



COMMISSIONERS' COURT AGENDA ITEM

Meeting Date: 8-30-10

Prepared by: Roberto E. Gallegos, Risk Manager

Description:

Approve and authorize the County Judge to sign the Business Associate Services Addendum with HealthScope Benefits.

Background:

The County is applying for Federal funds as part of the Early Retiree Reinsurance Program (ERRP) established by section 1102 of the Patient Protection and Affordable Care Act enacted on March 23, 2010. Regulations recently promulgated by the Department of Health and Human Services (HHS) requires that any subcontractor the County uses to apply for Federal funds also acknowledges that any information provided pursuant to the subcontract is being provided to obtain Federal funds. The County must attest that it has received such acknowledgement as part of the application process. HealthScope Benefits is the County's subcontractor for purposes of applying for ERRP funds, the enclosed Business Associate Services Addendum serves as the acknowledgement.

The Business Associate Services Addendum was reviewed and approved by the County Attorney's Office and the County's Risk Pool Board.

Recommendation:

It is recommended that the County Judge sign the Business Associate Services Addendum in order for the County to participate in the ERRP.

From: Josie Brostrom
Sent: Friday, August 13, 2010 3:24 PM
To: Betsy C. Keller; Roberto Gallegos
Subject: Contract Legal Review Form KK-10-360 HealthSCOPE Business Associate Services Addendum
Attachments: k10360 County of El Paso Covered Entity BAA Final 8 13 10.doc

COUNTY LEGAL REVIEW FORM

KK-10-360

Contract Description: Human Resources – HealthSCOPE –Business Associate Services Addendum

COUNTY ATTORNEY ACTION**

****Requested Amendments/Clarifications:** We assume you have submitted any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

___ xx ___ Approved as to Form as Submitted
___ Approved as to Form with Amendments/Modifications/Reservations Noted Below*
___ Not Approved

*1) NA

This document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

Josefina J. Brostrom
Assistant County Attorney

Business Associate Services Addendum

This Business Associate Services Addendum (“Addendum”) is entered into by and between **HealthSCOPE Benefits, Inc.**, a Delaware corporation (“Business Associate”), and **County of El Paso** (“Covered Entity”) and shall apply to Business Associate only in its capacity as a Business Associate under the Privacy and Security Rules and the HITECH Act.

Reasons for Addendum

Whereas, this Addendum is entered into and made a part of the written agreement under which Business Associate provides third party administration services to Covered Entity (the “Service Agreement”) between the parties;

Whereas, this Addendum is entered into as of the first day of January, 2010;

Whereas, as part of its provision of service to Covered Entity under the Service Agreement, Business Associate may obtain and possess certain “Protected Health Information” (as defined below) from Covered Entity;

Whereas, the parties are committed to complying with the Department of Health and Human Services (“DHHS”) regulations, Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Part 160, Part 162 and Part 164, Subparts A, C, E (the “Privacy and Security Rules”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and Standards for Breach Notification for Unsecured Protected Health Information, 45 CFR Part 164, Subpart D, under the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), as incorporated in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009; and

Whereas, as a result of the Privacy and Security Rules and the HITECH Act, the parties wish to amend the Service Agreement to comply with the Privacy and Security Rules and the HITECH Act.

NOW THEREFORE, in consideration of the mutual promises contained herein and as a condition of the continuation of the Service Agreement, the parties agree to the following:

1. Definitions

- (a) Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy and Security Rules and the HITECH Act.
- (b) **“Individual”** shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (c) **“Protected Health Information” or “PHI”** shall have the same meaning as the term “protected health information” in 45 CFR 160.103, shall include, but shall not be limited to, **“Electronic Protected Health Information” or “Electronic PHI”**, as defined below, and shall be limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (d) **“Electronic Protected Health Information” or “Electronic PHI”** shall mean PHI that is transmitted by or maintained in electronic media, as the term “electronic protected health information” is defined in 45 CFR 160.103.
- (e) **“Required By Law”** shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- (f) **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or his designee.

- (g) **“Security Incident”** shall mean the attempted or unsuccessful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as defined in 45 CFR 164.304.
- (h) **“Breach”** shall have the same meaning as “breach” under 45 CFR 164.402.
- (i) **“Unsecured Protected Health Information”** or **“Unsecured PHI”** shall have the same meaning as “unsecured Protected Health Information” or “unsecured PHI” under 45 CFR 164.402.
- (j) **“Discovery”** shall refer to the first day on which a Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate, as described under 45 CFR 164.410(2).

2. Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Service Agreement, this Addendum or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards and commercially reasonable efforts to prevent use or disclosure of the PHI other than as provided for by this Addendum.
- (c) Business Associate agrees to promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.
- (d) Business Associate agrees to notify Covered Entity without unreasonable delay, and in no event later than 60 calendar days following the Discovery of any Breach, use, or disclosure of Unsecured PHI not provided for by this Addendum of which Business Associate becomes aware, including, but not limited to, any Security Incident relating to Electronic PHI. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach, as well as any other information required by 45 CFR 164.404(c), including, but not limited to, a brief description of what happened, the types of Unsecured PHI involved, and steps Individuals should take to protect themselves.
- (e) Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (f) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information, including, but not limited to, ensuring that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement the safeguards described in Section 2(e) of this Addendum, to protect such Electronic PHI.
- (g) Business Associate agrees to provide during normal business hours and upon ten (10) days prior written notice from Covered Entity, access to PHI in a Designated Record Set, to Covered Entity in order to meet the requirements under 45 CFR 164.524, and where applicable, in accordance with the HITECH Act.
- (h) Business Associate agrees to provide access, at the written request of an Individual, to that Individual’s PHI in a Designated Record Set, in order to meet the requirements under 45 CFR 164.524. Business Associate’s response to an Individual’s request for access shall be timely if the requested PHI is maintained or accessible to Business Associate on-site, and Business Associate grants or denies the request in writing within 30 days of the earlier of either Business Associate’s

or Covered Entity's receipt of the request. However, if the requested information is not maintained or accessible to Business Associate on-site, Business Associate will grant or deny the request in writing within 60 days after the earlier of either Business Associate's or Covered Entity's receipt of the request. If Business Associate is unable to process an Individual's request within the respective 30-day or 60-day periods, Business Associate may be granted one additional extension for up to 30 days, provided that Business Associate provides the Individual with a written statement of the reasons for the delay and the date on which Business Associate will grant or deny the request. Each request made by an Individual for such access shall be subject to a charge for both the copies of the information and staff time to copy the information, plus postage for mailing the requested information. Business Associate will inform the Individual of such fee in advance and provide the Individual with the opportunity to withdraw or modify the request for an accounting.

- (i) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual. Business Associate's response to an Individual's request for amendment shall be timely if Business Associate grants or denies the request in writing within 60 days after the earlier of either Business Associate's or Covered Entity's receipt of the request. If Business Associate is unable to process an Individual's request within the 60-day period, Business Associate may extend the period for responding to a request up to an additional 30 days, provided that Business Associate provides the Individual with a written statement of the reasons for the delay and the date on which Business Associate will grant or deny the request for amendment.
- (j) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available during normal business hours and upon ten (10) days prior written notice, to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.
- (k) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528, and where so required by the HITECH Act and/or any accompanying regulations..
- (l) Business Associate agrees to provide to Covered Entity or an Individual, information collected in accordance with Section 2(k) of this Addendum, to permit either Business Associate or Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528, and where so required by the HITECH Act and/or any accompanying regulations. Business Associate may require Covered Entity's or an Individual's request for an accounting of disclosures to be in writing. Business Associate must act on the Individual's request for an accounting no later than 60 days after the earlier of either Business Associate's or Covered Entity's receipt of such request. Business Associate may have one additional extension for up to 30 days if it provides the Individual with a written statement of the reason for the delay and the date by which the accounting will be provided. The first accounting requested in any 12-month period will be provided free of charge, but each subsequent request made within that same period will be charged a cost-based fee for completing the requested accounting. Business Associate will inform the Individual of such fee in advance and provide the Individual with the opportunity to withdraw or modify the request for a subsequent accounting.

Notwithstanding any other requirement under this Subparagraph (l), Business Associate shall not be required to provide an accounting of any disclosure made: (i) to carry out Treatment, Payment and Health Care Operations, as those terms are defined in 45 CFR 164.501, except where such accounting is required by the HITECH Act, and as of the effective dates of this provision of the HITECH Act; (ii) to an Individual or authorized by the Individual; (iii) incident to a use or disclosure otherwise permitted or required by the Privacy and Security Rules; (iv) to persons

- involved in the Individual's care or for other notification purposes provided for in 45 CFR 164.510 of the Privacy and Security Rules; (v) for national security or intelligence purposes; (vi) to correctional institutions or law enforcement officials; (vii) as part of a limited data set in accordance with 45 CFR 164.514(e) of the Privacy and Security Rules; or (viii) made prior to April 14, 2003 or the effective date of the Privacy and Security Rules, if later.
- (m) In all cases, Business Associate shall only use or disclose the "Minimum Necessary" amount of PHI required for it to perform under the Service Agreement or this Addendum. "Minimum Necessary" shall have the meaning set forth for such term in the Privacy and Security Rules. To the extent Covered Entity determines that Business Associate is disclosing more than is the Minimum Necessary, Covered Entity shall notify Business Associate in writing of such determination.
 - (n) Business Associate agrees to comply with all other applicable requirements of the Privacy and Security Rules as such rules apply to Business Associate.
 - (o) Business Associate shall develop and implement policies and procedures that meet the Security Standards documentation requirements as required by the HITECH Act.

