

MEMORANDUM OF AGREEMENT
BETWEEN
SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
LIEUTENANT GOVERNOR'S OFFICE ON AGING

A. PARTIES TO AGREEMENT:

This Memorandum of Agreement (Agreement) is entered into as of the first day of July 2016, by and between the South Carolina Department of Health and Human Services, 1801 Main Street, Post Office Box 8206, Columbia, South Carolina, 29201-8206, hereinafter referred to as (SCDHHS), and the Lieutenant Governor's Office on Aging, 1301 Gervais Street, Suite 350, Columbia, South Carolina 29201, hereinafter referred to as (LGOA).

B. PURPOSE OF AGREEMENT:

This Agreement establishes the terms of collaboration in South Carolina between SCDHHS and LGOA, for the purposes of designing, implementing and maintaining a web-based Long Term Care Bed Registry. The LGOA is entering into this Agreement to facilitate the access of up-to-date information on available long term care beds throughout the state. This information will be available to hospitals, consumers, Community Long Term Care and anyone interested in identifying available long term care beds.

C. AGREEMENT PERIOD:

This Agreement is effective July 1, 2016 and shall continue unless sooner terminated in accordance with Section K until June 30, 2019 at which time the program will be evaluated for continuation.

D. SCOPE OF WORK:

SCDHHS and LGOA will work together to maintain the Long Term Care Bed Registry. The LGOA will:

1. Maintain a listing of nursing facilities and Community Residential Care Facilities (CRCF) with contact information
2. Send a daily e-mail request to each nursing facility to update Medicaid permit day utilization
3. Send a monthly e-mail request to each CRCF to update bed availability

4. Update vacant Medicaid, private pay, rehabilitation, and CRCF beds at each facility.
5. Update Medicaid permit days at each nursing facility with Medicaid beds, daily.
6. Train facility staff as needed on how to update the system.
7. Maintain an up-to-date user manual.
8. Provide regional or state wide training/Update/user events in coordination with SCDHHS.
9. This Agreement may be adjusted by mutual consent and shall be reviewed at six (6) month intervals by the SCDHHS and LGOA and may be amended.

E. BUDGET AND PAYMENT:

SCDHHS agrees to pay LGOA an amount not to exceed Seventy-five Thousand Dollars (\$75,000) for the maintenance of the registry for the period of the Contract. The budget for each State Fiscal Year shall not exceed Twenty-five thousand (\$25,000). Twenty-five thousand (\$25,000) for State Fiscal Year 2018 and Twenty-five Thousand (\$25,000) for State Fiscal Year 2019.

Quarterly invoices are to be submitted to:

Division of Accounting Operations
South Carolina Department of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202-8206

F. COST REPORT:

In lieu of filing an annual cost report, LGOA shall incorporate the following certification statement in each of its reimbursement requests:

I do solemnly swear (or affirm) that I have examined the information contained in this request or report. That all information has been prepared from the books and records of LGOA. That the aforesaid information is true and correct to the best of my knowledge and belief; and, that no other request for reimbursement from other federal and/or state funds has been made nor has any other reimbursement been received, applied for, nor will they be applied for, for the services herein described. That LGOA has on file the proper documentation to support this request for reimbursement. And, that the costs represented are true costs incurred during the period of this request.

This statement must be signed and dated by a finance person dually authorized by LGOA.

G. DONATIONS:

LGOA agrees to comply with 42 CFR Part 433 Subpart B, (2015, as amended), regarding any and all donations made by LGOA pursuant to this Agreement.

H. AMENDMENT:

No amendment or modification of this Agreement shall be valid unless it shall be in writing and signed by both parties hereto.

I. AMENDMENT DUE TO THE UNAVAILABILITY OF FUNDS:

SCDHHS shall have the right to amend the total dollar amount reimbursed under this Agreement, without the consent of LGOA, when the amendment is due to the unavailability of funds and SCDHHS is responsible for providing the matching funds. SCDHHS shall have the sole authority to determine the percentage of any reduction in the dollar amount of this Agreement. The amendment shall be effective thirty (30) days from the date of written notification from SCDHHS informing LGOA of the reduction/amendment or upon the signature of both parties thereto, whichever is earlier. SCDHHS shall have the sole authority for determining lack of availability of such funds.

