

## UnitedHealthcare Community Plan of Texas

### BUSINESS ASSOCIATE AGREEMENT

**THIS BUSINESS ASSOCIATE AGREEMENT** (“Agreement”) is by and between UnitedHealthcare Community Plan of Texas, L.L.C. (“UnitedHealthcare”) and Hidalgo County Health & Human Services Dept. (“Business Associate”). This Agreement is effective June 26, 2012 (“Effective Date”).

1. **Definitions.** Terms used but not otherwise defined in this Agreement shall have the meaning ascribed in Sections 160.103 and 164.501, or elsewhere, in the Regulations.
  - a. **“Business Associate Functions”** means functions performed by Business Associate on behalf of UnitedHealthcare in the course of providing services to UnitedHealthcare.
  - b. **“HIPAA”** means the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d to 1320d-7, and future amendments thereto, and the Regulations issued thereunder.
  - c. **“Protected Health Information”** or **“PHI”** means protected health information, as defined in 45 C.F.R. § 164.501, which is created, received or used by Business Associate in the performance of one or more Business Associate Functions for UnitedHealthcare.
  - d. **“ePHI”** means PHI that is maintained or transmitted in electronic media.
  - e. **“Regulations”** means the final Regulations implementing the privacy or security provisions of HIPAA, as amended from time to time. The Regulations are presently codified at 45 C.F.R. Parts 160, 162 and 164.
  - f. **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system affecting ePHI.
  - g. **“Unsecured PHI”** means PHI that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals by one or more of the methods outlined by the Department of Health and Human Services in 45 C.F.R. § 160 and § 164.
2. **Purpose.** In the performance of services on behalf of UnitedHealthcare, and in order for Business Associate to use, disclose or create Protected Health Information pursuant to the engagement of Business Associate by UnitedHealthcare, Business Associate is a Business Associate of

UnitedHealthcare as that term is defined in the Regulations. Accordingly, Business Associate and UnitedHealthcare mutually agree to the terms of this Agreement to obtain satisfactory written contractual assurances from Business Associate that it will appropriately safeguard such Protected Health Information and to comply with the requirements of HIPAA and the Regulations.

3. **Permitted Uses and Disclosures of Protected Health Information.**

Business Associate shall only use and disclose Protected Health Information for the following purposes:

- a. To perform its Business Associate Functions permitted under any agreement with UnitedHealthcare and this Agreement, which shall specifically include the accumulation and analysis of data relating to communicable disease(s).
- b. As needed for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
- c. To provide data aggregation services to UnitedHealthcare as permitted by 45 C.F.R. Part 164.504(e)(2)(i)(B).

4. **Special Conditions on Disclosure for Business Associates Purposes.**

Business Associate may *disclose* Protected Health Information to another party for a reason described in subparagraph 31b, if one of the following two conditions is met:

- a. The disclosure must *be required by law*,
- b. Business Associate must obtain *reasonable assurances* from the person to whom the Protected Health Information is disclosed that such person will safeguard the Protected Health Information and further use and disclose it only as required by law or for the purpose for which Business Associate disclosed it to such person; and such person must agree in writing to notify Business Associate of any instances of which it is aware in which the confidentiality of Protected Health Information has been breached.

5. **Assurances of Business Associate.** As an express condition of performing Business Associate Functions, Business Associate agrees to the following:

- a. Comply with the requirements of Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. §§ 172921-17954, which are applicable to Business Associate, and comply with all regulations issued by the Department of Health and Human Services (HHS) to implement the HITECH Act, as of the date by which Business Associate is required to comply with the

HITECH Act and the related regulations. Such requirements are hereby incorporated by reference into this Business Associate Agreement.

