

HIPAA BUSINESS ASSOCIATE AGREEMENT
Between
WASHINGTON DENTAL SERVICE
AND

(Business Associate)

This HIPAA Business Associate Agreement (Agreement) supplements any previous Agreement made by and between Washington Dental Service (WDS), and _____ (Business Associate) and is effective as of the _____ day of _____, _____ (the Agreement Effective Date). WDS and Business Associate may be referred to individually as “Party” and, collectively, “Parties.”

RECITALS

WHEREAS, WDS is a Covered Entity (defined below) subject to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and Regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively HIPAA); and

WHEREAS, WDS has entered into the Agreement with Business Associate so that Business Associate will provide certain services on behalf of WDS that require the use and disclosure of Protected Health Information (defined below); and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the Privacy Rule (defined below), the Security Rule (defined below) and other applicable law, including, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations (CFR) and contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in any other Agreement and in this Agreement and the exchange of information pursuant to any other Agreement and this Agreement, the delivery and sufficiency of which is acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms in this Agreement are defined as follows:

1.1 “Business Associate” shall have the same meaning as the term “Business Associate” in 45 CFR § 160.103.

1.2 “Covered Entity” shall have the same meaning as the term “covered entity” in 45 CFR § 160.103.

1.3 “De-identify” or “De-identified” means to remove, encode, encrypt or otherwise eliminate or conceal data that identifies an Individual, or modify information so

that there is no reasonable basis to believe that the information can be used to identify an Individual.

1.4 “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR § 164.501.

1.5 “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.6 “Privacy Rule” shall mean the standards for privacy of individually identifiable health information at 45 CFR Part 160 and Part 164, subparts A and E.

1.7 “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of WDS.

1.8 “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.501.

1.9 “Secretary” shall mean the Secretary of the Department of Health and Human Service or his or her designee.

1.10 “Security Rule” shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, Subpart C, as such standards may be amended or supplemented from time to time.

2. Permitted Uses and Disclosures of Protected Health Information by Business Associate.

2.1 General Use and Disclosure. Except as otherwise limited in this Agreement and any other Agreements, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, WDS as specified in the Agreement.

2.2 Permitted Uses and Disclosures of Protected Health Information.

(a) Use for Administration of Business Associate. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(b) Disclosure for Administration of Business Associate and as Required by Law. Except as expressly provided in this Section 2.2(b), Business Associate will not disclose Protected Health Information to any person or entity without the express prior written consent of Covered Entity. Business Associate may disclose Protected Health Information to its employees and agents if and to the extent (a) such

employees or agents need to know such information in order for Business Associate to perform its obligation under the Agreement, (b) such employees or agents have been notified that it is Protected Health Information of Covered Entity, (c) such employees or agents have agreed in writing or are otherwise contractually or legally bound to maintain and protect the confidentiality and privacy of the Protected Health Information under terms and conditions that are at least as stringent as those set forth in this Agreement, and (d) such disclosure would not violate any other provisions of this Agreement or applicable law, and would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or 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 Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.

(c) Use and Disclosure to Report Violations of Law. Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 42 CFR § 164.502(j)(1).

3. Obligations and Activities of Business Associate.

3.1 No Further Use or Disclosure. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or any other Agreement or as Required by Law.

3.2 Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by any other Agreement and this Agreement. Business Associate agrees to implement, in accordance with the Security Rule, any and all administrative, technical and physical safeguards necessary to reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity.

3.3 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 in violation of the requirements of any other Agreement or this Agreement.

3.4 Reporting Improper Use or Disclosure. Business Associate agrees to report, in writing, to WDS any use or disclosure of Protected Health Information, including disclosure as a result of a security incident, not provided for by any other

Agreement or this Agreement of which it becomes aware. The address for reporting such incidents is:

Washington Dental Service
9706 Fourth Avenue NE
Seattle, WA 98115-2157

For purposes of this Agreement, the term security incident shall mean successful unauthorized access to, disclosure, modification or destruction of, or interference with, Electronic Protected Health Information by a third party.

