

Wood County Board of Developmental Disabilities

PROCEDURE

Procedure #: 02-ALL-ALL-0660 (AD) Subject: HIPAA Privacy Procedure for Protected Health Information (PHI) for Administrative Staff

Effective Date: 04-01-04 Last Revision: 12-05-17

Person Responsible: Human Resources Coordinator

Approvals/Date: Brent Olsen 12-22-17
Superintendent, WCBDD Date Department Director Date

The following definitions will apply:

Business Associate (BA) – A person or entity which creates, uses, receives or discloses PHI held by a covered entity to perform functions or activities on behalf of the covered entity. See Attached Appendix A.

Disclosure – The release, transfer, provision of access to, or divulging in any manner (orally, written, electronically, or other) of information outside the entity holding the information.

Minimum Necessary - "When using or disclosing the protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit the protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request." 45 CFR.

MOU – Memorandum of Understanding between governmental entities which incorporates elements of a business associate contract in accordance with HIPAA rules.

Protected Health Information or PHI – Individually identifiable information that is (i) transmitted by electronic media, (ii) Maintained in electronic media, or (iii) transmitted or maintained in any other form or medium. Records of individual's deceased for more than 50 years are not PHI. For the purposes of this procedure, and the board's compliance program, PHI shall also include "Education Records" as defined by FERPA. This creates a consistent set of policies for both types of confidential information.

Procedures for Routine Disclosures

Protocols for routine disclosures are designed to limit the information disclosed to the minimum necessary. The Privacy Officer will update these protocols as necessary.

1. Medical and Ancillary Providers – Information required to complete orders or to develop services for individuals will be disclosed to contracted providers, using the providers, using the provider's forms, prior to any service being rendered.
2. Job and Family Services – For services rendered, which are reimbursed by ODJFS, submit requested information to JFS.
3. Service Coordination with Mental Health Board & Other Behavioral Service Providers – For coordination of care, psychological assessments and progress notes will be sent under the signature of the Director of Service & Support Administration to the mental health board and other behavioral health providers.
4. WSOS Community Action Commission (WSOS) – Contents of the early intervention file may be shared with the WSOS, upon their request, if the initial referral for services came through the Help Me Grow network.
5. Prosecutor's Office – When a warrant or subpoena is presented, any file may be released to the Prosecutor's Office. In addition, if the Board is seeking legal counsel, file contents to be revealed will be reviewed by the Privacy Officer to ensure that minimum necessary standards are being followed.
6. Auditor's Office – When authorizing payment of bills, fiscal files may be reviewed by the Auditor's office prior to authorization of payment.
7. Residential Providers – To ensure quality of care for individuals, the Director of Service & Support Administration can release IP's related to work goals, medication history, limitations and side effects, dietary needs and guardian/family contact information will be shared with contracted providers. Other requests for information from the providers will be reviewed by the Director of Service & Support Administration
8. DODD – Information will be shared routinely with Ohio DODD in order to ensure continuity of services for individuals. Specific to MUI case files, the Investigative Agent and internal MUI staff will utilize the State's secure website to input required information.
9. Surveyors – Upon confirmation of surveyors credentials, the superintendent or his/her designee may authorize review of any files requested by the surveyor with the exception of MUI State Files.
10. Transportation Providers – To ensure quality of care for individuals, medical needs and guardian/family contact information will be shared with contracted providers.
11. County School Districts – Individual information will be shared, upon written request on School District letterhead, if the request for services originated in the school district.
12. Bureau of Disability Determination – Using the Bureau's forms, assessment information will be shared in order to determine individual's eligibility for benefits.
13. Attorneys – When a subpoena is presented, the protocol in Policy 01-ALL-ALL-0133 HIPAA (Permissive Information Disclosure).

14. Other Outside Agencies – In order to ensure continuity of services to individuals, the Director of SSA will share IP, medical limitation and incident reports with authorized contacts from Family Services.
15. Providers – For coordination of services, SSA will provide medical assessments, limitations, progress notes and behavior support plans to the providers.
16. Law Enforcement – As identified by the Director of Service & Support Administration, guardianship, family contact information and behavior support plans will be shared with law enforcement agencies. In addition, upon presentation of a warrant and verification of credentials if presented in person, other file information may be shared with law enforcement agencies. See Policy 01-ALL-ALL-0133 HIPAA (Permissive Information Disclosure).

