

Health Information Privacy

Resolution Agreement

I. Recitals

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

A. The United States Department of Health and Human Services (HHS), Office for Civil Rights (OCR), 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. Children's Hospital & Medical Center (CHMC) meets the definition of "covered entity" under 45 C.F.R. § 160.103 and therefore is required to comply with the HIPAA Rules. HHS and CHMC shall together be referred to herein as the "Parties."

2. **Factual Background and Covered Conduct.** The Complainant alleged that CHMC failed to provide her with timely access to her deceased daughter's protected health information. Complainant is her late minor daughter's personal representative.

HHS's investigation found that on January 3, 2020, Complainant submitted a written request to CHMC for access to her late minor daughter's medical records. At the time of the request, CHMC provided Complainant with a portion of the requested records. The remainder needed to be collected from another CHMC division. Complainant received the remaining records on June 20, 2020 and July 16, 2020.

HHS's investigation indicated that the following "Covered Conduct" occurred:

- a. CHMC failed to provide access to PHI to Complainant in a timely manner. See 45 C.F.R. § 164.524(b).

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

4. **No Concession.** This Agreement is not a concession by HHS that CHMC 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: 20-381660 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 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 CHMC has agreed to pay HHS, the amount of **\$80,000** (Resolution Amount). CHMC agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 pursuant to written instructions to be provided by HHS.
7. **Corrective Action Plan.** CHMC 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 CHMC breaches the CAP, and fails to cure the breach as set forth in the CAP, then CHMC 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 CHMC's performance of its obligations under this Agreement, HHS releases CHMC from any actions it may have against CHMC 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 CHMC 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.** CHMC 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. CHMC 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.
0. **Binding on Successors.** This Agreement is binding on CHMC and its successors, heirs, transferees, and assigns.
1. **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.
2. **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.

3. **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.
4. **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).
5. **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, CHMC agrees that the time between the Effective Date of this Agreement and the date the Agreement may be terminated by reason of CHMC'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. CHMC 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.
6. **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.
7. **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.
8. **Authorizations.** The individual(s) signing this Agreement on behalf of CHMC represents and warrants that they are authorized to execute this Agreement and bind CHMC, as set forth in paragraph I.1.B. 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 Children's Hospital & Medical Center

/s/

Amy Bones, J.D.
Senior Vice President & General Counsel
Children's Hospital & Medical Center

8/16/2021

Date

For Department of Health and Human Services

/s/

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

8/17/2021

Appendix A

Corrective Action Plan Between the Department of Health and Human Services and Children's Hospital & Medical Center

I. Preamble

Children's Hospital & Medical Center (CHMC) 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, CHMC is entering into the Agreement with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. CHMC enters into this CAP as part of consideration for the release set forth in paragraph II.8 of the Agreement. Capitalized terms without definition in this CAP shall have the same meaning assigned to them under the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

CHMC 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:

Bart M. Sturdy, J.D., CHC, CHPC, CPCO
Compliance Director and Privacy Director
Children's Hospital & Medical Center
8200 Dodge Street
Omaha, Nebraska 68114-4113
bsturdy@ChildrensOmaha.org
Telephone: (402) 955-4122

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

Andrea Oliver, Regional Manager
Office for Civil Rights, Rocky Mountain Region
Department of Health and Human Services
1961 Stout Street, Room 08.148
Denver, Colorado 80294
Andrea.Oliver@hhs.gov
Telephone: (303) 844-7915
Facsimile: (303) 844-2025

CHMC and HHS agree to promptly notify each other of any changes in the contact person 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, electronic 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 CHMC under this CAP shall begin on the Effective Date of this CAP and end one (1) year from the Effective Date, unless HHS has notified CHMC under Section VIII hereof of its determination that CHMC 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 CHMC that it has determined that the breach has been cured. After the Compliance Term ends, CHMC shall still be obligated to: (a) submit the Final Report as required by Section VI; and (b) comply with the document retention requirement in Section VII. Nothing in this CAP is intended to eliminate or modify CHMC's obligation to comply with the document retention requirements in 45 C.F.R. §§ 164.316(b) and 164.530(j).

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

CHMC agrees to the following:

A. Policies and Procedures

1. Within thirty (30) calendar days of the Effective Date, CHMC shall review, and to the extent necessary, revise its policies and procedures related to the right of access to reflect satisfactory compliance with 45 C.F.R. §§ 164.530(j) and 164.524. CHMC's policies and procedures shall address, but not be limited to, the Covered Conduct specified in paragraph I.2 of the Agreement.
2. CHMC shall provide such access policies and procedures, consistent with paragraph 1 above, to HHS within sixty (60) calendar days of the Effective Date for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, CHMC shall have thirty (30) calendar days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval. This process shall continue until HHS approves such policies and procedures.
3. CHMC shall implement any revised access policies and procedures within thirty (30) calendar days of receipt of HHS's approval.

B. Distribution and Updating of Policies and Procedures

1. CHMC shall distribute the access policies and procedures identified in Section V.A to workforce members within thirty (30) calendar days of HHS approval of such revised policies, if any, and to new workforce members within thirty (30) calendar days of their beginning of service.
2. CHMC shall require, at the time of distribution of such revised policies and procedures, a signed written or electronic initial compliance certification from all appropriate workforce members stating that the workforce members have read, understand, and shall abide by such policies and procedures.
3. CHMC shall assess, update, and revise, as necessary, the policies and procedures at least annually or as needed. CHMC shall provide such revised policies and procedures to HHS for review and approval. Within thirty (30) calendar days of the effective date of any approved substantive revisions, CHMC shall distribute such revised policies and procedures to workforce members and shall require new compliance certifications.

