

RESOLUTION AGREEMENT

I. Recitals

1. Parties. The Parties to this Resolution Agreement (“Agreement”) are the United States Department of Health and Human Services, Office for Civil Rights (“HHS”), and QCA Health Plan, Inc. (“QCA”). HHS and QCA shall together be referred to herein as the “Parties.”

A. Authority of HHS

HHS enforces the Federal standards for the Privacy of Individually Identifiable Health Information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”), the Federal Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”), and the Federal standards for Notification in the Case of Breach of Unsecured Protected Health Information (45 C.F.R. Part 160 and Subparts A and D of Part 164, the “Breach Notification Rule”). HHS has the authority to conduct investigations of complaints alleging violations of the foregoing rules by covered entities, and covered entities must cooperate with HHS investigations. 45 C.F.R. §§ 160.306(c) and 160.310(b).

B. QCA

QCA is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the Privacy, Security, and Breach Notification Rules.

2. Factual Background and Covered Conduct

On February 21, 2012, HHS received notification from QCA regarding a breach of unsecured electronic protected health information (ePHI). On May 3, 2012, HHS notified QCA of its investigation regarding QCA’s compliance with the Privacy, Security, and Breach Notification Rules.

HHS’ investigation indicated that the following conduct occurred (“Covered Conduct”):

- A. QCA did not implement policies and procedures to prevent, detect, contain, and correct security violations, including conducting an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of ePHI it held, and implementing security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level to comply with 45 C.F.R. § 164.306 from the compliance date of the Security Rule to June 18, 2012.
- B. QCA did not implement physical safeguards for all workstations that access ePHI to restrict access to authorized users on October 8, 2011.

C. QCA impermissibly disclosed the ePHI of 148 individuals on October 8, 2011.

3. No Admission. This Agreement is not an admission of liability by QCA.

4. No Concession. This Agreement is not a concession by HHS that QCA is not in violation of the Privacy or Security Rules and that QCA is not liable for civil money penalties.

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve the OCR Transaction No. 12-142718, and any violations of the Privacy, Security, and Breach Notification Rules related to the Covered Conduct specified in paragraph I.2. of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden, and expense of further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

II. Terms and Conditions

6. Payment. QCA agrees to pay HHS the amount of \$250,000 ("Resolution Amount"). QCA agrees to pay the Resolution Amount by electronic funds transfer pursuant to written instructions to be provided by HHS. QCA agrees to make this payment on or before the date it signs this Agreement.

7. Corrective Action Plan. QCA has entered into and agrees to comply with the Corrective Action Plan ("CAP"), attached as Appendix A, which is incorporated into this Agreement by reference. If QCA breaches the CAP, and fails to cure the breach as set forth in the CAP, then QCA will be in breach of this Agreement and HHS will not be subject to the terms and conditions in the Release set forth in paragraph II.8 of this Agreement.

8. Release by HHS. In consideration of and conditioned upon QCA's performance of its obligations under this Agreement, HHS releases QCA from any actions it has or may have against QCA under the Privacy, Security, and Breach Notification Rules for the Covered Conduct specified in paragraph I.2. of this Agreement. HHS does not release QCA from, nor waive any rights, obligations, or causes of action other than those for the Covered Conduct and referred to in this paragraph. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.

9. Agreement by Released Party. QCA shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. QCA waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a-7a), 45 C.F.R. Part 160, Subpart E; and HHS Claims Collection regulations, 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.

10. Binding on Successors. This Agreement is binding on QCA and its successors, transferees, and assigns.

11. Costs. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. No Additional Releases. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

13. Effect of Agreement. This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement must be set forth in writing and signed by both Parties.

14. Execution of Agreement and Effective Date. The Agreement shall become effective (*i.e.*, final and binding) on the date this Agreement and the CAP are signed by HHS as the last signatory (“Effective Date”).

15. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty (“CMP”) must be imposed within six years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this Agreement, QCA agrees that the time between the Effective Date of this Agreement and the date this Resolution Agreement may be terminated by reason of QCA’s breach, plus one-year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. QCA waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the Covered Conduct specified in paragraph I.2. that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Agreement.