Procedures for Routine Requests

Eligibility Inquiry – Individual insurance eligibility will be verified by using procedures provided by the Ohio Dept. of DD.

Procedures for Non-Routine Disclosures or Requests

1. For Non-Routine Disclosures – When subject to the minimum necessary provision, the individual making the disclosure may seek guidance, if necessary, of the Privacy Officer (or his/her designee) to review the request for compliance with the minimum necessary requirements.
2. For Non-Routine Requests, the requesting party will utilize the minimum necessary principle.

Business Associate Contracts – WCBDD will obtain satisfactory assurance that Business Associates will appropriately safeguard PHI by maintaining appropriate HIPAA Business Associate agreements or MOU's.

1. WCBDD will have a written Business Associate Contract with every Business Associate. For a COG or other government agencies, a Memorandum of Understanding will be executed. See Attachment Appendix A: Identifying Business Associates.
2. On an annual basis, the HIPAA Privacy Officer will review all contractual relationships to and verify that up-to-date Business Associate contracts are in place.
3. The Business Associate Contract will provide satisfactory assurances that the Business Associate will not use or disclose the PHI of WCBDD individuals receiving services other than as provided in the Business Associate Contract. The Business Associate Contract will conform to both the requirements of the HIPAA regulations. See Attachment Appendix B: Sample HIPAA Business Associate Agreement.
4. In the event WCBDD learns of a pattern of activity or practice of a Business Associate that constitutes a material breach or violation of the Business Associate Contract, WCBDD will take steps to cure the breach or end the violation. If WCBDD is unable to cure the breach or end the violation, WCBDD will terminate the Business Associate Contract.

**Minimum Necessary
FOR THE PRIVACY OFFICER**

1. Implementation Approach – The Privacy Officer will implement the minimum necessary requirement with the steps detailed below. Measures to limit workforce access, and procedures for both routine disclosures and requests for PHI will be created and documented as detailed below:
 - A. Limiting Workforce Access to PHI – Access to the PHI will be granted based on the individual's role and determined by the Superintendent and Privacy Officer of WCBDD, WCBDD will identify:
 - i. Those persons or classes of persons, who require access to PHI to carry out their duties in the workforce, including interns and trainees, will be listed according to job classification with the necessary minimal necessary PHI required for successful job performance to serve the individuals, and
 - ii. For each such person or class of persons, the category or categories of PHI to which access is needed and any conditions appropriate to such access.
 - iii. Safeguards will be developed and documented to restrict workforce access to the minimum necessary, especially as detailed in Procedure 02-ALL-ALL-0686 (AD) HIPAA Security Procedure for Electronic Protected Health Information (EPHI) for Administrative Staff
 - iv. The Privacy Officer will document the results of this analysis – See Attachment Appendix C: Workforce Access to PHI and Safeguards
 - B. Procedures for Routine Disclosures and Requests – The HIPAA Privacy Officer will identify all routine disclosures made by Board employees, for which the minimum necessary requirement applies, and create procedures to implement these. The same shall be done for routine requests for PHI. These results shall be documented in Appendix C: Workforce Access to PHI and Safeguards.
 - C. Implementation – The Privacy Officer shall take the steps to implement the results of the analysis above, including configuring access control on software, staff training for routine requests and disclosures, and any other measures necessary.