3. Permitted Uses and Disclosures by Business Associate

- (a) Except as otherwise limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services (including, but not limited to, to carry out Treatment, Payment and Health Care Operations) for, or on behalf of, Covered Entity as specified in the Service Agreement or this Addendum, provided that such use or disclosure would not violate the Privacy and Security Rules or the HITECH Act if done by Covered Entity.
- (b) Except as otherwise limited in this Addendum, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (c) Except as otherwise limited in this Addendum, Business Associate may disclose PHI for the proper management and administration of the 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (d) Except as otherwise limited in this Addendum, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (e) Except as otherwise limited in this Addendum, Business Associate may de-identify any and all PHI, provided that the de-identification conforms to the requirements of 45 CFR 164.514(b) of the Privacy and Security Rules, and further provided that Covered Entity maintains the documentation required by 45 CFR 164.514(b) of the Privacy and Security Rules, which may be in the form of a written assurance from Business Associate.
- (f) Except as otherwise limited in this Addendum, Business Associate may report violations of law to federal and state authorities consistent with 45 CFR 164.502(j)(1).
- (g) Except as otherwise limited in this Addendum, Business Associate may use PHI to create a limited data set or may disclose PHI in a limited data set, consistent with the requirements of 45 CFR 164.514(e).

- (h) If Plan Sponsor is eligible for, and elects to participate in, the Early Retiree Reinsurance Program (“ERRP”), Plan Sponsor authorizes Business Associate to use and disclose PHI as necessary to HHS to assist Plan Sponsor with its application for ERRP funds and administration of ERRP payments from HHS. Such use or disclosure of PHI by Business Associate shall be at a time and in a manner specified by the HHS Secretary in guidance, information, data, documents, and records necessary for the Plan Sponsor to comply with the requirements of the ERRP, as specified in 45 C.F.R. 149.35.

4. Obligations of Covered Entity

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- (d) Covered Entity shall provide Business Associate with the policies and procedures the Covered Entity implements in accordance with 45 CFR 164.530 and will provide updates to Business Associate of any changes to such policies and procedures, to the extent such policy or change may affect Business Associate's use or disclosure of PHI.
- (e) Covered Entity shall notify Business Associate of the designation of a Privacy Official and any changes of such designation, as well as the names of those persons who are to be given access to PHI to be disclosed to Covered Entity or on behalf of Covered Entity.
- (f) Pursuant to Section 2(j) of this Addendum, Business Associate shall allow Covered Entity to conduct a reasonable inspection of the internal practices, books, and records relating to the use and disclosure of PHI for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance on the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection, and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.
- (g) When notified of a Breach, use, or disclosure of Unsecured PHI not provided for by this Addendum by Business Associate, Covered Entity agrees to notify the affected Individual, the Secretary and/or the media as required by 45 CFR 164.404, 164.406, and 164.408.

5. Term and Termination

- (a) Term. This Addendum shall terminate on the date the Service Agreement terminates.
- (b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of this Addendum or a violation of the Privacy and Security Rules, Covered Entity shall provide Business Associate written notice and a thirty (30) day period for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the breach or end the violation within such thirty (30) day period, Plan Sponsor may terminate this Addendum upon written notice. Plan Sponsor may immediately terminate this Addendum upon written notice if Business Associate has breached a material term of this Addendum and cure is not possible.
- (c) Effect of Termination.

- (1) Except as provided in sub-paragraph (c)(2) of this Section, upon termination of this Addendum, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

6. Miscellaneous

- (a) Regulatory References. A reference in this Addendum to a section in the Privacy and Security Rules or the HITECH Act means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. The Parties agree to enter into good faith negotiations as are necessary to amend this Addendum from time to time for the parties to comply with the requirements of the Privacy and Security Rules, HIPAA, and the HITECH Act.
- (c) Survival. The respective rights and obligations of the parties under this Addendum shall survive the termination of this Addendum.
- (d) Interpretation. Any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with the Privacy and Security Rules and the HITECH Act.
- (e) No Third-Party Beneficiaries. Nothing in this Addendum either express or implied is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (f) Validity of Service Agreement. Except as expressly set forth herein, all remaining provisions of the Service Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their respective officers duly authorized to do so.

Business Associate

HEALTHSCOPE BENEFITS, INC.

By: _____

Name: Joe Edwards

Title: CEO

Covered Entity

**COUNTY OF EL PASO, FOR AND
ON BEHALF OF ITS GROUP HEALTH PLANS.**

By: _____

Name: _____

Title: _____