



August 8, 2013

The following nine (9) pages represent the entirety of the “Medicaid Data Sharing and Confidentiality Agreement” (Business Associate Agreement) that Community Behavioral Health Centers (CBHCs) applying to the Ohio Department of Mental Health and Addiction Services (OhioMHAS) for health home service certification must enter into to access certain patient identified information.

Please keep the following in mind when completing this agreement:

- 1) This agreement must be used and submitted in conjunction with applying for certification for the health home service to OhioMHAS.
  - 2) The agreement must be signed in the form presented, without change.
  - 3) The signature of the health home representative must be in blue ink.
  - 4) Three (3) original signed copies must be submitted. Upon execution, one will be sent to the health home service provider with their OhioMHAS certification, one will be kept on file with OhioMHAS and one will be kept on file at ODM.
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## MEDICAID DATA SHARING AND CONFIDENTIALITY AGREEMENT

D-1415-07-\_\_\_\_\_

This Agreement is entered into by and among the Ohio Department of Medicaid (ODM)<sup>1</sup>, the Ohio Department of Mental Health and Addiction Services (ODMHAS)<sup>2</sup>, and \_\_\_\_\_ (Health Home). Health Home is a Community Behavioral Health Center (CBHC) that is enrolled as an Ohio Medicaid provider, and certified to provide the Health Home service by ODMHAS in accordance with OAC Section 5122-29-33.

### ARTICLE I - PURPOSE AND LEGAL AUTHORITY

This Agreement outlines the responsibilities of each of the parties in the shared coordination of the Medicaid Health Home Program (Program), a specialized care management program for Ohio Medicaid recipients identified with serious and persistent mental illness (SPMI). CBHC responsibilities include, but are not limited to, providing comprehensive care coordination to program enrollees. For purposes of this Agreement, "health home" shall have the meaning provided in Section 2703, "State Option to Provide Health Homes for Enrollees with Chronic Conditions," of the Affordable Care Act, citing to Section 1945 of the Social Security Act. Those programs, administered by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, allow health homes to enroll populations with chronic conditions, including those with SPMI, as defined by the State of Ohio in Ohio Administrative Code Section 5122-29-33.

The authority to release this data is 42 CFR 431.302, 431.305, 431.306, 431.307, 435.945, 45 CFR 164.402(e) and 164.504.

The ODM Agreement Manager is Mary Haller. The ODMHAS Agreement Manager is Douglas Day.

### ARTICLE II - DESCRIPTION OF RECORDS OR DATA TO BE PROVIDED

#### A. Responsibilities of the State [ODM and/or ODMHAS].

The State will provide Medicaid and state psychiatric hospital data containing protected health information (PHI) to the CBHC. The State will host a web portal that CBHC will use to enroll clients into the Health Home service and to obtain data files. The State will generate and share with the CBHC client specific utilization profiles for the Medicaid recipients that are currently enrolled in the Program through the CBHC.

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<sup>1</sup> The Office of Medicaid became the Department of Medicaid effective July 1, 2013.

<sup>2</sup> The Ohio Department of Mental Health (ODMH) and the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) were consolidated into the new Ohio Department of Mental Health and Addiction Services (ODMHAS), effective July 1, 2013. Statutory and regulatory authority, and all functions, duties, responsibilities, obligations, assets, and liabilities of ODMH and ODADAS were immediately and automatically consolidated into ODMHAS at that time.

B. Responsibilities of the CBHC.

1. The CBHC agrees to receive Medicaid and state psychiatric hospital data only for persons that are eligible for enrollment or who are enrolled in the CBHC's Program, for the purpose of carrying out its responsibilities under this Agreement.
2. The CBHC agrees not to share recipient historic Medicaid data provided by the State with entities other than under the following exceptions:
  - a. If the data is used for fulfillment of the goal of coordinating health with the enrollee's authorization;
  - b. If, in emergency situations, the enrollee is unable to communicate or make decisions for himself or herself; or
  - c. If the enrollee agrees to share his or her pharmacological claims history with the primary care provider who is partnering with the CBHC to develop a comprehensive care plan for the enrollee.
3. The CBHC agrees to inform each Medicaid recipient who it enrolls in the Program that his or her enrollment is voluntary and explain how enrollment in the Health Home impacts other services, especially other care coordination services (e.g. CPST, MCP care management), and that enrollee may rescind his or her enrollment at any time.
4. The CBHC agrees to disenroll any enrollee who has informed the CBHC that he or she wants to be disenrolled. The CBHC must give notice to ODM within three (3) business days by performing the disenrollment function within the MITS provider web portal, Ohio's online Medicaid provider claims processing system.
5. The CBHC agrees that the terms of this Agreement apply only to those individuals enrolled in the Program.
6. The CBHC agrees to comply with all Ohio Administrative Code rules governing health home services for persons with serious and persistent mental illness: OAC 5101:3-27-02; 5101:3-27-05; and 5122-29-33.