16. Disclosure. HHS places no restriction on the publication of the Agreement. This Agreement and information related to this Agreement may be made public by either party. In addition, HHS may be required to disclose this Agreement and related material to any person upon request consistent with the applicable provisions of the Freedom of Information Act, 5 U.S.C. § 552, and its implementing regulations, 45 C.F.R. Part 5.

17. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.

18. Authorizations. The individual signing this Agreement on behalf of QCA represents and warrants that he is authorized by QCA to execute this Agreement. The

individual signing this Agreement on behalf of HHS represents and warrants that she is signing this Agreement in her official capacity and that she is authorized to execute this Agreement.

For QCA Health Plan, Inc.

/s/

April 11, 2014

Michael E. Stock
President and Chief Executive Officer
QCA Health Plan, Inc.

Date

For the United States Department of Health and Human Services

/s/

April 14, 2014

Linda Yuu Connor
Regional Manager, Region X
Office for Civil Rights

Date

Appendix A
CORRECTIVE ACTION PLAN
BETWEEN THE
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
QCA HEALTH PLAN, INC.

I. Preamble

QCA Health Plan, Inc. (hereinafter referred to as “QCA”) hereby enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS”). Contemporaneously with this CAP, QCA is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. QCA enters into this CAP as part of the consideration for the release set forth in paragraph II.8 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

QCA has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports:

Mr. Michael Stock, Chief Executive Officer
QCA Health Plan, Inc.
12615 Chenal Parkway, Suite 300
Little Rock, AR 72211
Telephone: 501-219-5118
Fax: 501-707-6729

HHS has identified the following individual as its contact person with whom QCA is to report information regarding the implementation of this CAP:

Linda Yuu Connor, Regional Manager
Office for Civil Rights, Region X
Department of Health and Human Services
2201 Sixth Avenue, M/S RX-11
Seattle, WA 98121
Telephone: 206-615-2290
Facsimile: 206-615-2297

QCA and HHS agree to promptly notify each other of any changes in the contact persons or the other information provided above.

B. Proof of Submissions. Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

III. Effective Date and Term of CAP

The Effective Date for this CAP shall be calculated in accordance with paragraph II.14 of the Agreement (“Effective Date”). The period for compliance with the obligations assumed by QCA under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date (“Compliance Term”), except that after the Compliance Term ends, QCA shall be obligated to (1) submit the Annual Report for the final Reporting Period, as set forth in section VI and (b) comply with the document retention requirement set forth in section VII.

IV. Time

In computing any period of time prescribed or allowed by this CAP, all days referred to shall be calendar days. The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not one of the aforementioned days.

V. Corrective Action Obligations

QCA agrees to the following:

A. Security Management Process

1. QCA shall provide HHS with a risk analysis and corresponding risk management plan that includes security measures to reduce the risks and vulnerabilities to the electronic protected health information (ePHI) maintained by QCA to a reasonable and appropriate level. The risk analysis and corresponding risk management plan shall accurately reflect the environment and operations of QCA that exist at the time of the risk analysis and risk management plan are submitted to HHS. QCA shall provide the updated risk analysis and risk management plan to HHS for review and approval within sixty (60) days of the Effective Date.

2. Upon receiving notice from HHS specifying any required changes, QCA shall make the required changes and provide a revised risk analysis and risk management plan to HHS within thirty (30) days.

B. Security Awareness and Training.

1. QCA shall provide HHS with its training materials relating to security awareness established to reduce the risks and vulnerabilities to ePHI as identified in its security management process in section V.A. QCA shall provide the training materials to HHS for review and approval within thirty (30) days of the date HHS has approved QCA's risk analysis and risk management plan.

2. Upon receiving notice from HHS specifying any required changes, QCA shall make the required changes and provide revised security awareness training materials to HHS within thirty (30) days.

3. Upon receiving approval from HHS, QCA shall provide documentation that all workforce members with access to ePHI have received such security awareness training within sixty (60) days and will continue to receive such training on an on-going basis.