- b. Use and disclose Protected Health Information only as permitted or required by this Agreement, or as otherwise required by law. Business Associate shall not use or disclose PHI in a manner that would violate any applicable law if done by UnitedHealthcare.
- c. Develop and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of, and to prevent use or disclosure of Protected Health Information other than as provided for in this Agreement. Business Associate agrees that these safeguards will meet any applicable requirements set forth in the Regulations.
- d. Report to UnitedHealthcare's designated privacy official, without unreasonable delay (but in no event longer than twenty (20) days) after discovery by Business Associate, any use or disclosure of PHI not provided for in this Agreement or not permitted under the Regulations, including any impermissible use or disclosure that is a breach of Unsecured PHI, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall conduct a risk assessment with respect to any impermissible access, acquisition, use or disclosure to determine if there is a significant risk of financial, reputational or other harm to the individual whose PHI was impermissibly acquired, accessed, used or disclosed. Business Associate shall notify the UnitedHealthcare of any such impermissible use or disclosure, including the following information in such notice:
  - i. A brief description of how the impermissible access, acquisition, use or disclosure occurred and how and when it was discovered.
  - ii. A description of whether Unsecured PHI was involved in the impermissible access, acquisition, use or disclosure, and the results of Business Associate's risk assessment.
  - iii. The steps Business Associate is taking to further investigate the impermissible access, acquisition, use or disclosure, to mitigate losses, and to protect against further impermissible access, acquisition, use or disclosure.
- e. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of this Agreement, and cooperate with UnitedHealthcare in its efforts to mitigate any harmful effects of any such unauthorized disclosure.

- f. In performing Business Associate Functions, make reasonable efforts to use, disclose or request only the Minimum Necessary Protected Health Information to accomplish the intended purpose of the use, disclosure or request.
  - g. Make its internal practices, books and records relating to the use and/or disclosure of Protected Health Information available to the Secretary of Health and Human Services or his or her designee for purposes of determining UnitedHealthcare's compliance with the Regulations.
  - h. Ensure that all agents and contractors who will create, receive, use or disclose Protected Health Information agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to Business Associate hereunder.
  - i. Limit the use and disclosure of PHI for purposes described in this Agreement to the minimum necessary to perform the required function. Business Associate shall comply with any additional requirements for the determination of minimum necessary as are required from time to time by the Regulations, as amended.
6. **Security Assurances of Business Associate.** If Business Associate will create, receive, maintain or transmit ePHI on behalf of UnitedHealthcare, it further agrees to:
- a. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of ePHI.
  - b. Ensure that any agent, including a subcontractor, to whom it provides ePHI, or with whom it contracts to create, receive, maintain or transmit ePHI, agrees to implement reasonable and appropriate safeguards to protect such ePHI.
  - c. Report to Covered Entity any Security Incident of which Business Associate becomes aware.
  - d. Comply with any other required provision of the Regulations, as amended by the HITECH Act or further statutory or regulatory amendment.
7. **Obligations With Respect to Individual Rights.**
- a. Access. Business Associate and UnitedHealthcare agree that Business Associate will provide access to Protected Health Information maintained by Business Associate on UnitedHealthcare's behalf, as required by 45 C.F.R. §164.524. Upon UnitedHealthcare's written or electronic request or

the direct request of a Covered Person or the Covered Person's Personal Representative, Business Associate will make available for inspection and obtaining copies by the Covered Person (or the Covered Person's Personal Representative), any Protected Health Information about the Covered Person created or received for or from UnitedHealthcare in Business Associate's custody or control contained in a Designated Record Set (as defined in the Regulations), so that UnitedHealthcare may meet its access obligations under HIPAA.

- b. Amendment. Business Associate and UnitedHealthcare agree that Business Associate will, when directed by UnitedHealthcare, amend Protected Health Information contained in a Designated Record Set (as defined in the Regulations) by Business Associate, in accordance with the requirements of 45 C.F.R. § 164.526. Business Associate shall notify UnitedHealthcare within three (3) business days of any direct request by a Covered Person to amend Protected Health Information maintained by Business Associate and shall cooperate with UnitedHealthcare in handling such request.
  - c. Accounting. Business Associate shall log or otherwise track those disclosures of Protected Health Information by Business Associate which are subject to the Covered Person's right to an accounting under § 164.526 of the Regulations, and report such disclosures to UnitedHealthcare in form and manner specified by UnitedHealthcare from time to time. Business Associate shall notify UnitedHealthcare within three (3) business days of any direct request by a Covered Person to an accounting of disclosures.
  - d. Restriction Requests. Business Associate shall comply with any voluntary restriction on use or disclosure of Protected Health Information accepted by UnitedHealthcare under § 164.522(a) of the Regulations which is properly communicated to Business Associate. Business Associate shall notify UnitedHealthcare within three (3) business days of any direct request by a Covered Person for a voluntary restriction on use or disclosure.
  - e. Confidential Communications. Business Associate shall comply with any request by Covered Persons under § 164.522(b) of the Regulations to receive communications of Protected Health Information by alternative means or at alternative locations which is properly communicated to Business Associate. Business Associate shall notify UnitedHealthcare within three (3) business days of any request by a Covered Person for confidential communications.
8. **Return or Destruction of Protected Health Information**. Business Associate shall return to UnitedHealthcare or destroy (and not retain a copy) all

