

ELECTRONIC DATA INTERCHANGE
TRADING PARTNER AND BUSINESS ASSOCIATE AGREEMENT
[ADAMH/CMH/ADAS Board and State (ODMH/ODADAS)]

THIS AGREEMENT regarding the enrollment, claims payment, and related operations functions of the Multi-Agency Community Services Information System ("MACSIS"), including terms relating to the ELECTRONIC DATA INTERCHANGE AMONG THE TRADING PARTNERS and terms defining the BUSINESS ASSOCIATE RELATIONSHIP ("Agreement") is made as of this ____ day of _____, 2003, by and between _____ ("Partner" and "Covered Entity"), with offices at _____ and the State of Ohio, Departments of Mental Health ("ODMH") and Alcohol and Drug Addiction Services ("ODADAS"), (collectively "State" and "Business Associate"), with offices at 30 East Broad Street, 8th Floor, Columbus, Ohio 43215-3430 (ODMH) and Two Nationwide Plaza, 280 North High Street, 12th Floor, Columbus, Ohio 43215-2537 (ODADAS).

WHEREAS, Partner and State desire to facilitate transfer of claims payment and remittance advices relating to the State's operation of the Multi-Agency Community Services Information System ("MACSIS") on behalf of Partner by electronically transmitting and receiving data in agreed upon formats ("Transactions,") and to assure that such Transactions are legally valid and enforceable as a result of this use of electronic technologies for the mutual benefit of the parties; and

WHEREAS, this Agreement describes the procedures, terms and conditions that will apply to electronic data interchange ("EDI") transactions between the parties; and

WHEREAS, Covered Entity will make available and/or transfer to Business Associate confidential, personally identifiable protected health information ("PHI") in conjunction with Business Associate's operation of MACSIS on behalf of Covered Entity, for payment and related operations purposes; and

WHEREAS, PHI may be used or disclosed only in accordance with the privacy regulations [45 CFR Part 164] issued pursuant to the Health Insurance Portability and Accountability Act ["HIPAA"; 42 USC §§ 1320-1320d-8], or the more stringent terms of Ohio or other federal law, including 42 CFR Part II, and in accordance with the terms of this Agreement;

NOW THEREFORE, the parties agree as follows:

Definitions

Terms used herein shall have the same definitions as specified in the HIPAA EDI standards regulations (45 CFR Parts 160 and 162) and the HIPAA privacy regulations (45 CFR Part 164). For example:

Covered Entity ("CE") means a health plan, a health care clearinghouse, or a health care provider that transmits any health information in electronic form in connection with a covered transaction, as more fully defined in 45 CFR § 160.103, and any amendments thereto.

Business Associate ("BA") means a person or entity who, on behalf of a CE, and other than in the capacity of a workforce member: performs or assists in the performance of a function or activity that involves the use or disclosure of protected health information, or; provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services, as more fully defined in 45 CFR § 160.103, and any amendments thereto.

Protected Health Information ("PHI") means individually identifiable information received from or on behalf of Partner relating 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 in 45 CFR § 164.501, and any amendments thereto.

Required by law means a mandate contained in law that compels a CE to use or disclose PHI and that is enforceable in a court of law, as more fully defined in 45 CFR § 164.501, and any amendments thereto.

Trading Partner Agreement

Section 1. Miscellaneous

1.1 Documents; Standards: Each party shall electronically transmit to or receive from the other party any of the transaction sets listed in the Guidelines Pertaining to MACSIS, HIPAA EDI Policies and Procedures, Section 40B - Formats and Versions Supported, as it may be updated ("Documents"). Any transmission of data that is not a Document shall not give rise to any obligations between the parties unless justifiably relied upon by the receiving party. All Documents shall be transmitted in accordance with this Agreement, applicable state and federal law, the published industry guidelines, and the standards set forth in the Guidelines Pertaining to MACSIS, HIPAA EDI Policies and Procedures and the MACSIS Boards' Operations Manual.

1.2 Third Party Administrators:

1.2.1 Each party will transmit Documents directly or through a third party administrator ("Agent"), as will be specified by the party in the MACSIS claims testing process. Either party may modify its election to use, not use, or change an Agent upon thirty days prior written notice to the other party.

