

JUN 17 2004

Washington Lottery
Legal Services

MEMORANDUM OF UNDERSTANDING

Between

WASHINGTON STATE HEALTH CARE AUTHORITY

And

**WASHINGTON STATE LOTTERY COMMISSION
Agency Number 116**

This Memorandum of Understanding ("MOU") is entered into by the Washington State Health Care Authority hereinafter referred to as the ("HCA"), and the Washington State Lottery Commission hereinafter referred to as the ("AGENCY"). Collectively, these are the Parties to this MOU.

The purpose of this MOU is to delineate the Parties' respective responsibilities, identify areas in which they will assist each other, and minimize duplication of effort while complying with the requirements of HIPAA and its Privacy Rules. (Health Insurance Portability and Accountability Act of 1996, 42 USCA 1320d-d8, and 45 CFR 160 et. seq.).

45 CFR 164.504(e)(1) requires a written agreement between a "covered entity" and a "business associate" limiting the use and disclosure of Protected Health Information (PHI). The Parties acknowledge that the HCA is a "hybrid covered entity." To the extent the AGENCY is HCA's business associate, this agreement, in part, is satisfactory assurance that AGENCY will appropriately safeguard PHI in conformance with 45 CFR 164.502(e), 45 CFR 164.532(d) and (e) (2002).

This MOU satisfies HIPAA's requirement for a "business associate agreement" between a covered entity and business associate.

This MOU applies to PHI provided to or received from the AGENCY in electronic, handwritten, typed or digital formats, stored in either magnetic or optical media when the AGENCY assists HCA in administering health coverage for the AGENCY'S employees.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Section 1: STATEMENT OF WORK

- 1.1 The AGENCY'S Benefits Office will continue to perform its usual and customary assistance to HCA in administering employee benefits, including health coverage, for the AGENCY'S employees. In accordance with the HIPAA Privacy Rules, the Parties agree to the following AGENCY and HCA obligations and activities.
- 1.2 The AGENCY agrees to:
 - 1.2.1 Use or disclose Protected Health Information only as permitted or required by this MOU or as required by law.
 - 1.2.2 Apply the "minimum necessary" standard articulated in HIPAA to disclosures of PHI.
 - 1.2.3 Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this MOU.
 - 1.2.4 Report to HCA any use or disclosure of PHI not provided for by this MOU of which it becomes aware. If unauthorized disclosure of PHI occurs, the AGENCY will mitigate to the extent practicable, any resulting harm.

- 1.2.5 Provide HCA with access within a reasonable time, to PHI when requested.
- 1.2.6 Make internal records, practices, policies and procedures about the use and disclosure of Protected Health Information available to the HCA within a reasonable time for the federal Secretary of Health and Human Services (HHS) or the Office of Civil Rights (OCR) to determine HCA's compliance with the HIPAA Privacy Rules.
- 1.2.7 Notify HCA when PHI is requested that has been previously provided to the AGENCY. The HCA and the AGENCY will determine whether the AGENCY has received a duplicate request, or whether the AGENCY has the original or sole copy of the PHI.
- 1.2.8 Notify HCA of all requests by an individual to access and amend his or her PHI contained in a "designated record set," including information held by the AGENCY, if appropriate. The AGENCY shall not deny any individual's request for PHI, but will instead refer such requests to HCA for management and response.
- 1.2.9 Provide HCA with information collected in accordance with this MOU, to permit HCA to respond to an individual's request for an "accounting of disclosures" of PHI in accordance with 45 CFR §164.528.

- 1.3 The AGENCY may use PHI for the AGENCY'S management and administration and to carry out the AGENCY'S legal responsibilities if law requires such disclosures, or the AGENCY obtains reasonable assurances:
 - 1.3.1 That PHI will remain confidential; and
 - 1.3.2 That PHI will be used or further disclosed only as required by law; or
 - 1.3.3 That PHI will be used for the purpose for which it was disclosed; and
 - 1.3.4 That the HCA is notified of any instances in which the confidentiality of the information has been breached.

- 1.4 The AGENCY may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with § 164.502(j)(1).

- 1.5 HCA shall notify the AGENCY of:
 - 1.5.1 Any limitation(s) in HCA's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect the AGENCY'S use or disclosure of PHI.
 - 1.5.2 Any changes in, or revocation of, permission by individual to use or disclose PHI, to the extent that such changes may affect the AGENCY'S use or disclosure of PHI.
 - 1.5.3 Any restriction to the use or disclosure of PHI that HCA has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect the AGENCY use or disclosure of PHI.
 - 1.5.4 Receipt of an individual's request to access or amend his or her PHI contained in a "designated record set." The AGENCY and HCA shall coordinate the return of PHI in either Party's possession so that the amendment can occur. Amended PHI will then be returned. Such return and amendment shall occur in a timely manner, compliant with HIPAA.
 - 1.5.5 HCA shall not request the AGENCY to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by HCA.

Section 2: PERIOD OF PERFORMANCE

- 2.1 The term of this agreement shall begin on the date of execution and shall remain in effect until modifications are deemed necessary and mutually acceptable changes are negotiated.
- 2.2 Modifications shall not be binding unless they are in writing and signed by authorized personnel of the respective Parties.

