applicable law.

2. **Safeguards.** Health Home will implement sufficient safeguards, and comply with Subpart C of 45 CFR Part 164 pertaining to electronic PHI to prevent the use or disclosure of PHI other than as provided for under this Agreement. Safeguards will be implemented for all paper and electronic PHI created, received, maintained, or transmitted on behalf of ODM or OhioMHAS.
3. **Reporting of Disclosures.** Health Home agrees to promptly report to ODM and OhioMHAS any inappropriate use or disclosure of PHI that is not in accordance with this Agreement or applicable law, including breaches of unsecured protected health information as required at 45 CFR 164.410 and any security incident the Health Home has knowledge of or reasonably should have knowledge of under the circumstances.
4. **Mitigation Procedures.** Health Home agrees to coordinate with ODM and OhioMHAS to determine specific actions that will be required of the Business Associates for mitigation, to the extent practical, of the breach. These actions will include notification to the appropriate individuals, entities, or other authorities. Notification or communication to any media outlet must be approved, in writing, by ODM and OhioMHAS prior to any such communication being released. Health Home will report all of its mitigation activity to ODM and shall preserve all relevant records and evidence.
5. **Incidental Costs.** Health Home shall bear the sole expense of all costs to mitigate any harmful effect, of any breaches or security incidents of which Health Home has knowledge which are directly caused by the use or disclosure of protected health information by Health Home in violation of the terms of this Agreement. These costs will include, but are not limited to, the cost of investigation, remediation and assistance to the affected individuals, entities or other authorities.
6. **Agents and Subcontractors.** Health Home, in compliance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) as applicable, will ensure that all its agents and subcontractors that create, receive, maintain, or transmit PHI from or on behalf of Health Home, ODM, or OhioMHAS agree to have, in a written agreement, the same restrictions, conditions, and requirements that apply to Health Home with respect to the use or disclosure of PHI.
7. **Accessibility of Information.** Health Home will make available to ODM and OhioMHAS such information as ODM and OhioMHAS may require to fulfill its obligations to provide access to, provide a copy of any information or documents with respect to PHI pursuant to HIPAA and regulations promulgated by the United States Department of Health and Human Services, including, but not limited to, 45 CFR 164.524 and 164.528 and any amendments thereto.
8. **Amendment of Information.** Health Home shall make any amendment(s) to PHI as directed by, or agreed to, by ODM and OhioMHAS pursuant to 45 CFR 164.526, or take other steps as necessary to satisfy ODM's and OhioMHAS's

obligations under 45 CFR 164.526. In the event that Health Home receives a request for amendment directly from the individual, agent, or subcontractor Health Home will notify ODM and OhioMHAS prior to making any such amendment(s). Health Home's authority to amend information is explicitly limited to information created by Health Home.

9. **Accounting for Disclosure.** Health Home shall maintain and make available to ODM or OhioMHAS or individuals requesting the information as appropriate, records of all disclosures of PHI in a Designated Record Set as necessary to satisfy OhioMHAS and ODM's obligations under 45 CFR 164.528. For every disclosure the record will include, at a minimum, the name of the individual who is the subject of the disclosure, the date of the disclosure, reason for the disclosure if any, and the name and address of the recipient to which the protected health information was disclosed.
10. **Obligations of ODM.** When Health Home is to carry out an obligation of ODM or OhioMHAS under Subpart E of 45 CFR 164, Health Home agrees to comply with all applicable requirements of Subpart E that would apply to ODM in the performance of such obligation.
11. **Access to Books and Records.** Health Home shall make available to ODM, OhioMHAS, and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from ODM or OhioMHAS, or created or received on behalf of ODM or OhioMHAS. Such access is for the purposes of determining compliance with the HIPAA Rules.
12. **Material Breach.** In the event of material breach of Health Home's obligations under this Article, ODM or OhioMHAS may immediately terminate this Agreement as set forth in ARTICLE VI, Section B. Termination of this Agreement will not affect any provision of this Agreement, which, by its wording or its nature, is intended to remain effective and to continue to operate after termination.
13. **Return or Destruction of Information.** Upon termination of this Agreement and at the request of ODM or OhioMHAS, Health Home will return to ODM or OhioMHAS or destroy all PHI in Health Home's possession stemming from this Agreement as soon as possible but no later than 90 days, and will not keep copies of the PHI except as may be requested by ODM or OhioMHAS or required by law, or as otherwise allowed for under this Agreement. If Health Home, its agent(s), or subcontractor(s) destroy any PHI, then Health Home will provide to ODM and OhioMHAS documentation evidencing such destruction. Any PHI retained by Health Home will continue to be extended the same protections set forth in this Section, HIPAA regulations and this Agreement for as long as it is maintained.
14. **Survival.** These provisions shall survive the termination of this Agreement.

ARTICLE XII - CONSTRUCTION

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Agreement be found to be unenforceable by operation of statute or by administrative or judicial decision, the operation of the balance of this Agreement is not affected thereby, provided, however, the absence of the illegal provision does not render the performance of the remainder of the Agreement unreasonable.

SIGNATURE PAGE FOLLOWS - REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

[Health Home]: _____

Signature (blue ink)

Date

Address:

Ohio Department of Mental Health and Addiction Services:

Tracy J. Plouck, Director

Date

Ohio Department of Medicaid:

John B. McCarthy, Director

Date