

DEPARTMENT OF HEALTH CARE SERVICES

AGREEMENT FOR DISCLOSURE AND USE OF MEDI-CAL DATA

1. In order to secure data and documents that reside in the California Department of Health Care Services (DHCS) Medi-Cal systems of records or with its agents, 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 as follows: 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 22.
3. The parties mutually agree that the following named individual is designated as "Custodian 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 acquisition, access, use or disclosure. The User(s) agree to notify DHCS within fifteen (15) days of any change to the custodianship information.

Name of Custodian of Files

Title/Component

Company/Organization

Company Address

City/State/Zip

Phone Number / Email Address

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

California Department of Health Care Services
Safety Net Financing Division, LEA Program Unit
Attn: Cheryl Ward
(916) 345-7687
LEA@dhcs.ca.gov

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

Attachment A: Data Files
Attachment B: Security Controls
Attachment C: Notification of Breach
Attachment D: Certificate of Destruction

6. 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 students, and prior to services being rendered LEAs are obligated to verify the students’ (beneficiaries’) eligibility. The data listed in Attachment A is the minimum amount needed for this purpose.
7. 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, *which include the Final Omnibus Rule*, at 45 CFR Parts 160 and 164 (HIPAA regulations), the provisions of the California Information Practices Act (IPA) at Civil Code section 1798 *et. seq.*, Confidentiality of Substance Use Disorder Patient Records at 42 CFR Part 2, and the provisions of other applicable federal and state laws. User(s) specifically agree they will not use the Attachment A data for any purpose other than that stated in paragraph 6 of this Agreement. User(s) also specifically agree they will not use any DHCS data, by itself or in combination with any other data from any source, whether or not publicly available, to individually identify any person to anyone other than DHCS, as provided in this Agreement.

8. The following definitions shall apply to this Agreement. The terms used in this Agreement not otherwise defined shall have the same meanings as those terms have in the HIPAA regulations, the IPA or other applicable law. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.
- a. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the IPA.
 - b. 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 (PI) shall have the meaning given to such term in Civil Code sections 1798.3 and 1798.29.
 - d. PHI means individually identifiable health information that is transmitted by electronic media maintained in electronic media (45 CFR § 160.103), or is transmitted or maintained in any other form or medium (Management Memo Management Memo (MM) 08-11 and SAM 5365.2; Also, see SAM 5305.8).
 - 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 acquisition, access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the User'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, 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, except as DHCS shall authorize in writing. The User(s) agrees that, within the User's (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 this Agreement or Attachment A and to those individuals on a need-to-know basis only. User(s) shall not use or further disclose the information other than is permitted by this Agreement or as otherwise required by law. The User(s) shall not use the information to identify or contact any individuals.
10. The User(s) agree to notify DHCS within 30 days of the completion of the purpose specified in section 6. Upon such completion, 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) shall certify the destruction of the file(s) in writing within 30 days of the destruction. A statement certifying this action must be sent to the DHCS point-of-contact listed in section 4. 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 DHCS person designated in section 4.
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 (the HITECH Act), and the HIPAA Regulations. Final Omnibus Rule as set forth in 45 CFR, parts 160, 162 and 164 of the HIPAA Privacy and Security Regulations. The User(s) also agrees 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. In addition, the User(s) agree to comply with the specific security controls enumerated in Attachment B of this 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).

12. The users acknowledge that in addition to the requirements of this Agreement, they must also abide by the privacy and disclosure laws and regulations under 45 CFR Parts 160 and 164, of the HIPAA regulations, section 14100.2 of the California Welfare & Institutions Code, Civil Code section 1798.3 et. seq., the Confidentiality of Substance Use Disorder Patient Records 42 CFR Part 2, as well as any other applicable state or federal law or regulation. 42 CFR section 2.53 allows for the disclosure of such records to qualified personnel for the purpose of conducting management or financial audits, or program evaluation. 42 CFR Section 2.53(d) provides that patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose, or to investigate or prosecute criminal or other activities as authorized by an appropriate court order under section 2.66. 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 acquisition, access, use or disclosure of the information not provided for by this Agreement of which it becomes aware, immediately upon discovery, and to take further action regarding the acquisition, access, use or disclosure as specified in Attachment C, Notification of Breach, of this 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 penalties under 45 CFR, parts 160, 162 and 164 of the HIPAA 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 any data 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, C and D and 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. Further, the User(s) agree that any material violations of the terms of this Agreement or any of the laws and regulations governing the use of DHCS data may result in denial of access to DHCS data.
18. This Agreement shall terminate at the time of the completion of the project which is described in paragraph 6, or on December 1, 2021, whichever event occurs later, 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 and a certificate of destruction sent to DHCS. All representations, warranties and certifications shall survive termination.
19. Termination for Cause. Upon DHCS' knowledge of a material breach or violation of this Agreement by User(s), DHCS may provide an opportunity for User(s) to cure the breach or end the violation and may terminate this Agreement if User(s) does not cure the breach or end the violation within the time specified by DHCS. DHCS may terminate this Agreement immediately if User(s) breach 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 PI in accordance with Section 10, above. The provisions of this Agreement governing the privacy and security of the PHI and PI shall remain in effect until all PHI and PI is destroyed or returned to DHCS.
20. This Agreement may be signed in counterpart and all parts taken together shall constitute one agreement.
21. This Agreement shall be binding on any successors to the parties.

22. 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)

Title/Component

Signature

Date

23. 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

Title/Component

Company/Organization

NPI Number

Company Address

City/State/ZIP

Phone Number / Email Address

Signature

Date

24. 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

Title/Component

Signature

Date