4. QCA shall review the security awareness training materials annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during audits or reviews, and any other relevant developments.

C. Reportable Events.

1. QCA shall, upon receiving information that a workforce member may have failed to comply with its Privacy and Security policies and procedures, promptly investigate the matter. If QCA determines, after review and investigation, that a member of its workforce has failed to comply with its Privacy and Security policies and procedures, QCA shall notify HHS in writing within thirty (30) days of its determination. Such violations shall be known as "Reportable Events." The report to HHS shall include the following:

a. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of QCA's Privacy and Security policies and procedures implicated; and

b. A description of the actions taken and any further steps QCA plans to take to address the matter, to mitigate any harm, and to prevent it from recurring, including the application of appropriate sanctions against workforce members who failed to comply with its Privacy and Security policies and procedures.

2. If no Reportable Events have occurred during the Compliance Term, QCA shall so inform OCR in writing thirty (30) days prior to the conclusion of the Compliance Term.

VI. Annual Reports

The one-year period beginning on the Effective Date and the following one-year period during the course of the period of compliance obligations shall be referred to as “the Reporting Periods.” QCA shall submit to HHS Annual Reports with respect to the status of and findings regarding QCA’s compliance with this CAP for each of the two Reporting Periods. QCA shall submit each Annual Report to HHS no later than sixty (60) days after the end of each corresponding Reporting Period. The Annual Report shall include:

- A. A summary of the security measures (addressed in section V.A.) taken during the Reporting Period;
- B. A summary of any updates to security awareness training (addressed in section V.B.) taken during the Reporting Period;
- C. A summary of Reportable Events (addressed in section V.C.) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events; and
- D. An attestation signed by an officer of QCA attesting that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content, and believes, based upon such inquiry, that the information is accurate and truthful.

VII. Document Retention

QCA shall maintain for inspection and copying all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

VIII. Breach Provisions

QCA is expected to fully and timely comply with all provisions contained in this CAP.

A. Timely Written Requests for Extensions. QCA may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act required by this CAP. A “timely written request” is defined as a request in writing received by HHS at least five (5) days prior to the date such an act is required or due to be performed.

B. Notice of Breach and Intent to Impose CMP. The Parties agree that a breach of this CAP by QCA constitutes a breach of the Agreement. Upon a determination by HHS that QCA has breached this CAP, HHS may notify QCA of (1) QCA’s breach; and (2) HHS’ intent to impose a civil money penalty (“CMP”), pursuant to 45 C.F.R. Part 160, for the Covered Conduct set forth in paragraph I.2 of the Agreement and for any

other conduct that constitutes a violation of the HIPAA Privacy, Security, and Breach Notification Rules (“Notice of Breach and Intent to Impose CMP”).

C. QCA Response. QCA shall have thirty (30) days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS’ satisfaction that:

1. QCA is in compliance with the obligations of this CAP that HHS cited as the basis for the breach; or
2. the alleged breach has been cured; or
3. the alleged breach cannot be cured within the 30-day period, but that: (a) QCA has begun to take action to cure the breach; (b) QCA is pursuing such action with due diligence; and (c) QCA has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30-day period, QCA fails to meet the requirements of section VIII.C of this CAP to HHS’ satisfaction, HHS may proceed with the imposition of the CMP against QCA pursuant to 45 C.F.R. Part 160 for any violations of the Privacy and Security Rules related to the Covered Conduct set forth in paragraph I.2 of the Agreement and for any other act or failure to act that constitutes a violation of the Privacy, Security, or Breach Notification Rules. HHS shall notify QCA in writing of its determination to proceed with the imposition of a CMP.

For QCA Health Plan, Inc.

/s/

Michael E. Stock
Chief Executive Officer
QCA Health Plan, Inc.

April 11, 2014

Date

For the United States Department of Health and Human Services

/s/

Linda Yuu Connor
Regional Manager, Region X
Office for Civil Rights

April 14, 2014

Date