

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 Code of Federal Regulations (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. Metro Community Provider Network (“MCPN”) is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. MCPN is a 501(c)(3) (nonprofit) Federally Qualified Community Health Center (“FQHC”) with many locations throughout the greater Denver, Colorado metropolitan area. MCPN provides primary medical care, dental care, pharmacies, social work, and behavioral care services to approximately 43,000 patients per year, a large majority of who have incomes at or below the poverty level.

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

2. Factual Background and Covered Conduct.

HHS received notification from MCPN on January 27, 2012, regarding a breach of its electronic protected health information (ePHI). MCPN reported that, on December 5, 2011, it became aware that a hacker accessed employees’ email accounts and obtained 3,200 individuals’ ePHI. On April 6, 2012, HHS notified MCPN that it was initiating an investigation into the breach. OCR’s investigation indicated that the following covered conduct occurred:

A. MCPN failed to implement policies and procedures to prevent, detect, contain, and correct security violations. Specifically, MCPN has failed to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of ePHI held by MCPN. Further, MCPN has failed to implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level. *See* 45 C.F.R. § 164.308(a)(1)(i).

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

4. No Concession. This Agreement is not a concession by HHS that MCPN is not in violation of the HIPAA Rules and not liable for civil money penalties (“CMPs”).

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve OCR Transaction Number 12-138430 and any potential 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 MCPN has agreed to pay HHS, the amount of \$400,000 (“Resolution Amount”). MCPN 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. MCPN 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 MCPN breaches the CAP, and fails to cure the breach as set forth in the CAP, then MCPN 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 MCPN’s performance of its obligations under this Agreement, HHS releases MCPN from any actions it may have against MCPN 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 MCPN 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 United States Code (U.S.C.) § 1320d-6.

9. Agreement by Released Parties. MCPN 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. MCPN 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 MCPN 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 CMP must be imposed within six (6) 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, MCPN agrees that the time between the Effective Date of this Agreement and the date the Agreement may be terminated by reason of MCPN's breach, plus one year thereafter, will not be included in calculating the six-year statute of limitations applicable to the violations which are the subject of this Agreement. MCPN 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.

Authorizations. The individual(s) signing this Agreement on behalf of MCPN represent and warrant that they are authorized by MCPN 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 Metro Community Provider Network

/s/

April 7, 2017


David Myers
President and CEO
Metro Community Provider Network


Date

For Department of Health and Human Services

/s/

April 3, 2017

Andrea Oliver
Regional Manager, Rocky Mountain Region
Office for Civil Rights

Date

Appendix A
CORRECTIVE ACTION PLAN
BETWEEN THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
METRO COMMUNITY PROVIDER NETWORK

I. Preamble

Metro Community Provider Network (hereinafter known as "MCPN") 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, MCPN is entering into a Resolution Agreement ("Agreement") with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. MCPN enters into this CAP as part of consideration for the release set forth in paragraph II.8. of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

MCPN 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:

Jim Balogh
Director, Information Services
Metro Community Provider Network
2696 S. Colorado Blvd, Suite 525
Denver CO 80222
Phone – (303)789-7126

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

Andrea Oliver
Regional Manager
U.S. Department of Health and Human Services
Office for Civil Rights – Rocky Mountain Region
1961 Stout Street, Room 08-148
Denver, Colorado 80294
Phone – (303) 844-7915
Fax – (303) 844-2025

MCPN and HHS agree to promptly notify each other of any changes to the contact persons or 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 MCPN under this CAP shall begin on the Effective Date of this CAP and end three (3) years from the Effective Date unless HHS has notified MCPN under Section VIII hereof of its determination that MCPN 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 MCPN that it has determined that the breach has been cured. After the Compliance Term ends, MCPN shall still be obligated to submit the final Annual Report as required by Section VI and 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

MCPN agrees to the following:

A. Conduct Risk Analysis

1. MCPN shall conduct a current, comprehensive, and thorough Risk Analysis of security risks and vulnerabilities to include all of its current facilities and the electronic equipment, data systems, and applications controlled, currently administered or owned by MCPN, that contain, store, transmit, or receive electronic protected health information ("ePHI"). Upon MCPN's completion of the Risk Analysis, MCPN shall submit a comprehensive written report of the Risk Analysis to HHS for HHS' review, and either approval or disapproval, consistent with Section V.A.2., below.

