



City of Grand Island

Tuesday, February 23, 2010

Council Session

Item G8

#2010-56 - Approving Amended HIPPA Business Associate Agreement with Golden Living

Staff Contact: Jon Rosenlund

Council Agenda Memo

From: Jon Rosenlund, Emergency Mgt. Director

Meeting: December 23, 2010

Subject: HIPPA Business Associate Agreement

Item #'s: G-8

Presenter(s): Jon Rosenlund, Emergency Mgt. Director

Background

Changes in the laws regarding medical information and privacy require that the Grand Island Emergency Center enter into an updated “business associate” agreement with other HIPPA regulated facilities.

Discussion

As an emergency medical dispatch agency, the Grand Island Emergency Center staff receive and broadcast appropriate medical information regarding a patient’s signs, symptoms and location in order to provide an adequate emergency response. Thus, by managing certain details of a person’s health and medical information, the GIEC must meet certain regulations of the Health Insurance Portability and Accountability Act of 1996 (HIPPA).

Changes to the American Recovery and Reinvestment Act of 2009 (ARRA) requires that all organizations which are defined in HIPPA as a “business associates” enter into amended “business associate” agreements to meet changes in the law. A copy of such an amended and updated agreement was provided by Golden Living, a senior care center within our jurisdiction, to complete this requirement between the GIEC and Golden Living.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve

2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve this updated and amended “business associate” agreement with Golden Living

Sample Motion

Move to enter into this amended and updated “business associate” agreement with Golden Living.



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golden
living

EMERGENCY MANAGEMENT
100 EAST FIRST ST
PO BOX 1968
GRAND ISLAND, NE 68802

Dear, EMERGENCY MANAGEMENT

With the passage of the American Recovery and Reinvestment Act of 2009 ("ARRA") came some very significant changes to the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). One of the most significant changes is the manner in which companies who meet the HIPAA definition of a "business associate" are regulated under the new law. Previously, business associates were only regulated to the extent that covered entities (i.e. hospitals and physician offices) were required to have written business associate agreements in place with the business associates and HIPAA mandated that the business associate agreements contain certain terms. Under the changes put into law by ARRA, all business associate agreements are required to be amended and updated to include the latest changes in the law. Below is a brief summary of significant changes for business associates:

- Business associates are now legally required to comply with many of the same provisions of the HIPAA Security Rules, as covered entities are required to comply.
- Business associates can be audited by the federal government and fined and penalized by the federal government for failure to abide by the HIPAA regulations.
- Business associates must implement policies and procedures related to their handling of patient information.
- Business associates will need to train the members of their workforce about HIPAA.

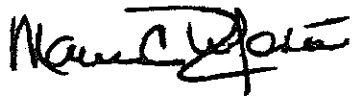
The deadline for amending business associate agreements to bring them into compliance with the new regulations is **February 17, 2010**. Please review the enclosed amendment to the existing business associate agreement, sign and return in the enclosed prepaid self-address stamped envelope.

Continued on the back

If you have any questions about the business associate addendum, you may contact Vern Clemons, Assistant General Counsel, Golden Living, 1000 Fianna Way, Fort Smith AR 72919 or by email to contracts@goldenliving.com.

For additional information about the changes to the HIPAA Privacy and Security Rules brought about by ARRA, you can link to the text of ARRA provided by the Government Printing Office at <http://fdsys.gpo.gov/fdsys/pkg/BILLS-111hr1ENR/pdf/BILLS-111hr1ENR.pdf>. The changes to HIPAA are found under Title XIII – Health Information Technology, Subtitle D – Privacy on pages 144-165 of the document. You can also visit the Office of Civil Rights website at www.hhs.gov/ocr/hipaa. Business Associates can be found at www.cms.hhs.gov/Enforcement/Downloads/HIPAAComplianceReviewSumtopost508.pdf.

Thank you for your prompt attention to this important matter.

A handwritten signature in black ink, appearing to read "Marie C. Infante". The signature is stylized with a large, looped "M" and a cursive "Infante".