FOR ALL EMPLOYEES

1. Minimum Necessary Requirement
 - A. Basic Requirement – When using or disclosing PHI, or when requesting PHI from another entity, employees must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.
 - B. Exceptions – The minimum necessary requirement does NOT apply to:
 - i. Disclosures to or requests by a health care provider for treatment
 - ii. Uses or disclosures made to the individual served, including but not limited to any requests for their records or requests for an accounting of disclosure
 - iii. Uses of disclosures made pursuant to an Authorization

- iv. When the disclosure is required by law, is to the Secretary of HHS, or for compliance with HIPAA regulations.
2. Procedures for Non-Routine Disclosures or Requests
 - A. For non-routine disclosures, when subject to the minimum necessary provision, the individual making the disclosure will apply the minimum necessary principle. He or she may seek the guidance, if necessary, of the Privacy Officer (or his/her designee).
 - B. For non-routine requests, the requesting party will utilize the minimize necessary principle, seeking the guidance, if necessary, of the Privacy Officer (or his/her designee).
 - C. Good Faith Reliance – WCBDD staff may rely on the belief that the PHI requested is the minimum amount necessary to accomplish the purpose of the request when:
 - i. The disclosure is made to a public official, permitted to receive information, and the public official represents that the request is for the minimum necessary information
 - ii. The request is from another covered entity
 - iii. The request is from a professional at WCBDD, or a business associate, and the professional, or business associate asserts that the request is for the minimum necessary
 3. Procedures for Routine Disclosures – Protocols for routine disclosures are designed to limit the information disclosed to the minimum necessary. The Privacy Officer will update these protocols as necessary.
 - A. Medical and Ancillary Providers – Information required to complete orders or to develop services for individuals will be disclosed to contracted providers, using the provider's forms, prior to any service being rendered.
 - B. Job and Family Services – For services rendered, which are reimbursed by ODJFS, submit requested information to JFS.
 - C. Service Coordination with Mental Health Board & Other Behavioral Service Providers – For coordination of care, psychological assessments and progress notes will be sent under the signature of the Director of Service and Support Administration to the mental health board and other behavioral health providers.
 - D. WSOS Community Action Commission (WSOS) – Contents of the early intervention file may be shared with the WSOS, upon their request, if the initial referral for services came through the Help Me Grow network.
 - E. Prosecutor's Office – When a warrant or subpoena is presented, any file may be released to the Prosecutor's Office. In addition, if the Board is seeking legal counsel, file contents to be revealed will be reviewed by the Privacy Officer to ensure that minimum necessary standards are being followed.
 - F. Auditor's Office – When authorizing payment of bills, fiscal files may be reviewed by the Auditor's office prior to authorization of payment.
 - G. Residential Providers – To ensure quality of care of individuals, the Director of Service and Support Administration can release IP's related to work goals, medication history, limitations and side effects, dietary needs and guardian/family contact information will be shared with contracted providers. Other requests for information from the providers will be reviewed by Director of Service and Support.
 - H. DODD – Information will be shared routinely with Ohio DODD in order to ensure continuity of services for individuals. Specific to MUI case files, the Investigative Agent and internal UI staff will utilize the State's secure website to input required information.
 - I. Surveyors – Upon confirmation of surveyors credentials, the superintendent or his/her designee may authorize review of any files requested by the surveyor with the exception of MUI State Files.
 - J. Transportation Providers – To ensure quality of care for individuals, medical needs and guardian/family contact information will be shared with contracted providers.
 - K. County School Districts – Individual information will be shared, upon written request on School District letterhead, if the request for services originated in the school district.
 - L. Bureau of Disability Determination – Using the Bureau's forms, assessment information will be shared in order to determine individual's eligibility for benefits.
 - M. Attorneys – When a subpoena is presented, the protocol in Policy 01-ALL-ALL-0133 HIPAA (Permissive Information Disclosure) will be carefully followed to determine, with legal counsel assistance, if the subpoena should be honored.
 - N. Other Outside Agencies – In order to ensure continuity of services to individuals, the Director of Service and Support Administration or the Director of Adult Services will share IP, medical limitation and incident reports with authorized contacts from Family Services.
 - O. Vocational Training Providers – For coordination of services, medical assessments, limitations, progress notes and behavior support plans will be sent by the Director of Adult Services, the Employment Service Coordinator, or a Habilitation Specialist to the vocational training provider.
 - P. Law Enforcement – As identified by the Director of Service and Support Administration, guardianship, family contact information and behavior support plans will be shared with law enforcement agencies. In addition, upon presentation of a warrant and verification of credentials if presented in person, other file information may be shared with law enforcement agencies. See Policy 01-ALL-ALL-0133 HIPAA (Permissive Information Disclosure).
 4. Procedures for Routine Requests
 - A. Eligibility Inquiry – Individual insurance eligibility will be verified by using procedures provided by the Ohio Dept. of DD.