1.2.2 Each party shall be responsible for the costs of any Agent with which it contracts.

1.2.3 Each party shall be responsible for the acts or omissions of its Agent while transmitting, receiving, storing or handling Documents or performing related activities for such party. If both parties use the same Agent to effect the transmission and receipt of a Document, the originating party shall be responsible for the acts or omissions of such Agent relative to such Document.

1.3 System Operations: Each party, at its own expense, shall provide and maintain the equipment, software, services, and testing (as outlined in pertinent sections of the Guidelines Pertaining to MACSIS, HIPAA EDI Policies and Procedures) necessary to transmit and receive Documents effectively and reliably.

1.4 Security Procedures: Each party shall properly use security procedures that are reasonably sufficient to ensure that all transmissions of Documents are authorized and to protect its business records and data from improper access, including any security procedures that may be specified in the Guidelines Pertaining to MACSIS, HIPAA EDI Policies and Procedures, Section 40D - General File Transfer Policies, or in applicable state or federal law.

Section 2. Transmissions

2.1 Proper Receipt: Documents shall not be deemed to have been properly received, and no Document shall give rise to any obligation until accessible to the receiving party in accordance with the Guidelines Pertaining to MACSIS, HIPAA EDI Policies and Procedures, Section 40D - General File Transfer Policies.

2.2 Garbled Transmissions: If any transmitted Document is received in an unintelligible or garbled form, the receiving party shall notify the originating party within seven (7) business days.

Section 3. Transaction Terms

3.1 Terms and Conditions: This Agreement is to be considered a part of any other written agreement referencing it or referenced in the Guidelines Pertaining to the Implementation of MACSIS and the Guidelines Pertaining to MACSIS, HIPAA EDI Policies and Procedures. Absent a written agreement to the contrary, any Transaction made pursuant to this Agreement, and any related communication, also shall be subject to the terms and conditions, including any terms for payment, included in the Guidelines Pertaining to the Implementation of MACSIS and the Guidelines Pertaining to MACSIS, HIPAA EDI Policies and Procedures.

The terms of this Agreement shall prevail in the event of any conflict with any other terms and conditions applicable to any Transactions.

3.2 Validity; Enforcement:

3.2.1 This Agreement has been executed by the parties to evidence their mutual intent to create binding Transactions pursuant to the electronic transmission and receipt of Documents.

3.2.2 Any Document properly transmitted pursuant to this Agreement shall be considered, in connection with any Transaction, this Agreement, or any other written agreement described in Section 3.1, to be a "writing" or "in writing", and to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

3.2.3 The conduct of the parties pursuant to this Agreement, including the use of Documents properly transmitted pursuant to this Agreement, shall, for all legal purposes, evidence a course of performance accepted by the parties in furtherance of this Agreement and any other agreements described in Section 3.1.

3.2.4 The parties agree not to contest the validity or enforceability of Documents under the provisions of any applicable laws relating to whether certain agreements must be in writing and signed by the party to be bound thereby. Documents, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party will contest the admissibility of copies of Documents under either the business records exception to the hearsay rule or the best evidence rule on the basis that the

Documents were not originated or maintained in documentary form.

3.3 Data Transmission Accuracy: Partner shall establish, implement and maintain controls, policies and procedures that ensure timely and accurate transmission and receipt of Documents to and from the State. If Partner evidences a pattern of failure to transmit or receive Documents to or from State in a timely and accurate manner, Partner agrees to work with State to review relevant business records and/or Partner's (or its agent's) operating system, as necessary, to ensure compliance with Sections 1 through 3 of this Agreement and the Guidelines Pertaining to MACSIS, HIPAA EDI Policies and Procedures. As deemed necessary pursuant to such review, State will provide technical assistance to Partner to establish, modify and implement effective controls, policies and procedures for these purposes, and will monitor their effectiveness.

Business Associate Agreement

Section 4. State as Business Associate

4.1 Covered Entity's Privacy Notice: Covered Entity shall provide to Business Associate a copy of its current Notice of Privacy Practices and any relevant information on changes to or agreed upon restrictions relating to legal permissions for the use or disclosure of PHI.