3.5 Agents and Subcontractors. Business Associate agrees to 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 WDS agrees to the same restrictions and conditions that apply through this Agreement and any other Agreement to Business Associate with respect to such Protected Health Information.

3.6 Access to Protected Health Information. Business Associate agrees to provide access, at the request of, and in the time and manner WDS and Business Associate mutually agree upon, to Protected Health Information in a Designated Record Set, to WDS or, as directed by WDS, to an Individual in order to meet the requirements under 45 CFR § 164.524.

3.7 Amendment of Protected Health Information. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that WDS directs or agrees to pursuant to 45 CFR § 164.526 at the request of WDS and in the time and manner Business Associate and WDS mutually agree upon.

3.8 Government Access to Business Associate Records. Business Associate agrees to make internal practices, books and records, relating to the use and disclosure of Protected Health Information received from, created or received by Business Associate on behalf of, WDS available to the Secretary, in a time and manner mutually agreed upon or designated by the Secretary, for purposes of the Secretary determining WDS's compliance with the Privacy Rule.

3.9 Documentation of Disclosures. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for WDS to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3.10 Accounting of Disclosures. Business Associate agrees to provide to WDS or an Individual, in the time and manner mutually agreed upon, information collected in accordance with Section 3.9 of this Agreement, to permit WDS to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3.11 Compliance with Applicable Laws. Business Associate shall comply with all federal, state and local confidentiality privacy and security laws, specifically including, but not limited to, HIPAA.

4. Obligations of WDS.

4.1 Notice of Privacy Practices. WDS shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

4.2 Notification of Changes Regarding Individual Permission. WDS shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

4.3 Notification of Restrictions to Use or Disclosure of Protected Health Information. WDS shall notify Business Associate of any restrictions to the use or disclosure of Protected Health Information that WDS has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

4.4 Permissible Requests by WDS. WDS 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 WDS except to the extent that Business Associate may use or disclose Protected Health Information for the administrative activities of Business Associate consistent with Section 2.2(a) and (b) of this Agreement.

5. Term and Termination.

5.1 Term. The term of this Agreement shall commence as of the Agreement Effective Date and shall terminate when all of the Protected Health Information provided by WDS to Business Associate, or created or received by Business Associate on behalf of WDS, is destroyed or returned to WDS 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 WDS' knowledge of a material breach by Business Associate of this Agreement, WDS shall provide an opportunity for Business Associate to cure the breach or end the violation within the time specified by WDS. If Business Associate does not cure the breach or end the violation within the time specified by WDS, or if Business Associate has breached a material term of this Agreement and cure is not possible, then WDS may immediately terminate any other Agreement and this Agreement upon notice to Business Associate. If neither termination nor cure is feasible, WDS shall report the violation to the Secretary.

5.3 Effect of Termination.

(a) Except as provided in paragraph (b) of this Section 5.3, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from WDS, or created or received by Business Associate on behalf of WDS. 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 WDS notification of the conditions that make it infeasible. Upon providing such notice to WDS that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to 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.

6. Indemnification

Each of the Parties agrees to be liable for its own conduct, including but not limited to breach of this Agreement or the Agreement, and to indemnify the other Party against any and all losses therefrom. In the event that loss or damage results from the conduct of more than one party, each party agrees to be responsible for its own proportionate share of the claimant's damages under the laws of the state of Washington.

7. Miscellaneous.

7.1 Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as updated, amended or revised.

7.2 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for WDS to comply with the requirements of the Privacy Rule and HIPAA.

7.3 Survival. The respective rights and obligations of Business Associate under Section 5.3 of this Agreement shall survive the termination of any other Agreement and this Agreement.

7.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit WDS to comply with the Privacy Rule.

7.5 Construction of Terms. The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by HHS or the Office of Civil Rights (OCR) from time to time.

7.6 No Third Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

7.7 Effect on Agreement. Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all other terms of the Agreement shall remain in force and effect.

7.8 Interpretation. The provisions of this Agreement shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits WDS to comply with the Privacy Rule.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Agreement Effective Date.

Washington Dental Service (Covered Entity)

Compliance Officer

Date

Business Associate

Signature of Company's Official or Sole Proprietor

Print Name

Title

Date