2. MCPN shall conduct such Risk Analysis, and provide relevant plans and reports, consistent with section V.A.1. above, to HHS in accordance with the following schedule:

- a. Within thirty (30) days of the Effective Date, MCPN shall submit for HHS' review, and either approval or disapproval, a plan setting forth the scope and

methodology of the Risk Analysis to be conducted by MCPN (the "Risk Analysis Plan"). Within thirty (30) days of its receipt of MCPN's Risk Analysis Plan, HHS will inform MCPN of any required changes to the Risk Analysis Plan. MCPN shall have fifteen (15) days in which to revise its Risk Analysis Plan accordingly, and then submit the revised Risk Analysis Plan to HHS for review and approval or disapproval. This process shall continue until HHS approves the Risk Analysis Plan.

- b. Within forty-five (45) days from MCPN's receipt of HHS's approval of the Risk Analysis Plan, MCPN shall begin to conduct the Risk Analysis. MCPN will complete the Risk Analysis no later than one (1) year from the Effective Date.
- c. Within ninety (90) days from the conclusion of the Risk Analysis, MCPN shall submit a written Risk Analysis for HHS' review and either approval or disapproval. Within sixty (60) days of its receipt of MCPN's written Risk Analysis, HHS will inform MCPN in writing as to whether HHS approves or disapproves of the Risk Analysis. Upon receiving any disapproval of the Risk Analysis from HHS, and a description of any required changes to the Risk Analysis, MCPN shall have sixty (60) days in which to revise accordingly its Risk Analysis, and then submit the revised written Risk Analysis to HHS for review and approval or disapproval. This process shall continue until HHS approves the Risk Analysis.

If HHS disapproves of the Risk Analysis or Risk Analysis Plan, HHS shall provide MCPN with the basis of its disapproval, and comments and recommendations that MCPN can use to prepare a revised Risk Analysis or Risk Analysis Plan (as appropriate).

3. MCPN shall review the Risk Analysis annually (and more frequently, if appropriate) and shall promptly update the Risk Analysis in response to environmental or operational changes affecting the security of ePHI. Following an update to the Risk Analysis, MCPN shall assess whether its existing security measures are sufficient to protect its ePHI, and revise its Risk Analysis, Risk Management Plan, Policies and Procedures, Training Materials, and implement additional security measures, as needed.

B. Develop and Implement Risk Management Plan

1. MCPN shall develop an organization-wide Risk Management Plan to address and mitigate any security risks and vulnerabilities identified in the Risk Analysis described in Section V.A. above. The Risk Management Plan shall include a process and timeline for MCPN's implementation, evaluation, and revision of its risk remediation activities. The Risk Management Plan shall be forwarded to HHS for its review consistent with Section V.B.2., below.

2. Within ninety (90) days of HHS' final approval of the Risk Analysis described in section V.A. above, MCPN shall submit its Risk Management Plan to HHS for HHS' review and approval. Within sixty (60) days of its receipt of MCPN's Risk Management Plan, HHS will inform MCPN in writing as to whether HHS approves or disapproves of the Risk Management Plan. If HHS disapproves of the Risk Management Plan, HHS shall provide MCPN with detailed comments

and recommendations so that MCPN can prepare a revised Risk Management Plan. Upon receiving any required changes to such Risk Management Plan from HHS, MCPN shall have sixty (60) days in which to revise its Risk Management Plan accordingly, and then submit the revised Risk Management Plan to HHS for review and approval or disapproval. This submission and review process shall continue until HHS approves the Risk Management Plan.