Section 3: TERMINATION AND SAVINGS CLAUSE

- 3.1 If federal or state laws are amended so that fulfillment of the MOU is not feasible the HCA and the AGENCY shall be discharged from further obligation created by this MOU.
- 3.2 If this MOU is superseded, then this MOU is terminated in regard to superceded terms and conditions. The remainder of the provisions of this MOU shall survive such termination if not superseded.

Section 4: PERIODIC REVIEW AND AMENDMENT

- 4.1 This MOU shall be periodically reviewed and evaluated as to the need for modifications or amendments by mutual determination of the Parties. Such review shall not occur more frequently than annually, or when HIPAA is amended, whichever is earlier.
- 4.2 The Parties agree to take such action as is necessary to amend this MOU from time to time as is necessary for HCA to comply with the requirements of the HIPAA Act and Privacy Rule. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

Section 5: INDEPENDENT CAPACITY

The employees or agents of each Party who are engaged in the performance of this MOU shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees of the other Party.

Section 6: DISPUTES

In the event that a dispute arises under this MOU, a Dispute Board shall determine it in the following manner:

- 6.1 Each Party to this agreement shall appoint one member to the Dispute Board.
- 6.2 The members so appointed shall jointly appoint an additional member to the Dispute Board.
- 6.3 The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute.
- 6.4 The determination of the Dispute Board shall be final and binding on the Parties.
- 6.5 As an alternative to this process, either of the Parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

Section 7: GOVERNANCE

- 7.1 This MOU is entered into pursuant to the Interlocal Cooperation Act, RCW 39.34 et seq. Activities under the MOU shall be performed in accordance with Washington State law and regulations, and with HIPAA and its attendant regulations as promulgated by the U.S. Department of Health and Human Services (HHS), the Center for Medicare and Medicaid Services (CMS), and the Office of Civil Rights (OCR).

7.2 A reference in this MOU to a section in the Privacy Rule means the section as in effect or as amended. Any ambiguity in this MOU shall be resolved to permit HCA to comply with the Privacy Rule.

Section 8: SEVERABILITY

If any provision of this MOU shall be held invalid, such invalidity shall not affect the other provisions of this MOU which can be given effect without the invalid provision. If such remainder conforms to the requirements of applicable law and the fundamental purpose of this MOU, the provisions of this MOU are declared severable.

Section 9: CONTRACT MANAGEMENT

The program manager for each of the Parties shall be responsible for and shall be the contact person for all communications regarding the performance of this MOU.

The Program Manager for HCA is:

Name: Melodie Bankers
Title: Director of Legal and Contract Services
Address: 676 Woodland Square Loop S.E.
Post Office Box 42702
Olympia, WA 98504-2702
Phone: (360) 923-2728

The Program Manager for Washington State Lottery Commission is:

Name: Ceil Buddeke
Title: Legal Counsel, Washington Lottery
Address: 814 East 4th Ave.
Olympia, WA 98504
Phone: (360) 664-4833



Section 10: RECORDS RETENTION AND MANAGEMENT

All records and reports relating to this MOU shall be retained by the AGENCY for a minimum of six years after termination of this MOU, unless returned to HCA. In the event an audit, litigation, or other action involving records is initiated prior to the end of such six-year period, records shall be maintained for a minimum of six years following resolution of such action.

Section 11: AGENTS AND SUBCONTRACTORS

AGENCY shall ensure that its obligations under this MOU are passed through to all its agents and subcontractors when an agent or subcontractor is providing services that the AGENCY has agreed to perform for HCA.

Section 12: DEFINITIONS

12.1 Terms used, but not otherwise defined, in this MOU shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health

Information at 45 CFR Part 160 and Part 164, Subparts A and E [HIPAA Privacy Rule].

- 12.2 "Protected Health Information (PHI)" is defined at 45 CFR 164.501, and is individually identifiable health information that is transmitted by electronic media, maintained in any medium constituting electronic media, or transmitted or maintained in any other form or medium. PHI does not include information that is expressly excluded by HIPAA. (See 45 CFR 164.501).
- 12.3 "Individually identifiable health information" includes demographic information collected from an individual, and is information created or received by a health care provider, health plan, employer or health care clearinghouse related to the past, present or future physical or mental health or condition of an individual that identifies the individual or regarding which information there is a reasonable basis to believe that the information can be used to identify the individual. [45 CFR 160.103 (2002)].

IN WITNESS WHEREOF, the Parties have executed this Agreement.

WASHINGTON STATE
HEALTH CARE AUTHORITY

By: Melodie Bankers
Title: Director of Legal and Contract Services
Date: 6-7-04

WASHINGTON STATE LOTTERY COMMISSION

By: [Signature]
Title: Legal Counsel
Date: 6/4/04

APPROVED AS TO FORM ONLY:
CHRISTINE O. GREGOIRE
Attorney General

By: *Melissa A. Burke-Cain, Senior Counsel*