**ARTICLE III - CONFIDENTIALITY OF INFORMATION**

- A. The Health Home agrees that it shall not use any information, systems, or records made available to it for any purpose other than to fulfill the obligations specified herein. The Health Home specifically agrees to comply with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this Agreement exists, including, but not limited to:

1. United States Code - 42 USC 1320d through 1320d-8 (HIPAA);
2. Code of Federal Regulations - 42 CFR 431.300, 431.302, 431.305, 431.306, 435.945, 45 CFR 164.502(e) and 164.504(e);
3. Ohio Revised Code - ORC 173.20, 173.22, 2305.24, 2305.251, 3701.243, 3701.028, 4123.27, 5101.26, 5101.27, 5101.572 (renumbered 5160.39 effective 9/29/13), 5160.45 (effective 9/29/13), 5160.46 (effective 9/29/13), 5160.48 (effective 9/29/13), 5160.481 (effective 9/29/13), 5112.21, 5111.61, 5119.28, and 5122.31; and

4. Corresponding Ohio Administrative Code rules.
- B. The Health Home shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State [ODM and/or ODMHAS] against use or disclosure not provided for by this Agreement.
  - C. The Health Home agrees that access to records and data provided by the State and described in ARTICLE II will be restricted to only those authorized employees, officials, subcontractors, and other persons who need it to perform duties related to this Agreement. The Health Home agrees to provide the ODM and ODMHAS Agreement Managers with a complete listing of any and all persons who shall have access to the above referenced records and/or data.
  - D. The Health Home agrees that the above described records and/or data and any records, reports, databases, and/or other derivative documents created from the information provided under this Agreement shall be stored in an area that is physically safe from access from unauthorized persons during duty and non-duty hours. Information provided under this Agreement shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means. No records will be accessed, tested, maintained, backed up or stored outside of the United States.
  - E. The Health Home shall assure that all persons who have access to the above referenced information shall be fully apprised as to the confidential nature of the information, the safeguards required to protect the information, and the applicable civil and criminal sanctions and penalties associated with any intentional or non-intentional unauthorized disclosure. No subcontractor shall receive any information without a written agreement with the Health Home incorporating these assurances.
  - F. The Health Home shall not disclose any of the above referenced information to any third party without the specific written authorization of the Director of ODM.
  - G. The Health Home shall permit onsite inspection by the State of Ohio (including, but not limited to ODM, ODMHAS, the Auditor of the State of Ohio, the Inspector General of Ohio, or any duly authorized law enforcement officials) and by agencies of the United States government.
  - H. ODM and/or ODMHAS will prepare data pursuant to the security and encryption standards found in Ohio IT Standard ITS-SEC-01, Data Encryption and Cryptography; and NIST Special Publication 800-53. The Health Home shall retain this encryption while the data is in a portable format (e.g. tape, laptop, flash/USB drive).

- I. The terms of this ARTICLE III shall be included in all subcontracts executed by the Health Home for any and all work under this Agreement.

#### **ARTICLE IV - TIME OF PERFORMANCE**

- A. Upon approval by the Directors of ODM and ODMHAS, this Agreement shall be in effect from the date of execution and shall be in effect during the time that the Health Home has a current Medicaid provider agreement with ODM and current certification to provide health home services through ODMHAS, unless this Agreement is earlier suspended or terminated pursuant to ARTICLE VI.
- B. The Confidentiality and Business Associate Requirements provisions of this Agreement shall survive the termination of this Agreement.

#### **ARTICLE V - COST OF DATA PREPARATION**

The parties agree that no reimbursement will be sought under the terms of this Agreement.