J. EXTENSION:

Prior to the end of the term of this Agreement, SCDHHS shall have the option to extend or renew this Agreement upon the same terms and conditions as contained herein, so long as the total Agreement period, including the extension, does not exceed five (5) years; provided, and shall be negotiated and set forth in writing and signed by both parties pursuant to Section H.

K. TERMINATION:

Either party may terminate this Agreement upon providing the other party with thirty (30) days written notice of termination.

L. APPEALS PROCEDURE:

Requests for resolutions of disputes or claims whether for money or other relief arising hereunder shall be submitted to the appropriate chief procurement officer, in writing not later than one (1) year after the date that LGOA last performs work under this Agreement. Nothing herein shall preclude the State from requiring submission of any invoice for final payment within a certain time after completion and acceptance of the services and/or supplies herein specified. Pendency of a claim shall not delay payment of amounts agreed due.

M. HIPAA BUSINESS ASSOCIATE:

Individually identifiable health information is to be protected in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as agreed upon in Appendix A.

N. RELEASE OF REPORTS:

LGOA understands and agrees that all reports and assessments prepared by LGOA pursuant to this Agreement, including drafts, must be submitted to SCDHHS for review and approval by SCDHHS. LGOA may not release or disclose, in any form, a report or assessment (including drafts) to any person/entity without the expressed, written consent of SCDHHS.

O. PORTABLE DEVICES:

All Protected Health Information (PHI) stored on portable devices must be encrypted. Portable devices include all transportable devices that perform computing or data storage, manipulation or transmission including, but not limited to, diskettes, CDs, DVDs, USB flash drives, laptops, PDAs, Blackberrys, cell phones, portable audio/video devices (such as iPODs, and MP3 and MP4 players), and personal organizers.

IN WITNESS WHEREOF, SCDHHS and LGOA, by their authorized agents, have executed this Agreement as of the first day of July 2016.

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

LIEUTENANT GOVERNOR'S OFFICE
ON AGING

"SCDHHS"

"LGOA"

