

HIPAA Business Associate Agreement Amendment to
Contract Between the County of El Dorado

and

EL DORADO COUNTY EMERGENCY SERVICES AUTHORITY

This HIPAA Business Associate Agreement Amendment ("Amendment") entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and El Dorado County Emergency Services Authority (hereinafter referred to as "the JPA") supplements and is made part of the JPA Prehospital Advanced Life Support and Dispatch Services Contract ("Underlying Agreement") as of the date of approval by the parties (the "Effective Date").

RECITALS

WHEREAS, County and the JPA entered into the Underlying Agreement pursuant to which the JPA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") may be made available to the JPA for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the "Privacy Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, the JPA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule; and,

WHEREAS, the parties agree that any disclosure or use of PHI be in compliance with the Privacy Rule or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Amendment, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by the JPA of County Disclosed PHI.
 - A. The JPA shall be permitted to use PHI disclosed to it by the County:
 - (1) on behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not

violate the Privacy Rule if done by the County, or the minimum necessary policies and procedures of the County.

- (2) as necessary to perform any and all of its obligations under the Underlying Agreement.

B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Amendment or Required by Law, the JPA may:

- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
- (2) disclose the PHI in its possession to a third party for the purpose of the JPA's proper management and administration or to fulfill any legal responsibilities of the JPA. The JPA may disclose PHI as necessary for the JPA's operations only if:
 - (a) the disclosure is Required by Law; or
 - (b) the JPA obtains written assurances from any person or organization to which the JPA will disclose such PHI that the person or organization will:
 - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which the JPA disclosed it to the third party, or as Required by Law; and,
 - (ii) the third party will notify the JPA of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- (3) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
- (4) not disclose PHI disclosed to the JPA by County not authorized by the Underlying Agreement or this Amendment without patient authorization or de-identification of the PHI as authorized in writing by County.
- (5) de-identify any and all PHI of County received by the JPA under this Amendment provided that the de-identification conforms to the requirements of the Privacy Rule and does not preclude timely

payment and/or claims processing and receipt.

- C. the JPA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Amendment, or as Required by Law, or as otherwise permitted by law.

3. Obligations of the JPA. In connection with its use of PHI disclosed by County to the JPA, the JPA agrees to:

- A. Use or disclose PHI only as permitted or required by this Amendment or as Required by Law.
- B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Amendment.
- C. To the extent practicable, mitigate any harmful effect that is known to the JPA of a use or disclosure of PHI by the JPA in violation of this Amendment.
- D. Report to County any use or disclosure of PHI not provided for by this Amendment of which the JPA becomes aware.
- E. Require sub-contractors or agents to whom the JPA provides PHI to agree to the same restrictions and conditions that apply to the JPA pursuant to this Amendment.
- F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from the County.
- G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.

4. PHI Access, Amendment and Disclosure Accounting.

the JPA agrees to:

- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
- B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
- C. To assist the County in meeting its disclosure accounting under HIPAA:

- (1) the JPA agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) the JPA agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (3) the JPA shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the JPA need have no information for disclosures occurring before April 14, 2003).
- D. Make available to the County, or to the Secretary of Health and Human Services, the JPA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining the JPA's compliance with the Privacy Rule, subject to any applicable legal restrictions.
- E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by the JPA.
- F. Within thirty (30) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in the JPA's possession constitutes a Designated Record Set.
- G. Not make any disclosure of PHI that County would be prohibited from making.
5. Obligations of County.
- A. County agrees that it will make its best effort to promptly notify the JPA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect the JPA's ability to perform its obligations under the Underlying Agreement, or this Amendment.
 - B. County agrees that it will make its best effort to promptly notify the JPA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect the JPA's ability to perform its obligations under the Underlying Agreement, or this Amendment.
 - C. County agrees that it will make its best effort to promptly notify the JPA

in writing of any known limitation(s) in its notice of privacy

practices to the extent that such limitation may affect the JPA's use of disclosure of PHI.

- D. County shall not request the JPA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
 - E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that the JPA can perform its obligations under this Amendment and/or the Underlying Agreement.
6. Term and Termination. This Amendment shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein.
7. Amendment to Indemnity.

The JPA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of the JPA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Amendment, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of the JPA, its officers, agents, employees, subcontractors, agents or representatives from this Amendment. the JPA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by the JPA, the JPA shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes the JPA's indemnification to County as set forth herein. The JPA's obligation to defend, indemnify and hold harmless County shall be subject to County having given the JPA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be,

and information and reasonable assistance, at the JPA's expense, for the defense or settlement thereof. The JPA's obligation hereunder shall be satisfied when the JPA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Amendment shall in no way limit or circumscribe the JPA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Amendment.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the JPA from indemnifying the County to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Amendment, this indemnification shall only apply to the subject issues included within this Amendment.

8. Amendment. The parties agree to take such action as is necessary to amend this Amendment from time to time as is necessary for County to comply with the Privacy Rule and HIPAA generally.
9. Survival. The respective rights and obligations of this Amendment shall survive the termination or expiration of this Amendment.
10. Regulatory References. A reference in this Amendment to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts. Any ambiguity in this Amendment and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule and HIPAA generally.
12. Except as herein amended, all other parts and sections of this Agreement with the JPA, shall remain unchanged and in full force and effect.