C. Minimum Content of Policies and Procedures

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

1. Review and update as necessary CHMC's policy regarding *Right of Access to Protected Health Information*, to ensure timely and comprehensive response to requests for copies of records,

including individuals' requests for access directing CHMC to transmit copies directly to a designated third party, and a denial process consistent with the Privacy Rule.

2. Protocols for training all CHMC's workforce members that are involved in receiving or fulfilling access requests as necessary and appropriate to ensure compliance with the policies and procedures provided for in Section V.A above.

D. Training

1. CHMC shall provide HHS with training materials per Section V.C above for all workforce members within sixty (60) calendar days of the approval of its policies and procedures per Section V.A.
2. Upon receiving the notice from HHS specifying any required changes, CHMC shall make the required changes and provide revised training materials to HHS within thirty (30) calendar days. This process shall continue until HHS approves such training materials.
3. Upon receiving approval from HHS of any revised training materials, CHMC shall provide training on any revised training materials to all CHMC workforce members to the extent that their job duties relate to receiving, reviewing, processing, or fulfilling individual requests for access to records within ninety (90) calendar days of HHS's approval and annually thereafter. These workforce members may include: providers, administrative staff with direct patient contact (such as schedulers and front desk workers), all managers and supervisors, all Health Information Management staff, all compliance department staff, and all legal department staff. CHMC shall also provide such training to each new workforce member within thirty (30) calendar 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. CHMC 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, or any other relevant developments.

E. Reportable Events

1. During the Compliance Term, CHMC shall, upon receiving information that a workforce member may have failed to comply with the policies and procedures described in Section V.A, promptly investigate this matter. If CHMC determines, after review and investigation, that a workforce member has failed to comply with these policies and procedures, CHMC shall notify HHS in writing within thirty (30) calendar days and in the Annual Report, as set forth in Section VI.B.

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 steps CHMC 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 Rule policies and procedures.

VI. Implementation Report and Annual Report

Within one hundred twenty (120) calendar days after the receipt of HHS's approval of the policies and procedures required by Section V.A.1, CHMC 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 CHMC attesting that the policies and procedures approved by HHS in Section V.A are being implemented;
2. An attestation signed by an owner or officer of CHMC attesting that all workforce members have completed the initial training required by Section V.D;
3. An attestation signed by an owner or officer of CHMC 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 Report

The one (1) year period after the Effective Date shall be known as a "Reporting Period." Within sixty (60) calendar days after the close of the Reporting Period, CHMC shall submit a report to HHS regarding CHMC's compliance with this CAP for the Reporting Period ("Annual Report"). The Annual Report shall include:

1. An attestation signed by an owner or officer of CHMC attesting that all workforce members have completed the training required by Section V.D during the Reporting Period;
2. An attestation signed by an owner or officer of CHMC attesting that any revision(s) to the policies and procedures required by Section V.A were finalized and adopted within thirty (30) calendar days of HHS's approval of the revision(s), which shall include a statement affirming that CHMC

distributed the revised policies and procedures to all appropriate workforce members within sixty (60) calendar days of HHS's approval of the revision(s);

3. A summary of Reportable Events (defined in Section VI.A), if any, the status of any corrective and preventative action(s) relating to all such Reportable Events, or an attestation signed by an owner or officer of CHMC stating that no Reportable Events occurred during the Compliance Term; and
4. An attestation signed by an owner or officer of CHMC 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

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

VIII. Requests for Extensions and Breach Provisions

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

- A. **Timely Written Requests for Extensions.** CHMC 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. This requirement may be waived by HHS only.
- B. **Notice of Breach of This CAP and Intent to Impose CMP.** The Parties agree that a breach of this CAP by CHMC constitutes a breach of the Agreement. Upon a determination by HHS that CHMC has breached this CAP, HHS may notify CHMC Contact of: (1) CHMC's breach; and (2) HHS's intent to impose a CMP pursuant to 45 C.F.R. Part 160, 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. **CHMC's Response.** If CHMC is named in a Notice of Breach and Intent to Impose CMP, CHMC shall have thirty (30) days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS's satisfaction that:
 1. CHMC 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 thirty (30) day period, but that CHMC: (a) has begun to take action to cure the breach; (b) is pursuing such action with due diligence; and (c) has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the thirty (30) day period, CHMC fails to meet the requirements of Section VIII.C of this CAP to HHS's satisfaction, HHS may proceed with the imposition of a CMP against CHMC pursuant to the rights and obligations set forth in 45 C.F.R. Part 160 for any violations of the HIPAA Rules applicable 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 HIPAA Rules. HHS shall notify CHMC Contact in writing of its determination to proceed with the imposition of a CMP pursuant to 45 C.F.R. §§ 160.312(a)(3)(i) and (ii).

For Children's Hospital & Medical Center

/s/

Amy Bones, J.D.
Senior Vice President & General Counsel
Children's Hospital & Medical Center

8/16/2021

Date

For Department of Health and Human Services

/s/

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

8/17/2021

Date