

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement, effective _____, 20____, is entered into by and between Sedgwick County on behalf of its COMCARE with an address of 635 N. Main, Wichita KS 67203 "Business Associate" and SOUTHWEST MEDICAL CENTER with an address of 315th at Pershing, PO Box 1340, Liberal, KS 67905, "Covered Entity."

The Business Associate is a Mental Health Center and the Covered Entity is a hospital.

The Covered Entity and the Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements under which the Business Associate may regularly use and/or disclose Protected Health Information and/or Electronic Protected Health Information in its performance of the Services provided to the Covered Entity. Both Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Regulation") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and The Security Rule (45 CFR Parts 160 and 164). This Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is provided by, or created or received by the Business Associate from or on behalf of the Covered Entity ("Protected Health Information"), will be handled between the Business Associate and the Covered Entity and with third parties during the term of their Agreement and after its termination. The Department of Health and Human Services published a final rule relating to the Security Standards under HIPAA codified at 45 CFR Parts 160 and 164 (Security Rule). The Security Rule requires the Business Associate to agree to certain safeguards and terms relating to the security of Electronic Protected Health Information (EPHI). Specifically, a covered entity like Southwest Medical Center, in accordance with Sec. 164.306, may permit a business associate to create, receive, maintain, or transmit EPHI on the covered entity's behalf only if the covered entity obtains satisfactory assurances, in accordance with Sec. 164.314(a) that the Business Associate appropriately safeguards the information.

Further, this Agreement is also intended to comply with the Health Information Technology for Economic and Clinical Health Act (HITECH Act), which imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Regulations and Security Rule.

Definitions: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule and the Security Rule (45 CFR 160 and 164).

- (a) **Breach** shall have the same meaning as the term "breach" at 45 CFR 164.402 and shall include the unauthorized acquisition, access, use or disclosure of Unsecured PHI that compromises the security or privacy rule of the PHI.
- (b) **Business Associate** shall mean Sedgwick County on behalf of its COMCARE
- (c) **Covered Entity** shall mean Southwest Medical Center.
- (d) **Electronic Media** has the meaning in 45 CFR 160.103 which is:
 - (1) Electronic storage media including memory devices in computers (hard drives) and any removable or transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
 - (2) transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the Internet, extranet, leased lines, dial-up lines, private networks and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and via telephone,

are not considered transmission via electronic media because the information did not exist in electronic form before the transmission.

- (e) **Electronic Protected Health Information** or "EPHI" has the meaning in 45 CFR 160.103, and is defined as that received from, or created or received on behalf of Southwest Medical Center.
- (f) **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) **Parties** shall mean Business Associate and Covered Entity.
- (h) **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- (i) **Protected Health Information** shall have the same meaning as the term "Protected Health Information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (j) **Required By Law** shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- (k) **Secretary** shall mean the Secretary of the Department of Health and Human Services or his designee.
- (l) **Security Incident** has the meaning in 45 CFR 164.304, which is the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
- (m) **Unsecured Protected Health Information** shall have the same meaning as "unsecured protected health information" in 45 CFR 164.402.

Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions:

Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, Protected Health Information and/or Electronic Protected Health Information

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information and/or Electronic Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Healthcare Master Agreement and any ancillary agreements, provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

Specific Use and Disclosure Provisions:

A. Except as otherwise limited in the Agreement, Business Associate may use Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

B. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information and Electronic Protected Health Information 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 notified the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

C. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information and Electronic Protected Health Information to provide Data Aggregation services to Covered entity as permitted by 45 CFR 164.504(e)(2)(i)(B).

D. Business Associate may use Protected Health Information and Electronic Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with (45 CFR 164.502(j)(1))

Obligations and Activities of Business Associate

A. Business Associate agrees to not use or disclose Protected Health Information or Electronic Protected Health Information (EPHI) other than as permitted or required by the Agreement or as Required by Law.

B. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information and EPHI that it receives, maintains, transmits or stores on behalf of the Covered Entity.

C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information and Electronic Protected Health Information by Business Associate in violation of the requirements of the Agreement.

D. Business Associate agrees to report in writing to the designated Privacy and Security Officer of the Covered Entity any use or disclosure of the Protected Health information and Electronic Protected Health Information not provided for by this Agreement of which it becomes aware within five business days of the Business Associate's discovery of such unauthorized use and/or disclosure.

(1) Any actual, successful Security Incident will be reported to Southwest Medical Center immediately by telephone to Southwest Medical Center's Security or Privacy and Security Officials and the hospital Administrator. The telephone report is to be followed up in writing, within five (5) business days of the date on which Business Associate becomes aware of such Security Incident.