#### **ARTICLE VI - SUSPENSION AND TERMINATION**

- A. Upon thirty (30) days written notice to the other parties, any party may terminate this Agreement.
- B. Notwithstanding Section A of this ARTICLE, ODM and/or ODMHAS may suspend or terminate this Agreement immediately upon delivery of written notice to the Health Home and the other state agency if ODM and/or ODMHAS discovers any illegal conduct on the part of the Health Home or if there is any breach of the provisions of ARTICLE III or ARTICLE XI.
- C. Notice of termination or suspension under either Section A or B of this ARTICLE must be sent to: ODM at: 50 W. Town Street, Suite 400, Columbus OH 43215 ; to ODMHAS at: 30 East Broad Street, 36<sup>th</sup> Floor, Columbus, Ohio 43215; and to Health Home's representative at the address appearing on the signature page of this Agreement.

#### **ARTICLE VII - BREACH OR DEFAULT**

- A. Upon breach or default of any of the provisions, obligations, or duties embodied in this Agreement, ODM and/or ODMHAS may exercise any administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and ODM and/or ODMHAS retains the right to exercise all remedies hereinabove mentioned.
- B. If any of the parties fails to perform an obligation or obligations under this Agreement and thereafter such failure(s) is(are) waived by the other parties, such waiver shall be limited

to the particular failure(s) so waived and shall not be deemed to waive other failure(s) hereunder. Waiver by ODM or ODMHAS shall not be effective unless it is in writing signed by the respective Director.

#### **ARTICLE VIII - AMENDMENTS**

This Agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the Director of ODM, the Director of ODMHAS, and the Health Home. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing a written amendment.

#### **ARTICLE IX - INDEPENDENT CONTRACTOR**

The Health Home agrees that no agency, employment, joint venture, or partnership has been or will be created among the parties hereto pursuant to the terms and conditions of this Agreement. The Health Home also agrees that, as an independent contractor, it assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums which may accrue as a result of compensation received for services or deliverables rendered hereunder. The Health Home agrees that it is an independent contractor for all purposes including, but not limited to, the application of the Fair Labor Standards Act, the Social Security Act, the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, provisions of the Internal Revenue Code, Ohio Tax Law, Workers Compensation law, and Unemployment Insurance law. The Health Home certifies that all approvals, licenses, or other qualifications necessary to conduct business in Ohio have been obtained and are operative. If at any time during the contractual period the Health Home becomes disqualified from conducting business in Ohio, for whatever reason, the Health Home must immediately notify ODM and ODMHAS of the disqualification and will immediately cease performance of its obligations hereunder, except those obligations to safeguard the information as set forth in ARTICLE IV.B.

#### **ARTICLE X - LIMITATION OF LIABILITY: DUTIES OF THE HEALTH HOME**

The Health Home agrees to defend, indemnify and hold ODM, its officials, employees and agents harmless from and against any and all liability, loss and expense (including reasonable attorneys' fees) or claims for personal injury, property damage, patent and copyright infringement, or for any liability or claims under Article XI below ("Business Associate Requirements Under HIPAA"), and/or any other type of claim that arises resulting from activities in furtherance of the work hereunder. Subject to Ohio Revised Code Section 109.02, the Health Home agrees to defend ODM and/or ODMHAS against any such claims or legal actions if called upon by ODM and/or ODMHAS to do so.

