

**DEPARTMENT OF HEALTH CARE SERVICES**

**DATA USE AGREEMENT**

**AGREEMENT FOR USE OF MEDI-CAL DATA AND DOCUMENTS CONTAINING  
INDIVIDUAL AND PROVIDER-SPECIFIC INFORMATION**

In order to secure data and documents that reside in the California Department of Health Care Services (DHCS) Medi-Cal system of records and to ensure the integrity, security, and confidentiality of such data and documents, and to permit only appropriate disclosure and use as may be permitted by law, DHCS and \_\_\_\_\_ (parties) enter into this Agreement to comply with the following specific sections. This Agreement shall be binding on any successors to the parties.

1. This Agreement is by and between the California Department of Health Care Services and \_\_\_\_\_ (User(s)).
2. This Agreement addresses the conditions under which DHCS will disclose and the User(s) will obtain and use Medi-Cal data file(s) as set out in Attachment A. This Agreement supplements any agreements between the parties with respect to the use of information from data and documents and overrides any contrary instructions, directions, agreements, or other understandings in or pertaining to any other prior communication from DHCS or any of its components with respect to the data specified in this Agreement. The terms of this Agreement may be changed only by a written modification to this Agreement or by the parties entering into a new agreement. The parties agree further that instructions or interpretations issued to the User(s) concerning this Agreement, and the data and documents specified herein, shall not be valid unless issued in writing by the DHCS point-of-contact specified in Section 4 or the DHCS signatories to this Agreement shown in Section 21.
3. The parties mutually agree that the following named individuals are designated as "Custodians of the Files" on behalf of the User(s) and shall be responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use or disclosure. The User(s) agree to notify DHCS within fifteen (15) days of any change to the custodianship.

\_\_\_\_\_  
(Name of Custodian of Files)

\_\_\_\_\_  
(Title/Component)

\_\_\_\_\_  
(Company/Organization)

\_\_\_\_\_  
(Company Address)

\_\_\_\_\_  
(City/State/Zip)

- The parties mutually agree that the following named individual will be designated as “point-of-contact” for the Agreement on behalf of DHCS.

**Cheryl Ward**

(Name of Contact)

**LEA Medi-Cal Billing Option Program**

(Title/Component)

**(916) 552-9081 / Cheryl.Ward@dhcs.ca.gov**

(Phone Number / Email Address)

- The parties mutually agree that the following specified Attachments are part of this Agreement:

Attachment A: Data Files

Attachment B: SSA Agreement

Attachment C: Security Controls

Attachment D: Notification of Breach

Attachment E: Certificate of Destruction

- The parties mutually agree, and in furnishing data files hereunder DHCS relies upon such agreement, that such data file(s) will be used solely for the following purpose: Data is released to LEAs for the purpose of verifying Medi-Cal eligibility of the beneficiaries. Services are being provided to special needs students, and prior to services being rendered LEAs are obligated to verify the students’ (beneficiaries’) eligibility. We have determined that the data listed in Attachment A is the minimum necessary amount needed for this purpose.
- Some of the data specified in this Agreement may constitute Protected Health Information (PHI), including protected health information in electronic media (ePHI), under federal law, and personal information (PI) under state law. The parties mutually agree that the creation, receipt, maintenance, transmittal and disclosure of data from DHCS containing PHI or PI shall be subject to the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act) and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 (HIPAA regulations), the provisions of the California Information Practices Act, Civil Code section 1798 *et seq*, and the provisions of other applicable federal and state law.
- The following definitions shall apply to this Agreement. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.
  - Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
  - Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual,

the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.

- c. Personal Information shall have the meaning given to such term in Civil Code section 1798.29.
  - d. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
  - e. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
  - f. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
  - g. Unsecured PHI shall have the meaning given to such term under the HITECH Act, any guidance issued pursuant to such Act including, but not limited to, 42 USC section 17932(h), and the HIPAA regulations.
9. The User(s) represent and warrant that, except as DHCS shall authorize in writing, the User(s) shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement to any person, company or organization. The User(s) agrees that, within the User(s)' organizations, access to the data covered by this Agreement shall be limited to the minimum number of individuals necessary to achieve the purpose stated in Attachment A and to those individuals on a need-to-know basis only.
10. Upon completion of the purpose specified in section 6, the User(s) shall destroy all electronic data files with DHCS data by wiping such data using Department of Defense standards or as approved by DHCS. The User(s) shall destroy all paper documents with DHCS data by using a confidential method of destruction, such as crosscut shredding or contracting with a company that specializes in confidential destruction of documents. The User(s) agree that no data from DHCS records, any parts or copies thereof, including files derived from DHCS records (electronic, hardcopy or otherwise), shall be retained when the files are destroyed unless authorization in writing for the retention of such files has been received from the person designated in section 20. The only exception is data that has been de-identified by the User(s) as defined in 45 CFR Parts 164.514(a) and 164.514(b) of the Health Insurance Portability and Accountability

Act (HIPAA) privacy regulations. The User(s) shall certify destruction of the file(s) in writing using Attachment E, Certificate of Destruction of Confidential Data, upon renewal of the DUA.

