

## RESOLUTION AGREEMENT

### I. Recitals

1. Parties. The Parties to this Resolution Agreement (“Agreement”) are:

A. The United States Department of Health and Human Services, Office for Civil Rights (“HHS”), which enforces the Federal standards that govern 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 standards that govern the security of electronic individually identifiable 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 45 C.F.R. Part 164, the “Breach Notification Rule”). HHS has the authority to conduct compliance reviews and investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules (the “HIPAA Rules”) by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews and investigations. *See* 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).

B. Catholic Health Care Services of the Archdiocese of Philadelphia (“CHCS”) is a business associate, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. CHCS is a nonprofit corporation organized under the laws of and operating in the Commonwealth of Pennsylvania. CHCS provided management services to and was the sole corporate parent of six nursing homes, St. Francis Country House, Immaculate Mary Home, St. John Neumann Home, St. Mary’s Manor, St. Martha’s Manor, and St. Monica’s Manor (“Skilled Nursing Facilities”). As of November 3, 2014, ownership of the six nursing homes was transferred to Center Management Group (“CMG”). CHCS continues to operate as a business associate to Catholic Clinical Consultants (“CCC”).

HHS and CHCS shall together be referred to herein as the “Parties.”

2. Factual Background and Covered Conduct. In February 2014, the HHS Office for Civil Rights (OCR) received separate notifications from each of the six nursing homes regarding a breach of unsecured electronic protected health information (ePHI) at CHCS. On April 17, 2014, OCR notified CHCS of OCR’s investigation regarding CHCS’s compliance with the HIPAA Rules.

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

(1) From September 23, 2013, the compliance date of the Security Rule for business associates, until the present, CHCS failed to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality integrity, and availability of e-PHI held by CHCS (*See* 45 C.F.R. § 164.308(a)(1)(ii)(A));

(2) From September 23, 2013, the compliance date of the Security Rule for business associates, until the present, CHCS failed to implement appropriate security measures sufficient to reduce the risks and vulnerabilities to a reasonable and appropriate level to comply with § 164.306(a) of the Security Rule. (See 45 C.F.R. § 164.308(a)(1)(ii)(B)).

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

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

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve OCR Transaction Number: 14-175895 and any violations of the HIPAA 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. HHS has agreed to accept, and CHCS has agreed to pay HHS, the amount of \$650,000.00 ("Resolution Amount"). CHCS agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 by automated clearing house transaction pursuant to written instructions to be provided by HHS.

7. Corrective Action Plan. CHCS 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 CHCS breaches the CAP, and fails to cure the breach as set forth in the CAP, then CHCS will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph II.8 of this Agreement.

8. Release by HHS. In consideration of and conditioned upon CHCS's performance of its obligations under this Agreement, HHS releases CHCS from any actions it may have against CHCS under the HIPAA Rules arising out of or related to the Covered Conduct identified in paragraph I.2 of this Agreement. HHS does not release CHCS from, nor waive any rights, obligations, or causes of action other than those arising out of or related to 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 Parties. CHCS 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. CHCS waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a- 7a) and 45 C.F.R. Part 160 Subpart E, and HHS claims collection regulations at 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 CHCS and its successors, heirs, 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 or by 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 shall be set forth in writing and signed by all Parties.
14. Execution of Agreement and Effective Date. The Agreement shall become effective (*i.e.*, final and binding) upon the date of signing of this Agreement and the CAP by 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, CHCS agrees that the time between the Effective Date of this Agreement and the date the Agreement may be terminated by reason of CHCS’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. CHCS waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the Covered Conduct identified 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. In addition, HHS may be required to disclose material related to this Agreement 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(s) signing this Agreement on behalf of CHCS represent and warrant that they are authorized by CHCS to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

**For Covered Entity**

/s/

June 24, 2016

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John Wagner  
Deputy Secretary/CEO  
Catholic Health Care Services of the Archdiocese of Philadelphia

Date

**For Department of Health and Human Services**

/s/

June 24, 2016

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Timothy Noonan  
Regional Manager  
Office for Civil Rights

Date

## Appendix A

# CORRECTIVE ACTION PLAN BETWEEN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND CATHOLIC HEALTH CARE SERVICES OF THE ARCHDIOCESE OF PHILADELPHIA

### **I. Preamble**

Catholic Health Care Services of the Archdiocese of Philadelphia (hereinafter known as “CHCS” 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, CHCS is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. CHCS enters into this CAP as part of consideration for the release set forth in paragraph II.7 of the Agreement.