(2) Any attempted, unsuccessful Security Incident of which Business Associate becomes aware, will be reported to Southwest Medical Center's Privacy or Security Officer in writing, within ten (10) business days of the date on which Business Associate becomes aware of such unsuccessful Security Incident.

(3) Any notice provided by this agreement shall contain all of the information required under 45 CFR 164.410.

E. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information and Electronic Protected Health Information 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 Agreement to Business Associate with respect to such information.

F. Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner agreed to by the Parties, to Protected Health Information and Electronic Protected Health Information to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. This time frame cannot exceed 45 days.

G. Business Associate agrees to make available protected health information for amendment and to make any amendment(s) to Protected Health Information that the Covered Entity directs or agrees to pursuant to 45 CFR

164.526 at the request of Covered Entity or an Individual, and in the time and manner to be negotiated for the convenience of Parties.

H. Business Associate agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement or the HHS Privacy Regulations.

I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information and/or Electronic Protected Health Information relating to the use and disclosure of Protected Health Information and/or Electronic Protected Health Information received from, created by, transmitted by or stored by Business Associate on behalf of Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule and the Security Rule.

J. Business Associate agrees to document such disclosures of Protected Health Information and/or Electronic Health Information 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 Protected Health Information in accordance with 45 CFR 164.528.

K. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner to be negotiated by Parties, information collected in accordance to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

L. Business Associate agrees to refrain from receiving any remuneration in exchange for any Individual's PHI unless such exchange (i) is pursuant to a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual, or (ii) satisfies one of the exceptions enumerated in the HIPAA regulations and, specifically, Section 13405(d)(2) of the HITECH Act.

M. Business Associate shall refrain from marketing activities that would violate the Privacy and Security Rules.

N. Business Associate agrees to refrain from exchanging any PHI with any entity (including Covered Entity) of which Business Associate knows of a pattern of activity or practice that constitutes a material breach or violation of HIPAA and, upon becoming aware of such behavior by an entity with which Business Associate has already exchanged HI, take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the contract or arrangement with such entity, if feasible. If termination is not feasible, Business Associate shall report the problem to the Secretary, in accordance with Section 13404 of the HITECH Act and 45 C.F.R. § 164.504(c).

O. The Business Associate shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Additionally, the Business Associate shall comply with all applicable requirements of Subpart C of Part 164 of the Security Rule.

Obligations of Covered Entity

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 its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information or Electronic Protected Health Information.

B. Covered Entity shall notify Business Associate of any changes in, or revocation of permission by Individual to use or disclose Protected Health Information or Electronic Protected Health Information, to the extent that such

changes may affect Business Associate's use or disclosure of Protected Health Information and/or Electronic Protected Health Information.

C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information or Electronic Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information and/or Electronic Protected Health Information.

D. Covered Entity shall provide the Business Associate a copy of the Notice of Privacy Practices currently in use and any revision of Notice.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information and/or Electronic Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

Term and Termination

A. **Term.** The Term of this Agreement shall be effective as of June 1st, 2015 and shall terminate when all of the Protected Health Information and/or Electronic Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information and/or Electronic Protected Health Information protections are extended to such information in accordance with the termination provisions in this Section.

B. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either: (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; (2) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or (3) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

C. **Effect of Termination.** (1) Except as provided in paragraph two of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information and Electronic Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, within 30 days. This provision shall apply to Protected Health Information and Electronic Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information or Electronic Protected Health Information. (2) In the event that the Business Associate determines that returning or destroying the Protected Health Information and/or Electronic Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon the determination that return or destruction of Protected Health Information and/or Electronic Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and/or Electronic Protected Health Information and limit further uses and disclosures of such Protected Health Information and/or Electronic Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such Protected Health Information and/or Electronic Protected Health Information.

Miscellaneous

(a) **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(b) **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(c) **Survival.** The respective rights and obligations of Business Associate under Section C of this agreement shall survive the termination of this Agreement.


(d) **Interpretation.** If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally so as to permit Covered Entity and Business Associate to comply with the Privacy Rule and the Security Rule.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of _____.

BUSINESS ASSOCIATE

APPROVED AS TO FORM:

By: _____

By:  _____

Print Name: Richard Ranzau

Print Name: Michael North

Print Title: Chairman, Sedgwick County Commissioners

Print Title: Assistant County Counselor

Date: _____

Date: 5/7/15

COVERED ENTITY

By:  _____

Print Title: Jo Harrison, VP Patient Care

Date: 5/11/15