4.2 Business Associate's Use of Data: Business Associate agrees that it will not receive, create, use or disclose PHI from or on behalf of Covered Entity except as follows:

4.2.1 Business Associate shall receive from Covered Entity enrollment and claims information in accordance with the Guidelines Pertaining to MACSIS and the MACSIS Boards' Operations Manual, and shall use such information:

- ◆ to support system efforts related to payment and operations functions necessary for the administration of MACSIS;
- ◆ for ODMH to match against mental health Outcomes criteria as specified in the Outcomes System Procedural Manual to create the basic Outcomes operations files and to provide Covered Entity with error reports and missing data reports concerning Outcomes data flow, and further, to use MACSIS age, race, gender and diagnosis elements to prepare statewide aggregate Outcomes data reports; and
- ◆ for ODADAS to match against alcohol and other drug Behavioral Health Module data ("BH data") as specified in the BH Manual and Procedures to perform a gap analysis relating

to BH data reporting and to provide error reports concerning BH data flow to Covered Entity.

- ◆ Business Associate shall return to Covered Entity information relating to adjudication and payment of claims in accordance with the Guidelines Pertaining to MACSIS, and the MACSIS Boards' Operations Manual.

4.2.2 Business Associate may use or disclose PHI If necessary for the proper management and administration of the MACSIS system, or to carry out legal responsibilities of Business Associate, provided that such uses or disclosures are permitted under state and federal law. PHI may only be disclosed to another person or entity for such purposes if:

- ◆ Disclosure is required by law; or
- ◆ Where Business Associate obtains reasonable assurances from the person/entity to whom disclosure is made that the PHI released will be held confidentially, and only may be used or further disclosed as required by law or for the purposes of the disclosure; and
- ◆ Person or entity agrees to notify Business Associate of any breaches of confidentiality;

4.2.3 Business Associate may aggregate data for the MACSIS Data Mart and ODADAS may aggregate data for the ODADAS BH Data Mart. Business Associate, ODMH and/or ODADAS may use or disclose PHI in order to permit Business Associate, ODMH and/or ODADAS to provide other data aggregation services relating to the health care operations of Covered Entity as mutually agreed to in writing as an addendum to this Agreement by Covered Entity and Business Associate, ODMH and/or ODADAS.

4.3 Minimum Necessary: Business Associate agrees that it will not request, use or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure unless the minimum necessary standard under the HIPAA regulations does not apply to the specific request, use or disclosure. Business Associate will not retain PHI except as necessary for the performance of operations or functions authorized under this Agreement, any Agreements subsequently entered into between or among Covered Entity and Business Associate, ODMH, and/or ODADAS, or as required by state or federal law.

4.4 Safeguards: Business Associate will establish and maintain appropriate safeguards to prevent any unauthorized use or disclosure of PHI.

4.5 Reporting of Unauthorized Uses/Disclosures: Business Associate agrees that it shall, within five (5) business days, report to Covered Entity any unauthorized uses or disclosures of PHI of which it becomes aware, and shall take all reasonable steps to mitigate the potentially harmful effects of any such breach.

4.6 Subcontractors and Agents: Business Associate shall ensure that all of its subcontractors and agents are bound, in writing, by the same restrictions and obligations contained in this Section 4 whenever PHI is made accessible to such subcontractors or agents.

4.7 Access, Accounting, Amendment: Business Associate shall make all PHI and related information in its possession available to Covered Entity, within twenty (20) business days of notice, to the extent necessary to permit Covered Entity to fulfill any obligation it has to allow access for inspection and copying in accordance with 45 CFR § 164.524, to account for disclosures of PHI in accordance with 45 CFR § 164.528, and to amend PHI and related information in accordance with 45 CFR § 164.526. Business Associate shall, as directed by Covered Entity, incorporate any amendments or related statements into the information held by Business Associate and any of its subcontractors or agents within thirty (30) days of receiving such direction from Covered Entity.