### **II. Contact Persons and Submissions**

#### A. Contact Persons

CHCS 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:

Michael Czekner  
Chief Financial Officer  
Catholic Health Care Services  
222 North 17th Street  
3rd Floor  
Philadelphia, PA  
[mczekner@CHS-ADPHILA.ORG](mailto:mczekner@CHS-ADPHILA.ORG)  
267-663-5357

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

Serena Mosley-Day  
Deputy Regional Manager, HHS, OCR, Southeast Region  
61 Forsyth St. SW, Suite 16T70  
Atlanta, GA 30303  
[serena.mosley-day@hhs.gov](mailto:serena.mosley-day@hhs.gov)  
(404) 562-7864

CHCS 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 (“Compliance Term”) with the obligations assumed by CHCS under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date unless HHS has notified CHCS under section VIII hereof of its determination that CHCS breached this CAP. In the event of such a notification by HHS under section VIII hereof, the Compliance Term shall not end until HHS notifies CHCS that it has determined that the breach has been cured. After the Compliance Term ends, CHCS shall still be obligated to comply with the document retention requirement 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 which is not one of the aforementioned days.

## V. Corrective Action Obligations

CHCS agrees to the following:

### A. Risk Analysis and Risk Management.

As required by 45 CFR 164.308(a)(1)(ii)(A), CHCS shall, within 120 days of the Effective Date and then, annually, conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of e-PHI held by CHCS and document the security measures CHCS implemented or is implementing to sufficiently reduce the identified risks and vulnerabilities to a reasonable and appropriate level.

### B. Policies and Procedures

1. CHCS shall develop, maintain, and revise, as necessary, its written policies and procedures to comply with the Federal standards that govern the security of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”). CHCS’s policies and procedures shall include, but not be limited to, the minimum content set forth in section V.C.

2. CHCS shall provide such policies and procedures, consistent with paragraph 1 above, to HHS within 150 days of the Effective Date for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, CHCS shall have 30 days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval.

3. CHCS shall implement such policies and procedures within 30 days of receipt of HHS’ approval.

### C. Distribution and Updating of Policies and Procedures

1. CHCS shall distribute the policies and procedures identified in section V.A. to all members of the CHCS workforce within 30 days of HHS approval of such policies and to new members of the workforce within 14 days of their beginning of service.

2. CHCS shall require, at the time of distribution of such policies and procedures, a signed written or electronic initial compliance certification from all members of the workforce, stating that the workforce members have read, understand, and shall abide by such policies and procedures.

3. CHCS shall assess, update, and revise, as necessary, the policies and procedures at least annually (and more frequently if appropriate), as long as it continues to function as a business associate. CHCS shall provide such revised policies and procedures to HHS for review and approval. Within 30 days of the effective date of any approved substantive revisions, CHCS shall distribute such revised policies and procedures to all members of its workforce and shall require new compliance certifications.

4. CHCS shall not involve any member of its workforce in the access of electronic protected health information (“ePHI”) if that workforce member has not signed or provided the written or electronic certification required by paragraphs 2 & 3 of this section.

D. Minimum Content of the Policies and Procedures

The Policies and Procedures shall include, but shall not be limited to the following:

1. Policies regarding encryption of ePHI.
2. Policies regarding password management.
3. Policies regarding security incident response.
4. Policies regarding mobile device controls.
5. Policies regarding information system review.
6. Policies regarding security reminders.
7. Policies regarding log-in monitoring.
8. Policies regarding a data backup plan.
9. Policies regarding a disaster recovery plan.
10. Policies regarding an emergency mode operation plan.
11. Policies regarding testing and revising of contingency plans.
12. Policies regarding applications and data criticality analysis.
13. Policies regarding automatic log off.
14. Policies regarding audit controls.
15. Policies regarding integrity controls.

E. Reportable Events.

1. During the Compliance Term, CHCS shall, upon receiving information that a workforce member may have failed to comply with the Policies and Procedures required by V.A, promptly investigate this matter. If CHCS determines, after review and investigation, that a member of its workforce has failed to comply with these policies and procedures, CHCS shall notify HHS in writing within thirty (30) days. Such violations shall be known as Reportable Events. The report to HHS shall include the following information:



- a. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and
- b. A description of the actions taken and any further CHCS plans to take to address the matter to mitigate any harm, and to prevent it from recurring, including application of appropriate sanctions against workforce members who failed to comply with its Privacy, Security, or Breach Notification Rule Policies and Procedures.