3. Within sixty (60) days of HHS' approval of the Risk Management Plan, MCPN shall begin implementation of the Risk Management Plan.

C. Review and Revise Policies and Procedures

1. MCPN shall review and, to the extent necessary, revise, its current Security Rule Policies and Procedures ("Policies and Procedures") based on the findings of the Risk Analysis and the implementation of the Risk Management Plan, as required by Sections V.A. and V.B., respectively. MCPN's Policies and Procedures must comply with the HIPAA Security Rule. MCPN shall forward the revised Policies and Procedures, if any, to HHS for its review consistent with Section V.C.2., below.

2. If applicable, MCPN shall provide such revised Policies and Procedures, consistent with section V.C.1. above, to HHS within sixty (60) days of HHS' final approval of the Risk Management Plan described in Section V.B. above, for HHS' review and approval. Within thirty (30) days of its receipt of MCPN's revised Policies and Procedures, HHS will inform MCPN in writing as to whether HHS approves or disapproves of the Policies and Procedures. If HHS disapproves of the Policies and Procedures, HHS shall provide MCPN with a written description of any required changes, including comments and recommendations that MCPN can use to further revise the Policies and Procedures. Upon receiving disapproval of the Policies and Procedures from HHS, and a description of any required changes to the Policies and Procedures, MCPN shall have thirty (30) days in which to revise its Policies and Procedures accordingly, and then submit the revised Policies and Procedures to HHS for review and approval or disapproval. This process shall continue until HHS approves the Policies and Procedures.

3. Within thirty (30) days of HHS' approval of the Policies and Procedures, MCPN shall begin implementation of the Policies and Procedures and shall distribute the approved Policies and Procedures to the relevant and appropriate MCPN workforce members.

D. Review and Revise Training Materials

1. MCPN shall review and, to the extent necessary, revise, its current Security Rule Training Materials ("Training Materials") based on the findings of the Risk Analysis and the implementation of the Risk Management Plan, as required by Sections V.A. and V.B., respectively, as well as any revisions to the Policies and Procedures, as described in Section V.C. MCPN's Training Materials must comply with the HIPAA Security Rule. The revised Training Materials, if applicable, shall be forwarded to HHS for its review consistent with Section V.D.2., below.

2. If applicable, MCPN shall provide the revised Training Materials, consistent with section V.D.1., above, to HHS within sixty (60) days of the HHS' final approval of the revised Policies and Procedures, described in Section V.C., for HHS' review and approval. Within thirty (30) days of its receipt of MCPN's Training Materials, HHS will inform MCPN in writing as to

whether HHS approves or disapproves of the Training Materials. If HHS disapproves of the Training Materials, HHS shall provide MCPN with a written description of any required changes, including comments and recommendations that MCPN can use to further revise the Training Materials. Upon receiving disapproval of the Training Materials from HHS, and a description of any required changes to the Training Materials, MCPN shall have thirty (30) days in which to revise its Training Materials accordingly, and then submit the revised Training Materials to HHS for review and approval or disapproval. This process shall continue until HHS approves the Training Program.

3. Within thirty (30) days of HHS' approval of the Training Materials and at least every 12 months thereafter, MCPN shall administer a Security Rule Training Program, containing the Training Materials, to each workforce member who has access to ePHI. MCPN shall also provide such training to each new member of the workforce who has access to ePHI within thirty (30) days of their beginning service.

4. Each workforce member who is required to participate in the training program shall certify, in electronic or written form, that he or she has received the training. The training certification shall specify the date the training was received. All course materials shall be retained in compliance with Section VII.

E. Reportable Events.

1. During the Compliance Term, MCPN shall, upon receiving information that a workforce member may have failed to comply with its Policies and Procedures, promptly investigate this matter. If MCPN determines, after review and investigation, that a member of its workforce has failed to comply with these Policies and Procedures, MCPN shall report such events to HHS as provided in Section VI.B.4. 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 applicable provision(s) of MCPN's Policies and Procedures; and

b. A description of the actions taken and any further steps MCPN 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 Policies and Procedures.