Protected Health Information in its possession, upon the termination of the engagement or as soon as such Protected Health Information is no longer needed by Business Associate to perform its responsibilities thereunder, whichever comes first, and require its agents and contractors to do likewise. To the extent that return or destruction is not feasible, the protections of this Agreement shall remain in effect for so long as Business Associate or its agents or contractors have possession of or access to such Protected Health Information, and Business Associate agrees to limit further uses and disclosures of Protected Health Information to those purposes which make return or destruction infeasible.

9. **Responsibilities of UnitedHealthcare.** UnitedHealthcare agrees to:
  - a. Notify Business Associate if UnitedHealthcare agrees to any voluntary restrictions on the use or disclosure of Protected Health Information under § 164.522(a) of the Regulations which will affect Business Associate's use or disclosure of Protected Health Information under the engagement.
  - b. Notify Business Associate of any reasonable requests by individuals under § 164.522(b) of the Regulations to receive communications of Protected Health Information by alternative means or at alternative locations if such requests will affect Business Associate's services,
  - c. Provide Business Associate with a copy of any amendment to Protected Health Information which is accepted by UnitedHealthcare under §164.526 of the Regulations which UnitedHealthcare believes will apply to Protected Health Information maintained by Business Associate in Designated Record Sets.
10. **Supervening Law.** Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, UnitedHealthcare may, by written notice to Business Associate, amend this Agreement in such manner as it determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, Business Associate shall so notify UnitedHealthcare in writing within thirty (30) days of UnitedHealthcare's notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either of them may terminate the engagement or representation on not less than thirty (30) days' written notice to the other.
11. **Term and Termination.**
  - a. **Term.** This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, including return or destruction of all Protected Health Information in

Business Associate's possession (or in the possession of Business Associate's agents and/or contractors), unless sooner terminated as provided herein. It is expressly agreed that the terms and conditions of this Agreement designed to safeguard Protected Health Information shall survive expiration or other termination of the engagement or representation and shall continue in effect until Business Associate has performed all obligations under this Agreement.

- b. Termination by UnitedHealthcare. UnitedHealthcare may immediately terminate the engagement or representation, if UnitedHealthcare makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, UnitedHealthcare may choose to provide Business Associate with written notice of the existence of an alleged material breach, and afford Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure to take reasonable steps to cure is grounds for immediate termination of this Agreement.
  - c. Termination by Business Associate. If Business Associate determines that UnitedHealthcare has breached a material term of this Agreement, Business Associate shall notify UnitedHealthcare and provide UnitedHealthcare an opportunity to cure the alleged material breach upon mutually agreeable terms. Failure of UnitedHealthcare to take reasonable steps to cure the breach is grounds for the immediate termination of this Agreement.
  - d. Return/Destruction Infeasible. In the event Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide UnitedHealthcare with notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health information. Business Associate shall only be required to return or destroy Protected Health Information when it is feasible to do so.
12. **Miscellaneous.** The following miscellaneous provisions shall apply throughout the term of this Agreement:
- a. Survival. The respective rights and obligations of Business Associate and UnitedHealthcare hereunder shall survive termination of this Agreement according to the terms hereof and the obligations imposed on UnitedHealthcare under HIPAA.

- b. Interpretation; Amendment. This Agreement shall be interpreted and applied in a manner consistent with UnitedHealthcare’s obligations under HIPAA. Except as provided In Section 10, all amendments shall be in writing and signed by the parties.
- c. Waiver. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- d. No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies or obligations hereunder.

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

**UNITEDHEALTHCARE  
COMMUNITY PLAN OF TEXAS, L.L.C.**

**Hidalgo County Health  
& Human Services  
Dept.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Hidalgo County  
Judge

Date: \_\_\_\_\_

Date: \_\_\_\_\_