11. The User(s) agree to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized use or access to it. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established in HIPAA and the Health Information Technology for Economic and Clinical Health Act (HITECH), in 45 CFR, parts 160, 162 and 164 of the HIPAA Privacy and Security Regulations. The User(s) also agree to provide a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies. If the data obtained by User(s) from DHCS includes data provided to DHCS by the Social Security Administration (SSA), User(s) shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the Information Exchange Agreement, which are attached as Attachment B and incorporated into this Agreement. The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the SSA. In addition, the User(s) agree to comply with the specific security controls enumerated in Attachment C of this Data Use Agreement. The User(s) also agree to ensure that any agents, including a subcontractor, to whom they provide DHCS data, agree to the same requirements for privacy and security safeguards for confidential data that apply to the User(s) with respect to such information.
12. The User(s) acknowledge that in addition to the requirements of this data use Agreement, they must also abide by the privacy and disclosure laws and regulations under 45 CFR, parts 160, 162 and 164, of the HIPAA privacy and security regulations, section 14100.2 of the California Welfare & Institutions Code and Title 42, Part 2, of the Code of Federal Regulations. The User(s) also agree to ensure that any agents, including a subcontractor, to whom they provide the DHCS data, agree to the same restrictions and conditions that apply to the User(s) with respect to such information.
13. The User(s) agree to report to DHCS any use or disclosure of the information not provided for by this Data Use Agreement of which they becomes aware, immediately upon discovery, and to take further action regarding the use or disclosure as specified in Attachment D, Notification of Breach, of this Data Use Agreement.
14. User(s) agree to train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose DHCS data, and to discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment. In complying with the provisions of this section, User(s) shall observe the following requirements:

- (a) User(s) shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities under this Agreement and use or disclose DHCS data; and
  - (b) User(s) shall require each employee who receives information privacy and security training to sign a certification, indicating the employee's name and the date on which the training was completed.
15. From time to time, DHCS may, upon prior written notice and at mutually convenient times, inspect the facilities, systems, books and records of User(s) to monitor compliance with this Agreement. User(s) shall promptly remedy any violation of any provision of this Agreement and shall certify the same to the DHCS Privacy Officer in writing. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, User(s)' facilities, systems and procedures does not relieve User(s) of their responsibility to comply with this Agreement.
  16. The User(s) acknowledge that criminal penalties under 45 CFR, parts 160, 162 and 164 of the HIPAA privacy and security regulations, and section 14100.2 of the California Welfare & Institutions Code, including possible fines and imprisonment, may apply with respect to any disclosure of information in the file(s) that is inconsistent with the terms of this Agreement. The User(s) further acknowledge that criminal penalties under the Confidentiality of Medical Information Act (Civ. Code § 56) may apply if it is determined that the User(s), or any individual employed or affiliated therewith, knowingly and willfully obtained the file(s) under false pretenses.
  17. By signing this Agreement, the User(s) agree to abide by all provisions set out in this Agreement and in Attachments B and C for protection of the data file(s) specified in this Agreement, and acknowledge having received notice of potential criminal, administrative, or civil penalties for violation of the terms of the Agreement. User(s) agree any material violations of the terms of this Agreement or any of the laws and regulations governing use of DHCS data may result in denial of access to DHCS data.
  18. This Agreement shall terminate **December 1, 2015**, and at that time all data provided by DHCS must be destroyed as set forth in Section 10, above, and a certificate of destruction sent to the DHCS representative named in Section 4, unless data has been destroyed prior to the termination date.
  19. Termination for Cause. Upon DHCS' knowledge of a material breach or violation of this Agreement by User, DHCS may provide an opportunity for User to cure the breach or end the violation and may terminate this Agreement if User does not cure the breach or end the violation within the time specified by DHCS. DHCS may terminate this Agreement immediately if User has breached a material term and DHCS determines, in its sole discretion, that cure is not possible or available under the circumstances. Upon termination of this Agreement, User must destroy all PHI and PCI in accordance with Section 10, above. The provisions of this Agreement governing the privacy and security of the PHI and PCI shall remain in effect until all PHI and PCI is destroyed and DHCS receives a certificate of destruction.
  20. This Agreement may be signed in counterpart and all parts taken together shall constitute one agreement.

21. The Custodian, as named in Section 3, hereby acknowledges his/her appointment as Custodian of the aforesaid file(s) on behalf of the User(s), and agrees in a representative capacity to comply with all of the provisions of this Agreement on behalf of the User(s).

\_\_\_\_\_  
(Name of Custodian of File(s) - Typed or Printed)

\_\_\_\_\_  
(Title/Component)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

22. On behalf of the User(s), the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

\_\_\_\_\_  
(Name - Typed or Printed)

\_\_\_\_\_  
(Title/Component)

\_\_\_\_\_  
(Company/Organization)

\_\_\_\_\_  
(User NPI Number)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/State/ZIP Code)

\_\_\_\_\_  
(E-Mail Address)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

23. On behalf of DHCS the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

\_\_\_\_\_  
(Name of DHCS Representative - Typed or Printed)

\_\_\_\_\_  
(Title/Component)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)