Mitigation – In the event of an inappropriate use or disclosure of an individual's PHI, the WCBDD will take reasonable steps to mitigate the harmful effects of the disclosure.

1. In the event of a HIPAA Privacy rule violation, the Privacy Officer, in conjunction with other members of the management staff as he/she deems appropriate, shall take action to mitigate the harmful effects of the Privacy Violation, if this is reasonable and possible. The mitigation action should correspond to the nature of the violation. For example, if social security numbers are breached, it may be appropriate to purchase identity theft protection for 1 year.

Policy Updating and Staff Training – WCBDD is committed to maintaining updated Policies as required by law, and to train staff as necessary on these policies.

1. The HIPAA Privacy Officer shall conduct an annual review of all policies, and update policies as necessary based on new circumstances, changes in federal regulations and any changes in Ohio state laws and regulations governing DD Boards. An audit trail of policy changes will be maintained as detailed in Policy 01-ALL-ALL-0139 HIPAA Privacy and Procedure 02-ALL-ALL-0656 (AD) Maintenance of HIPAA Required Documentation.
2. The HIPAA Privacy Officer shall insure that all new staff will receive training on WCBDD Confidentiality Records, HIPAA, and Computer Security Policies and Procedures, see Procedure 02-ALL-ALL-0492 (AD) General Orientation.
3. The HIPAA Privacy Officer shall insure that staff receive training on WCBDD Confidentiality Records, HIPAA, and Computer Security Policies and Procedures when they are substantially changed.
4. The HIPAA Privacy Officer shall insure that staff acknowledge and sign Form 03-ALL-ALL-0907 HIPAA Confidentiality Agreement and Form 03-ALL-ALL-0908 HIPAA Training Acknowledgment.

Attachments: Appendix A: Identifying Business Associates
Appendix B: Sample HIPAA Business Associate Agreement
Appendix C: Workforce Access to PHI and Safeguards

References: 45 CFR
OAC § 5123:2-3-08, 5123:2-5-01, 5123:2-5-02, 5123:2-5-05, 5123:2-5-07, 5123:2-7-01
ORC § 5123.64, 5126.044

Policies: 01-ALL-ALL-0133; 01-ALL-ALL-0139

Procedures: 02-ALL-ALL-0492 (AD); 02-ALL-ALL-0656 (AD); 02-ALL-ALL-0686 (AD)

Forms: 03-ALL-ALL-0907; 03-ALL-ALL-0908

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IDENTIFYING BUSINESS ASSOCIATES

Boards are obligated to identify and place any "Business Associate" under a contract that meets the specifications of the HIPAA regulations. Further, these Business Associates, as of January 25, 2013, are directly regulated by the HIPAA regulations and for the first time are subject to the same civil and criminal penalties for any failures to comply with the portions of the HIPAA regulations that apply to them.

An abbreviated definition of "Business Associate" is a person or entity, other than a member of the workforce, that performs certain functions, activities or provides services that involve the use or disclosure of PHI on behalf of a DD Board.

More specifically, the functions and activities that create a Business Associate relationship are:

- claims processing or administration,
- data analysis, processing or administration,
- utilization review,
- quality assurance,
- patient safety activities listed at 42 CFR,
- billing,
- benefit management,
- practice management,
- repricing,
- legal,
- actuarial,
- accounting,
- consulting,
- data aggregation,
- management,
- administrative,
- accreditation or
- financial services.

Subcontractors of Business Associates Are Business Associates – A significant change in the January 25, 2013 HIPAA Rule changes is that subcontractors of your business associates, who have access to PHI, are now Business Associates. For example, suppose you contract with your COG to handle all of your MUI investigations. However, it is the COG's responsibility, not yours, to place XYS under the Business Associate contract.