BY: _____

Christian L. Soura
Director

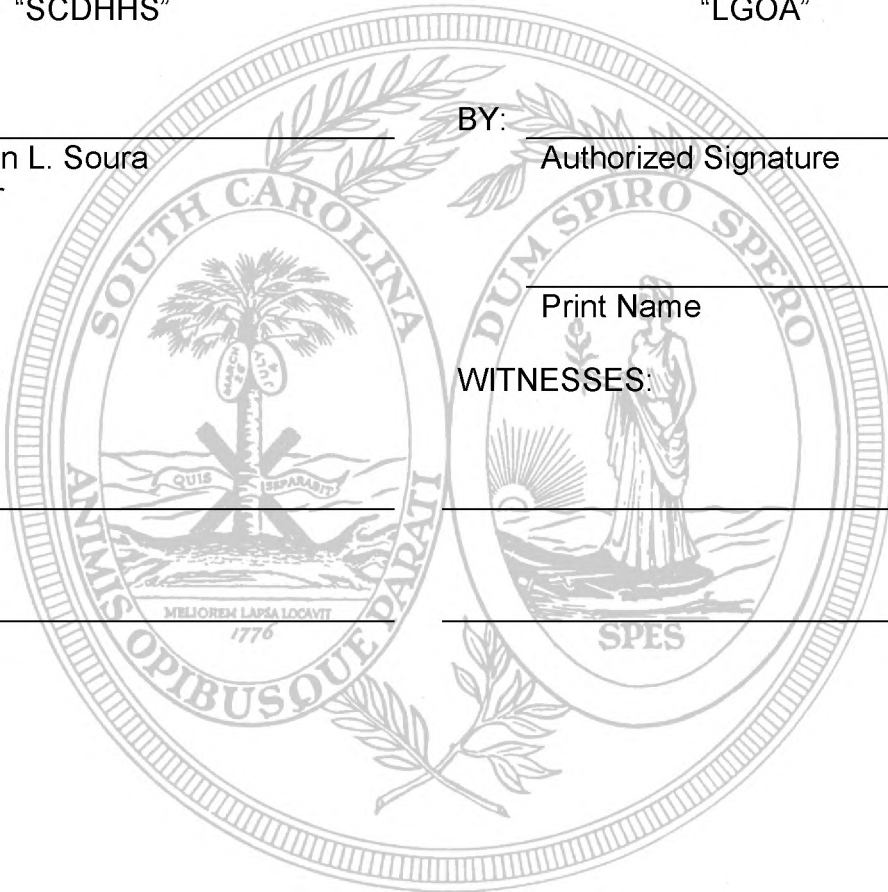
BY: _____

Authorized Signature

Print Name

WITNESSES:

WITNESSES:



APPENDIX A
HIPAA BUSINESS ASSOCIATE AGREEMENT

A. Purpose

The South Carolina Department of Health and Human Services (Covered Entity) and Business Associate agree to the terms of this Agreement for the purpose of protecting the privacy of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in performing the functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract between the parties.

B. Definitions

General Statement

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:

(a) Business Associate. "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 Lieutenant Governor's Office on Aging.

(b) Covered Entity. "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 SCDHHS.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(d) Security incident. "Security incident" shall generally have the same meaning as the term "security incident" at 45 CFR 164.304.

C. 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;

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(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;

(d) Notwithstanding the requirements of 45 CFR 164.410, Business Associate shall notify Covered Entity of potential breaches within fifteen (15) calendar days of discovery and include Covered Entity's designee in their breach determination process;

(e) Business Associate shall report security incidents on a quarterly basis, unless the severity of the security incident elevates the risk to a potential breach, in which case paragraph (d) takes precedence;

(f) Unless otherwise directed by Covered Entity, Business Associate shall be responsible for breach notifications to individuals, the HHS Office of Civil Rights (OCR), the South Carolina Department of Consumer Affairs, and the media, if applicable, on behalf of Covered Entity and shall include Covered Entity's designee as part of the breach response team;

(g) 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;

(h) 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) 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;

(j) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity, or an individual if directed by Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(k) Notify Covered Entity within five (5) business days of receipt of any request covered under paragraphs (h), (i) or (j) above;

(l) 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

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requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(m) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

D. Permitted Uses and Disclosures by Business Associate

(a) Business associate may only use or disclose protected health information as necessary to perform the services set forth in the Contract to which this Agreement is appended, including, if applicable, authorization to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c);

(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;

(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;

(e) 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.

(f) Business Associate may not disclose or duplicate protected health information identified by Covered Entity as provided by the Social Security Administration (SSA) without written approval and permission from SSA. If the need for such disclosure and/or duplication arises, Business Associate must notify Covered Entity and work with Covered Entity to obtain approval and permission from SSA.

E. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of and shall terminate on the effective and termination dates of the Contract to which this Agreement is appended, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner;

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(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 and Business Associate has not cured the breach or ended the violation within thirty (30) calendar days.

(c) Obligations of Business Associate Upon Termination.

(1) 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;

(2) In the event that Business Associate determines that returning or destroying the protected health information is not practical or possible, Business Associate shall notify Covered Entity of the conditions and reasons return of the protected health information is not practical or possible. Upon concurrence by Covered Entity that return is not practical, Business Associate shall:

(i) Continue to 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 the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;

(ii) Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section D of this Appendix.

(3) Business Associate shall obtain or ensure the destruction of protected health information created, received, or maintained by any subcontractors;

(4) Business Associate shall transmit the protected health information to another Business Associate of the Covered Entity at termination, upon receipt of a written request from the Covered Entity.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

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F. 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) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