VI. Implementation Report and Annual Reports

A. Implementation Report. Within sixty (60) days after HHS approves the Training Materials specified in Section V.D.1. above, MCPN shall submit a written report with the documentation described below to HHS for review and approval ("Implementation Report"). If no revisions to MCPN's Policies and Procedures are required, pursuant to Section C.1., above, and therefore, approval of the Training Program is not required under Section V.D.2., then MCPN shall submit the Implementation Report to HHS for review and approval within sixty (60) days after HHS approves the Risk Management Plan, specified in Section V.B.1. The Implementation Report shall include:

1. An attestation signed by a member of MCPN's Executive Management Team attesting that the Risk Management Plan is being implemented and documentation indicating the date of implementation.

2. If applicable, an attestation signed by a member of MCPN's Executive Management Team attesting that the Policies and Procedures are being implemented, have been distributed to all relevant and appropriate members of the workforce, and documentation indicating the date of implementation and distribution.

3. If applicable, an attestation signed by a member of MCPN's Executive Management Team attesting that all required members of the workforce have participated in the Security Rule Training Program required by Section V.D.3. and have executed the training certifications required by Section V.D.4.

4. An attestation signed by a member of MCPN's Executive Management Team listing all MCPN facilities (including locations and mailing addresses), the corresponding name under which each facility is doing business, the corresponding telephone numbers and fax numbers, and attesting that each such facility has complied with the policy and procedures and training obligations of this CAP.

5. An attestation signed by a member of MCPN's Executive Management Team 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." MCPN also shall submit to HHS Annual Reports with respect to the status of and findings regarding MCPN's compliance with this CAP for each of the three (3) Reporting Periods. MCPN shall submit each Annual Report to HHS no later than thirty (30) days after the end of each corresponding Reporting Period. The final report shall be due thirty (30) days after MCPN's obligations under the CAP are otherwise concluded. The Annual Report shall include:

1. A detailed description of updates or changes, if any, to the Risk Analysis or Risk Management Plan made pursuant to Section V.A.3. This shall include a summary of MCPN's strategy related to the assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of ePHI held by MCPN; the identification of all outside entities assisting MCPN in this process; and documentation related to the security measures MCPN has implemented or is implementing to sufficiently reduce the identified risks and vulnerabilities to a reasonable and appropriate level;

2. A detailed description of any revisions to MCPN's Policies and Procedures and Training Materials, if any, made pursuant to Section V.A.3.;

3. A summary of Reportable Events, as defined in Section V.E., if any, identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events; and

4. An attestation signed by an owner or officer of MCPN 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

MCPN 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

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

A. Timely Written Requests for Extensions. MCPN 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 MCPN constitutes a breach of the Agreement. Upon a determination by HHS that MCPN has breached this CAP, HHS may notify MCPN of: (1) MCPN's breach; and (2) HHS' intent to impose a CMP pursuant to 45 Code of Federal Regulations (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. MCPN's Response. MCPN 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:

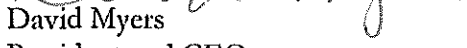
1. MCPN is in compliance with the obligations of the CAP that HHS cited as the basis for the breach;
2. The alleged breach has been cured; or
3. The alleged breach cannot be cured within the 30-day period, but that: (a) MCPN has begun to take action to cure the breach; (b) MCPN is pursuing such action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

D. Imposition of CMP. If at the conclusion of the 30-day period, MCPN 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 MCPN 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 MCPN in writing of its determination to proceed with the imposition of a CMP.

For Metro Community Provider Network

/s/

April 7, 2017



David Myers
President and CEO
Metro Community Provider Network

Date

For United States Department of Health and Human Services

/s/

April 3, 2017

Andrea Oliver
Regional Manager – Rocky Mountain Region
Office for Civil Rights

Date