Common Examples of Business Associates for DD boards include:

- A consultant that performs utilization reviews, compliance audits, financial services or billing support.
- A software vendor who provides customer support involving access to PHI.
- A computer contractor who carries out MUI investigations.
- A COG which manages IO waiver contracts for member DD Boards (or any other function involving PHI).
- An accreditation organization (such as CARF or JCAHO) that reviews PHI as part of the accreditation process.
- An attorney whose legal services involve access to protected health information.
- A CPA firm whose accounting services involve access to protected health information.

Examples of Relationships Which Are NOT Business Associates:

- A Provider contracted by the board to provide services, billed to Medicaid under its own Provider number, such as a provider of psychological, speech, OT or PT services.
- A Provider with a contract subject to ORC § 5126.035, such as a Provider of waiver or supported living services which bills Medicaid under its own Provider number.
- Ohio Department of Developmental Disabilities. There are numerous interactions with DODD. DODD is a health oversight agency and a payer.
- Cleaning services. However, since these organizations may be able to easily and inappropriately access PHI, it is appropriate to include a confidentiality clause in their agreement that expressly prohibits such behavior.
- Contractors such as electricians, plumbers, exterminators who perform services in board facilities.
- Contractors who perform construction or remodeling of an individual's house for accessibility or other adaptive living.

Full Definition of Business Associate from the HIPAA Rules (1/25/2013 Revision):

1. Except as provided in paragraph (4) of this definition, business associate means, with respect to a covered entity, a person who:
 - A. On behalf of such covered entity or of an organized health care arrangement (as defined in this section) in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity regulated by this subchapter, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR, billing, benefit management, practice management, and repricing; or
 - B. Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in §164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.
2. A covered entity may be a business associate of another covered entity.
3. Business associate includes:
 - A. A Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to protected health information to a covered entity and that requires access on a routine basis to such protected health information.
 - B. A person that offers a personal health record to one or more individuals on behalf of a covered entity.
 - C. A subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate.
4. Business associate does not include:
 - A. A health care provider, with respect to disclosures by a covered entity to the health care provider concerning the treatment of the individual.
 - B. A plan sponsor, with respect to disclosures by a group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to the plan sponsor, to the extent that the requirements of § 164.504 of this subchapter apply and are met.
 - C. A government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another government agency, or collecting protected health information for such purposes, to the extent such activities are authorized by law.
 - D. A covered entity participating in an organized health care arrangement that performs a function or activity as described by paragraph (1)(i) of this definition for or on behalf of such organized health care arrangement, or that provides a service as described in paragraph (1)(ii) of this definition to or for such organized health care arrangement by virtue of such activities or services.

SAMPLE HIPAA BUSINESS ASSOCIATE AGREEMENT

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into this _____ Day of _____, 2014 ("Effective Date") by and between _____ ("Business Associate"), and the Wood County Board of Developmental Disabilities ("Covered Entity") (collectively, the "Parties").

RECITALS

WHEREAS, The Parties have entered, and may in the future enter, into one or more arrangements or agreements (the "Agreement") which require the Business Associate to perform functions or activities on behalf of, or services for, Covered Entity or a Covered Entity Affiliate ("CE Affiliate") that involve the use or disclosure of Protected Health Information ("PHI") that is subject to the final federal Privacy, Security, Breach Notification and Enforcement Rules (collectively the "HIPAA Rules") issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (the Act including the HIPAA rules shall be referred to as "HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), as each is amended from time to time. The purpose of this BAA is to set forth the obligations of the Parties with respect to such PHI.

WHEREAS, Business Associate provides [professional services] for Covered Entity pursuant to a contract dated _____, 20____, and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain Protected Health Information ("PHI") to Business Associate (collectively, the "Master Agreement").