## ARTICLE XI - BUSINESS ASSOCIATE REQUIREMENTS UNDER HIPAA

- A. The definitions contained in this ARTICLE are derived from federal law. Should there be any conflict between the meanings assigned in this Agreement and the meanings defined in applicable federal law, even in the event of future amendments to law that create such conflict, the definitions found in federal law will prevail.
1. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.
  2. "Covered Entity" means a health plan, a health care clearinghouse, or health care provider under 45 CFR 160.103.
  3. "Business Associate" means a person or entity that, on behalf of the Covered Entity, maintains, performs, or assists in the performance of a function or activity that involves the use or disclosure of "Protected Health Information" under 45 CFR 160.103.
  4. "Protected Health Information" ("PHI") means information received from or on behalf of a Covered Entity that meets the definition of PHI as defined by HIPAA and 164.501 and any amendments thereto.
- B. The Health Home acknowledges that ODM and ODMHAS are Covered Entities under HIPAA. The Health Home further acknowledges that it is a Business Associate of ODM and of ODMHAS, and, in carrying out the work described in this Agreement, the Health Home agrees to comply with all of the following provisions:
1. Permitted Uses and Disclosures. The Health Home will not use or disclose PHI except as provided in this Agreement or as otherwise required under HIPAA regulations or other applicable law.
  2. Safeguards. The Health Home will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the ODM or ODMHAS against use or disclosure not provided for by this Agreement.
  3. Reporting of Disclosures. The Health Home will promptly report to ODM and to ODMHAS any knowledge of uses or disclosures of PHI that are not in accordance with this Agreement or applicable law. In addition, the Health Home will mitigate any adverse effects of such a breach of confidentiality to the greatest extent possible.
  4. Agents and Subcontractors. The Health Home will ensure that all its agents and subcontractors that receive PHI from or on behalf of the Health Home, ODMHAS and/or ODM agree to the same restrictions and conditions that apply to the Health Home with respect to the use or disclosure of PHI.

5. Accessibility of Information. The Health Home will make available to ODM and/or ODMHAS such information as ODM and/or ODMHAS may require to fulfill its obligations to provide access to, provide a copy of, and account for disclosures with respect to PHI pursuant to HIPAA and regulations promulgated by the United States Department of Health and Human Services, including, but not limited to, 45 CFR 164.524 and 164.528 and any amendments thereto.
6. Amendment of Information. The Health Home will make PHI available to ODM and/or ODMHAS so that ODM and/or ODMHAS may fulfill its obligations pursuant to HIPAA to amend the information. As directed by ODM and/or ODMHAS, the Health Home will also incorporate any amendments into the information held by the Health Home and shall ensure incorporation of any such amendments into information held by the Health Home's agents or subcontractors.
7. Disclosure. The Health Home will make available to ODM and/or ODMHAS and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from or on behalf of ODM and/or ODMHAS, or created or received by the Health Home on behalf of ODM and/or ODMHAS. Such access is for the purpose of determining compliance with HIPAA, regulations promulgated by the United States Department of Health and Human Services, and any amendment thereto.
8. Material Breach. In the event of material breach of the Health Home's obligations under this ARTICLE, ODM and/or ODMHAS may immediately terminate this Agreement as set forth in ARTICLE VI, Section B. Termination of this Agreement will not affect any provision of this Agreement which, by its wording or its nature, is intended to remain effective and to continue to operate after termination. Health Home will be responsible for all fines and penalties arising from any breach of its obligations under this ARTICLE, and agrees to hold harmless ODM, ODMHAS, the State of Ohio and any state official or employee acting in his or her official capacity, from any and all fines, penalties or other liabilities imposed as a result of Health Home's breach of its obligations under this ARTICLE.
9. Return or Destruction of Information. Upon termination of this Agreement and at the request of ODM and/or ODMHAS, the Health Home shall return to ODM and/or ODMHAS or destroy all PHI in the Health Home's possession stemming from this Agreement, and shall not keep copies of the PHI except as requested by ODM and/or ODMHAS or required by law. If the Health Home, any agent(s), or subcontractor(s) destroy any PHI, then the Health Home will provide to ODM and ODMHAS documentation evidencing such destruction. Any PHI retained by the Health Home shall continue to be extended the same protections set forth in this Section and HIPAA regulations for as long as it is maintained.

10. American Recovery and Reinvestment Act of 2009. The Health Home agrees to comply with the terms of Subtitle D of Title XIII of the American Recovery and Reinvestment Act of 2009.

11. These provisions shall survive the termination of this Agreement.

## ARTICLE XII - CONSTRUCTION

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Agreement be found to be unenforceable by operation of statute or by administrative or judicial decision, the operation of the balance of this Agreement is not affected thereby, provided, however, the absence of the illegal provision does not render the performance of the remainder of the Agreement unreasonable.

*SIGNATURE PAGE FOLLOWS - REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

[Health Home]: \_\_\_\_\_

\_\_\_\_\_

Signature (blue ink)

\_\_\_\_\_

Date

Address:

\_\_\_\_\_

\_\_\_\_\_

Ohio Department of Mental Health and Addiction Services:

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Tracy J. Plouck, Director

\_\_\_\_\_

Date

Ohio Department of Medicaid:

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John B. McCarthy, Director

\_\_\_\_\_

Date