4.8 HHS Compliance Efforts: Business Associate shall make its internal practices and records relating to the use and disclosure of PHI available to the United States Secretary of Health and Human Services, or his/her designee, for purposes of determining Covered Entity's compliance with the HIPAA privacy regulations.

4.9 Obligations upon Termination: Upon termination of this Agreement, Business Associate agrees to return or destroy all PHI created or received from or on behalf of Covered Entity, except to the extent that Business Associate is required by law to retain the PHI. Business Associate agrees that it will not retain any copies of PHI except as required by law. If return or destruction of all PHI, and all copies of PHI is not feasible, Business Associate agrees to extend the protections of this Section 4 to such information for as long as it is maintained, and to limit further uses and disclosures to those purposes that make return or destruction of the information infeasible. Termination of this Agreement shall not affect any of the provisions of Section 4 that safeguard the confidentiality and security of PHI.

4.10 Covered Entity's Right to Terminate: Any non-compliance by Business Associate with the terms of this Section 4 or the HIPAA privacy regulations shall be a breach of this Agreement if Business Associate knew of the breach and failed to take immediate and reasonable steps

to cure the non-compliance. Business Associate agrees that Covered Entity has the right to immediately terminate this Agreement, if feasible, or to report the problem to the Secretary of the U.S. Department of Health and Human Services, if Covered Entity determines that Business Associate has violated a material provision of Section 4.

General Provisions

Section 5. Miscellaneous

5.1 Termination: This Agreement shall remain in effect until terminated by either party with not less than thirty (30) days prior written notice, or without notice in accordance with Section 4.10. Such notice shall specify the effective date of termination, provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Agreement prior to the effective date of termination.

5.2 Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unless the invalidity or unenforceability of other provisions make it unreasonable to proceed in their absence.

5.3 Entire Agreement: This Agreement, the Guidelines Pertaining to the Implementation of MACSIS and Guidelines Pertaining to MACSIS, HIPAA EDI Policies and Procedures, constitute the complete agreement of the parties relating to the matters specified in this Agreement and supercede all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. No obligation to enter into any Transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon, the parties and their respective successors and assigns.

5.4 Non-Waiver: The waiver by either party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition or obligation.

5.5 Survival of Key Provisions: The respective obligations of the Parties under this Agreement, specifically including, without limitation, relevant provisions of Section 4 (State as Business Associate), which by their nature are intended to continue beyond the termination of this Agreement, shall survive termination of this Agreement.

5.6 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

5.7 Force Majeure: No party shall be liable for any failure to perform its obligations in connection with any Transaction relating to any Document where such failure results from any act of God or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such party from transmitting or receiving any Documents.

5.8 Limitation of Damages: Neither party shall be liable to the other for any special, incidental, exemplary or consequential damages arising from or as a result of any delay, omission or error in the electronic transmission or receipt of any Documents pursuant to this Agreement, even if the party has been advised of the possibility of such damages.

5.9 Dispute Resolution: The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement through either negotiation or mediation prior to initiating litigation.

5.10 Notices: All notices, requests or responses shall be made in writing and shall be deemed to have been properly given if and when personally delivered or sent, postage prepaid, by certified mail:

To: [contact person]
[board]
[address]

To: Joe Wiant, Chief of Information Services
Ohio Department of Mental Health
30 East Broad Street, Suite 1010
Columbus, Ohio 43215-3430

To: Walter Hull, Chief of Division of MIS
Ohio Department of Alcohol and Drug Addiction Services
Two Nationwide Plaza
280 North High Street, 12th Floor
Columbus, Ohio 43215-2537

Either party may give written notice of a change in the identity or address for their designated contact person in accordance with the terms of this notice provision.

5.11 Other Agreements: Parties acknowledge that there are other agreements between ODMH and Board, including the Mutual Systems

Performance Agreement, and/or between ODADAS and Board, that are not impacted by this Agreement except to the extent any provision therein is inconsistent with the specific terms of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any other agreement between or among the parties, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

[BOARD NAME]

[Board, Executive Director]

Date

Director, Ohio Department of Mental Health

Michael F. Hogan, PhD

Date

Director, Ohio Department of Alcohol
And Drug Addiction Services

Luceille Fleming

Date