WHEREAS, Business Associate, in the course of providing services to Covered Entity, may have access to PHI and may be deemed a business associate for certain purposes under HIPAA;

WHEREAS, the Parties contemplate that Business Associate may obtain PHI, with Covered Entity's knowledge and consent, from certain other business associates of Covered Entity that may possess such PHI; and

WHEREAS, Business Associate and Covered Entity are entering into this BAA to set forth Business Associate's obligations with respect to its handling of the PHI, whether such PHI was obtained from another business associate of Covered Entity or directly from Covered Entity;

NOW, THEREFORE, for mutual consideration, the sufficiency and delivery of which is acknowledged by the Parties, and upon the premises and covenants set forth herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in this BAA shall have the meanings ascribed to them in HIPAA or the Master Agreement between Covered Entity and Business Associate, as applicable.
2. **Obligations and Activities of Business Associate.** To the extent that Business Associate is provided with or creates any PHI on behalf of Covered Entity and is acting as a business associate of Covered Entity, Business Associate agrees to comply with the provisions of HIPAA applicable to business associates, and in doing so, represents and warrants as follows:
 - a. **Use or Disclosure.** Business Associate agrees to not use or disclose PHI other than as set forth in this BAA, the Master Agreement, or as required by law.
 - b. **Specific Use of Disclosure.** Except as otherwise limited by this BAA, Business Associate may:
 - i. use or disclose PHI to perform data aggregation and other services required under the Master Agreement to assist Covered Entity in its operations, as long as such use or disclosure would not violate HIPAA if done by Covered Entity, or HIPAA permits such use or disclosure by a business associate;
 - ii. use or disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that with respect to disclosure of PHI, such disclosure is required by law, or Business Associate 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and

- iii. de-identify PHI and maintain such de-identified PHI indefinitely, notwithstanding Section 4 of this Agreement, provided that all identifiers are destroyed or returned in accordance with the Privacy Rule.
- c. **Minimum Necessary.** Business Associate agrees to take reasonable efforts to limit requests for, or uses and disclosures of, PHI to the extent practical, a limited data set, otherwise to the minimum necessary to accomplish the intended request, use, or disclosure.
- d. **Safeguards.** Business Associate shall establish appropriate safeguards, consistent with HIPAA, that are reasonable and necessary to prevent any use or disclosure of PHI not expressly authorized by this BAA.
 - i. To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required by the Privacy Rule and Security Rule.
 - ii. The safeguards established by Business Associate shall include securing PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in accordance with the standards set forth in HITECH Act §13402(h) and any guidance issued thereunder.
 - iii. Business Associate agrees to provide Covered Entity with such written documentation concerning safeguards as Covered Entity may reasonably request from time to time.
- e. **Agents and Subcontractors.** Business Associate agrees to obtain written assurances that any agents, including subcontractors, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement that it agree to implement reasonable and appropriate safeguards to protect Electronic PHI that is disclosed to it by Business Associate. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any and all acts, failures, or omissions of Business Associate's agents and subcontractors in any breach of their subcontracts or assurances to Business Associate as though they were Business Associate's own acts, failures, or omissions.
- f. **Reporting.** Within five (5) business days of discovery by Business Associate, Business Associate agrees to notify Covered Entity in writing of any use or disclosure of, or Security Incident involving, PHI, including any Breach of Unsecured PHI, not provided for by this BAA or the Master Agreement, of which Business Associate may become aware.
 - i. In the notice provided to Covered Entity by Business Associate regarding unauthorized uses and/or disclosures of PHI, Business Associate shall describe the remedial or proposed mitigation efforts required under Section 2(g) of this BAA.
 - ii. Specifically, with respect to reporting a Breach of Unsecured PHI, Business Associate agrees to must include the identity of the individual(s) whose Unsecured PHI was Breached in the written notice provided to Covered Entity, and any additional information required by HIPAA.
 - iii. Business Associate agrees to cooperate with Covered Entity upon report of any such Breach so that Covered Entity may provide the individual(s) affected by such Breach with proper notice as required by HIPAA.
- g. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Master Agreement.