2. If no Reportable Events occur during the Compliance Term, CHCS shall so inform HHS in its Annual Report for that Reporting Period.

F. Other Documentation

1. CHCS shall provide HHS with copies of its business associate agreements with all covered entities for whom it acts as a business associate within 14 days of the Effective Date.
2. CHCS shall provide HHS with copies of its management services agreements with all covered entities for whom it acts as a business associate within 14 days of the Effective Date.
3. CHCS shall provide an attestation signed by an owner or officer of CHCS stating that all documentation submitted to HHS pursuant to this section address all covered entities for whom CHCS acts as a business associate, and that the information is accurate and truthful, within 14 days of the Effective Date.

G. Training

1. CHCS shall provide HHS with security training materials for all members of the workforce that have access to ePHI within 60 days of the Effective Date.
2. Upon receiving notice from HHS specifying any required changes, CHCS shall make the required changes and provide revised PHI security training materials to HHS within thirty (30) days.
3. Upon receiving approval from HHS, CHCS shall provide security training for each workforce member who has access to ePHI within (60) days of HHS approval and at least every twelve (12) months thereafter. CHCS shall also provide such training to each new member of the workforce who has access to ePHI within (30) days of their beginning of service.
4. Each workforce member who is required to attend training shall certify, in electronic or written form, that he or she has received the training. The training certification shall specify the date training was received. All course materials shall be retained in compliance with section VII.

5. CHCS shall review the training at least 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.

## **VI. Implementation Report and Annual Reports**

A. Implementation Report. Within 60 days after the receipt of HHS' approval of the policies and procedures required by section V.A.1, CHCS shall submit a written report to HHS summarizing the status of its implementation of the requirements of this CAP. This report, known as the "Implementation Report," shall include:

1. An attestation signed by an owner or officer of CHCS attesting that the Policies and Procedures are being implemented, have been distributed to all appropriate members of the workforce, and that CHCS has obtained all of the compliance certifications required by sections V.B.2. and V.B.3.;

2. Copies of the Policies and Procedures described in section V.C.

3. An attestation signed by an owner or officer of CHCS stating that he or she has reviewed the Implementation Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

B. Annual Reports. The one-year period beginning on the Effective Date and each subsequent one-year period during the course of the period of compliance obligations shall be referred to as "the Reporting Periods." CHCS also shall submit to HHS Annual Reports with respect to the status of and findings regarding CHCS's compliance with this CAP for each of the two Reporting Periods. CHCS shall submit each Annual Report to HHS no later than 60 days after the end of each corresponding Reporting Period. The Annual Report shall include:

1. An attestation signed by an owner or officer of CHCS attesting that it is obtaining and maintaining written or electronic training certifications from all persons that require training that they received training pursuant to the requirements set forth in this CAP;

2. A summary of Reportable Events (defined in section V.C.6.) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;

3. An attestation signed by an owner or officer of CHCS attesting that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

## **VII. Document Retention**

CHCS shall maintain for inspection and copying, and shall provide to OCR, upon request, all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

## **VIII. Breach Provisions**

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

### **A. Timely Written Requests for Extensions**

CHCS 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 of this CAP and Intent to Impose Civil Monetary Penalty. The parties agree that a breach of this CAP by CHCS constitutes a breach of the Agreement. Upon a determination by HHS that CHCS has breached this CAP, HHS may notify CHCS of: (1) CHCS’s breach; and (2) HHS’ intent to impose a civil money penalty (“CMP”) pursuant to 45 C.F.R. Part 160, or other remedies for the Covered Conduct set forth in paragraph I.2 of the Agreement and any other conduct that constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules (“Notice of Breach and Intent to Impose CMP”).

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

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

D. Imposition of CMP. If at the conclusion of the 30-day period, CHCS fails to meet the requirements of section VIII.C. of this CAP to HHS’ satisfaction, HHS may proceed with the imposition of a CMP against CHCS pursuant to 45 C.F.R. Part 160 for any violations of 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 HIPAA Rules. HHS shall notify CHCS in writing of its determination to proceed with the imposition of a CMP.

**For Catholic Health Care Services of the Archdiocese of Philadelphia**

/s/

June 24, 2016

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John Wagner  
Deputy Secretary/CEO  
Catholic Health Care Services of the Archdiocese of Philadelphia

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Date

**For United States Department of Health and Human Services**

/s/

June 24, 2016

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Timothy Noonan  
Regional Manager  
Office for Civil Rights

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Date