

HIPAA BUSINESS ASSOCIATE AGREEMENT
[HIPAA, HITECH, RED FLAG RULES]

This HIPAA Business Associate Agreement ("Agreement") is entered into on this 1st day of July, 2016, between Denver Options, Inc., dba Rocky Mountain Human Services (hereinafter referred to as "Covered Entity") and the host home provider (hereinafter referred to as "Business Associate").

It is the intent of the Covered Entity and the Business Associate to protect the privacy and provide for the security of Protected Health Information ("PHI") disclosed to the Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and privacy and security regulations published by the U.S. Department of Health and Human Services ("DHHS") contained at 45 CFR Parts 160 and 164 which may be periodically revised or amended ("HIPAA Rules") and other applicable laws. The purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Rules, including, but not limited to, Title 45, Sections 164.504(e), 164.308, 164.310, 164.312, 164.314 and 164.316 of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time.

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement, the parties agree as follows:

I. Definitions

Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

“Breach” means the unauthorized access, acquisition or use of protected health information in a manner that violates the Privacy Rule by compromising the security or privacy of the protected health information.

“Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [Insert Name of Business Associate].

“C.F.R.” means the Code of Federal Regulations.

“Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Denver Options, Inc., dba Rocky Mountain Human Services.

“Designated Record Set” has the meaning set forth in 45 C.F.R. §164.501.

“DHHS” means the Department of Health and Human Services.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§1320d-1320d8, as amended, and the regulations promulgated thereunder, 45 C.F.R. Parts 160 and 164.

“**HIPAA Rules**” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

“**Privacy Rule**” means the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 C.F.R. Part 160 and Subparts A and E of Part 164.

“**Protected health information**” (sometimes referred to in this Agreement as “PHI”) has the meaning set forth in 45 C.F.R. §164.501 and is limited for purposes of this Agreement to information created or received by Business Associate from or on behalf of a Business Associate Covered Entity Client.

“**Required by Law**” has the meaning set forth in 45 C.F.R. §164.501.

“**Secretary**” means the Secretary of the Department of Health and Human Services or his or her designee.

“**Security Rule**” means the Standards for Security of Individually Identifiable Health Information set forth in 45 C.F.R. Part 160 and Subparts A and C of Part 164.

II. Obligations and Activities of Business Associate

Business Associate agrees to:

- A. Not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law;
- B. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement; electronic transmissions of PHI must be executed in a secure format. They must be scanned and sent through the secure communications in the online electronic system Therap LLC., or an alternative system designated by RMHS. No PHI can be submitted through faxes and confidentiality statements attached to electronic transmissions alone do not constitute a secure format.
- C. Report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including breaches of unsecured Protected Health Information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
 - i. Business Associate shall, upon becoming aware of a Disclosure of PHI in violation of this Agreement by Business Associate, its officers, directors, employees, contractors or agents or by a third party to which Business Associate Disclosed PHI, immediately report in writing any such Disclosure to the Covered Entity in a manner and time not to exceed three (3) business days to permit Covered Entity to timely determine if Covered Entity must report the Disclosure to the individual or any governmental entity as may be required by law, and to permit Covered Entity to do so within the time required by law. Business Associate agrees to have procedures in place for mitigating, to the maximum extent practicable, any harmful effect from the Use or Disclosure of PHI in a manner contrary to this Agreement or the HIPAA Regulations.
- D. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of

the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

- E. Make available Protected Health Information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
 - i. Within ten (10) business days of a request by the Covered Entity, Business Associate agrees to comply with Covered Entity's request to accommodate an individual's access to his/her PHI. In the event an individual contacts Business Associate directly about access to PHI, Business Associate shall within three (3) business days forward such request to the Covered Entity. Any denials of access to the PHI requested shall be the responsibility of the Covered Entity.
- F. Make any amendment(s) to Protected Health Information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
 - i. Within ten (10) business days of receipt of a request from the Covered Entity for the amendment of an individual's PHI, Business Associate shall promptly incorporate any such amendments into the PHI. In the event an individual contacts Business Associate directly about making amendments to PHI, Business Associate will not make any amendments to the individual's PHI but shall forward such request to the Covered Entity within three (3) business days of such contact. Any denials of requested amendment to PHI shall be the responsibility of the Covered Entity.
- G. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
 - i. Business Associate hereby agrees to maintain a record of Disclosures of PHI for a retention period of six (6) years. Business Associate agrees to make information regarding Disclosures of PHI regarding an individual available to the Covered Entity within ten (10) business days of a request by the Covered Entity. At a minimum, Business Associate shall provide the Covered Entity with the following information: (i) the date of the Disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI Disclosed, (iv) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure, and (v) the names of all individuals whose PHI was Disclosed. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within three (3) business days forward such request to the Covered Entity. It shall be the Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate hereby agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.
- H. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- I. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

III. Permitted Uses and Disclosures by Business Associate

- A. Business Associate may only use or disclose Protected Health Information in such a manner as necessary to perform the services set forth in the Services Agreement separately entered into by Covered Entity and Business Associate.
- B. Business Associate may use or disclose Protected Health Information as required by law.

- C. Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures as described in Exhibit 1 (A).
- D. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.
- E. Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- F. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes 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.
- G. Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

IV. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- A. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- C. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

VI. Term and Termination

- A. Term. The Term of this Agreement shall be effective as of the date noted in the first paragraph of this Agreement, and shall continue in effect until cancelled, unless the Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- B. Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement.
- C. Obligations of Business Associate Upon Termination.
 - i. Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered

Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

- D. Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

VII. Miscellaneous

- A. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- B. Disclaimer. Covered Entity makes no warranty or representation that compliance by Associate with this Contract, HIPAA, or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of Protected Information.
- C. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- D. Injunctive Relief. Covered Entity shall have the right to injunctive and other equitable and legal relief against Business Associate or any of its agents in the event of any use or disclosure of Protected Information in violation of this Agreement or applicable law.
- E. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- F. Insurance. Each party to this Agreement will be responsible for its own insurance coverage. While Privacy Insurance is not required, if the Business Associate decides to purchase Privacy Insurance, it is recommended that the insurance include coverage for costs related to breaches of unsecured PHI, including the costs to notify affected individuals, DHHS and, if applicable, the media.
- G. Indemnification. Each party will indemnify and hold harmless the other party to this Agreement from and against any and all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in connection with:
1. any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Agreement; and
 2. any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the party's performance under this Agreement.
- H. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.
- I. Governing Law. This Agreement shall be construed broadly to implement and comply with the requirements relating to the Privacy Rule, the Security Rule, and other HIPAA laws, rules and regulations. All other aspects of this Agreement shall be governed under the laws of the State of Colorado and venue for any actions relating to this Agreement shall be in Denver County, Colorado].
- J. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.