- h. **Audits and Inspections.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary, in a time and manner mutually agreed to by the Parties or designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with HIPAA.
- i. **Accounting.** Business Associate agrees to document and report to Covered Entity, within fourteen (14) days, Business Associate's disclosures of PHI so Covered Entity can comply with its accounting of disclosure obligations in accordance with 45 CFR and any subsequent regulations issued thereunder. Business Associate agrees to maintain electronic records of all such disclosures for a minimum of six (6) calendar years.
- j. **Designated Record Set.** While the Parties do not intend for Business Associate to maintain any PHI in a designated record set, to the extent that Business Associate does maintain any PHI in a designated record set, Business Associate agrees to make available to Covered Entity PHI within fourteen (14) days:
 - i. for Covered Entity to comply with its access obligations in accordance with 45 CFR and any subsequent regulations issued thereunder; and
 - ii. for amendment upon Covered Entity's request and incorporate any amendments to PHI as may be required for Covered Entity comply with its amendment obligations in accordance with 45 CFR and any subsequent guidance.
- k. **HITECH Compliance Dates.** Business Associate agrees to comply with the HITECH Act provisions expressly addressed, or incorporated by reference, in this BAA as of the effective dates of applicability and enforcement established by the HITECH Act and any subsequent regulations issued thereunder.

3. **Obligations of Covered Entity.**

- a. Covered Entity agrees to notify Business Associate of any limitations(s) in Covered Entity's notice of privacy practices in accordance with 45 CFR, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, including disclosure of data to insurers and health plans when the patient pays for medical services in full and requests that such notification not be made, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity agrees to notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d. Covered Entity agrees to limit its use, disclosure, and requests of PHI under this BAA to a limited data set or, if needed by Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure, or request.

4. **Term and Termination.**

- a. **Term.** This BAA shall become effective upon the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Master Agreement.
- b. **Termination Upon Breach.**
 - i. Without limiting the termination rights of the Parties pursuant to the Master Agreement, upon either Party's knowledge of a material breach by the other Party to this BAA, the breaching Party shall notify the non-breaching Party of such breach and the breaching party shall have fourteen (14) days from the date of notification to the non-breaching party to cure such breach. In the event that such breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately

terminate this BAA and those portions of the Master Agreement that involve the disclosure to Business Associate of PHI, or, if nonseverable, the Master Agreement.

c. **Termination by Either Party.** Either Party may terminate this BAA upon provision of thirty (30) days' prior written notice.

d. **Effect of Termination.**

i. To the extent feasible, upon termination of this BAA or the Master Agreement for any reason, Business Associate agrees, and shall cause any subcontractors or agents to return or destroy and retain no copies of all PHI received from, or created or received by Business Associate on behalf of, Covered Entity. Business Associate agrees to complete such return or destruction as promptly as possible and verify in writing within thirty (30) days of the termination of this BAA to Covered Entity that such return or destruction has been completed.

ii. If not feasible, Business Associate agrees to provide Covered Entity notification of the conditions that make return or destruction of PHI not feasible. Upon notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate agrees to extend the protections of this BAA to such PHI for as long as Business Associate maintains such PHI.

iii. Without limiting the foregoing, Business Associate may retain copies of PHI in its workpapers related to the services provided in the Master Agreement to meet its professional obligations.

5. **Miscellaneous.**

a. **Regulatory References.** A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

b. **Amendment.** The Parties acknowledge that the provisions of this BAA are designed to comply with HIPAA and agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA. Regardless of the execution of a formal amendment of this BAA, the BAA shall be deemed amended to permit the Covered Entity and Business Associate to comply with HIPAA.

c. **Method of Providing Notice.** Any notice required to be given pursuant to the terms and provisions of this BAA shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each Party at the addresses listed in the Master Agreement currently in effect between Covered Entity and Business Associate. Any such notice shall be deemed to have been given if mailed as provided herein, as of the date mailed.

d. **Parties Bound.** This BAA shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Business Associate may not assign or subcontract the rights or obligations under this BAA without the express written consent of Covered Entity. Covered Entity may assign its rights and obligations under this BAA to any successor or affiliated entity.

e. **No Waiver.** No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

f. **Effect on Master Agreement.** This BAA together with the Master Agreement constitutes the complete agreement between the Parties and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Master Agreement, the terms of this BAA shall control unless the terms of such Master Agreement are stricter, as determined by Covered Entity, with respect to PHI and comply with HIPAA, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this BAA.

- g. **Interpretation.** Any ambiguity in this BAA shall be resolved to permit the Covered Entity to comply with HIPAA and any subsequent guidance.
- h. **No Third Party Rights.** Except as stated herein, the terms of this BAA are not intended nor should they be construed to grant any rights, remedies, obligations, or liabilities whatsoever to parties other than Business Associate and Covered Entity and their respective successors or assigns.
- i. **Applicable Law.** This BAA shall be governed under the laws of the State of Ohio, without regard to choice of law principles, and the Ohio courts shall have sole and exclusive jurisdiction over any dispute arising under this Agreement.
- j. **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity and its employees, officers, directors, agents and affiliates from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards or expenses, including without limitation attorneys' fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any non-permitted or violating use or disclosure of PHI or other material breach of this Agreement by Business Associate or its agents or subcontractors.
- k. **Judicial and Administrative Proceedings.** In the event that Business Associate receives a subpoena, court or administrative order, or other discovery request or mandate for release of PHI, Business Associate agrees to collaborate with Covered Entity with respect to Business Associate's response to such request. Business Associate shall notify Covered Entity within seven (7) days of receipt of such request or mandate.
- l. **Relationship of the Parties.** The parties are separate and independent legal entities. Nothing contained in this Agreement shall be deemed to constitute either party as the agent, representative, partner, joint venturer or employee of the other party for any purpose.
- m. **Severability.** The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision.
- n. **Transmitting Electronic PHI.** Electronic PHI transmitted or otherwise transferred from between Covered Entity and Business Associate must be encrypted by a process that renders the Electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of HITECH Act § 13402 and any implementing guidance including, but not limited to, 42 CFR.

6. IN WITNESS WHEREOF, the Parties hereto have executed this BAA to be effective on the date set forth above.

Covered Entity

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

Business Associate

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

Approved as to form:

 Paul A. Dobson
 Wood County Prosecuting Attorney

SCHOOL		
Adapted Physical Education Specialist	Computer Data; Records regulated under FERPA	
Administrative Support Staff II	Computer Data; Records regulated under FERPA	
Administrative Support Staff Supervisor	Computer Data; Records regulated under FERPA	
Children's Services EI Coordinator	All	
Children's Services Nurse	Computer Data; Records regulated under FERPA	
COTA	Computer Data; Records regulated under FERPA	
Day Camp Group Assistant	Computer Data; Records regulated under FERPA	
Day Camp Group Attendant	Computer Data; Records regulated under FERPA	
Day Camp Group Substitute	Computer Data; Records regulated under FERPA	
Developmental Specialist	Computer Data; Records regulated under FERPA	
Director of Children's Services	All	
Early Intervention Specialist	Computer Data; Records regulated under FERPA	
Family Support Services Technician	Computer Data	
Food Services Worker	None	No User ID will be provided
Instructor	Computer Data; Records regulated under FERPA	
Instructor Assistant	Computer Data; Records regulated under FERPA	
Instructor Assistant Substitute	Medical Needs related to Job Description	No User ID will be provided; Information provided in hard copy or verbal format
Instructor Assistant/Employment Transition	Computer Data, Records regulated under FERPA	
Instructor Substitute	Medical Needs related to Job Description	No User ID will be provided; Information provided in hard copy or verbal format
Occupational Therapist	Computer Data; Records regulated under FERPA	
Program Receptionist	Computer Data; Records regulated under FERPA	
School/Cook	Computer Data; Records regulated under FERPA	
Speech Therapist/Language Development Specialist	Computer Data; Records regulated under FERPA	
TRANSPORTATION DEPARTMENT		
Bus Transportation Supervisor	Computer Data	
Mechanic	None	No User ID will be provided
Vehicle Aide	Medical Needs related to Transportation	No User ID will be provided; Information provided in hard copy format
Vehicle Aide Substitute	Medical Needs related to Transportation	No User ID will be provided; Information provided in hard copy format
Vehicle Operator	Medical Needs related to Transportation	No User ID will be provided; Information provided in hard copy format
Vehicle Operator Substitute	Medical Needs related to Transportation	No User ID will be provided; Information provided in hard copy format