Marie C. Infante, SVP
Chief Compliance Officer; General Counsel, Healthcare
Golden Living & Affiliated Companies

**HITECH: WHAT BUSINESS ASSOCIATES NEED TO KNOW**

STOP: Important Changes to HIPAA Requirements	<p>HITECH* (Title XIII of the American Recovery & Investment Act of 2009) expanded many HIPAA requirements for Business Associates (BAs):</p> <ul style="list-style-type: none">• New breach notification requirements• Direct compliance with certain HIPAA Security & Privacy Rule provisions• Direct liability and increased penalties (civil & criminal) for HIPAA violations <p>These changes require amendments to existing Business Associate Agreements (BAAs) and evaluation of internal policies and procedures surrounding the privacy and security of Protected Health Information (PHI).</p> <p>*The Health Information Technology for Economic and Clinical Health Act</p>
CAUTION: What you need to know	<ul style="list-style-type: none">• Breach Notification. Effective September, 2009, Covered Entities (CEs) must notify affected individual(s) of a breach of unsecured PHI. BAs must notify CEs of breaches of unsecured PHI so the CE can then notify the affected individual(s). Because not all unauthorized uses and disclosures of PHI are breaches requiring notification, BAs must promptly notify CEs of <i>all</i> unauthorized uses and disclosures, including suspected breaches, so the CE can: (1) determine if a breach occurred; and (2) notify the affected individual(s) within the required time frame.• Privacy & Security Rule Compliance. Effective February, 2010, BAs must comply with: (1) Security Rule provisions specifying required administrative, technical, and physical safeguards for electronic PHI; and (2) the business associate safeguards of the Privacy Rule. BAs also must comply with the other new privacy and security requirements in HITECH that apply to CEs (effective dates vary).• Increased Penalties. HITECH increased civil and criminal penalties for HIPAA violations. BAs can now be directly penalized by HHS for HIPAA violations.• Audits by CE. CE must have access to its BAs' relevant HIPAA-related books, records, policies and procedures to ensure compliance with breach notification and other new requirements.
GO: What you need to do	<ul style="list-style-type: none">• Evaluate HIPAA policies & procedures and update as necessary.<ul style="list-style-type: none">○ Adequate to detect and report breaches to CE?○ Adequate to comply with required Security and Privacy Rule provisions?○ Adequate to comply with other applicable privacy and security requirements of HITECH?• Work with CE in complying with breach notification requirements.

Business Associate Addendum

This **BUSINESS ASSOCIATE ADDENDUM** (this "Addendum") between GGNSC Administrative Services, LLC and its Affiliates ("Covered Entity") and _____ ("Business Associate") is made effective the _____ day of _____, 2010 (the "Effective Date"). As used herein, Affiliate ("Affiliate") shall mean, as to any individual, partnership, joint venture, corporation, limited liability company, trust, estate or other entity or organization (a "Person"), any Person controlled by, controlling, or under common control with another Person. For purposes of this definition, "control" (including the terms "controlling", "controlled by" and "under common control with") of a Person means the possession, directly or indirectly, alone or in concert with others, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract, or otherwise.

Business Associate and Covered Entity are parties to an Agreement (the "Agreement"). For purposes of complying with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder (collectively, "HIPAA") and the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated thereunder (collectively, "HITECH"), if and only to the extent that Business Associate is acting as a business associate (as defined by HIPAA) of Covered Entity, the parties agree as follows:

1. **Definitions.** Capitalized terms used, but not otherwise defined in this Addendum, shall have the same meaning as those terms in the HIPAA regulations and HITECH, and the following capitalized terms shall be given the following meanings:

1.1. "Breach" means the acquisition, access, Use or Disclosure of PHI in a manner not permitted under the Privacy Rule that poses a significant risk of financial, reputational, or other harm to the Individual who is the subject of the PHI. Breach does not include: (a) Use or Disclosure of Protected Health Information (PHI) that does not include the identifiers listed at 45 C.F.R. § 164.514(e)(2), date of birth, and zip code; (b) any unintentional acquisition, access, or Use of PHI by a member of Business Associate's Workforce or a person acting under the authority of Business Associate, if such acquisition, access or Use was made in good faith and within the person's scope of authority and does not result in further Use or Disclosure in a manner not permitted under the Privacy Rule; (c) any inadvertent Disclosure by a person who is authorized to access PHI at Business Associate to another person authorized to access PHI at Business Associate, provided the information received as a result of such Disclosure is not further Used or Disclosed in a manner not permitted under the Privacy Rule; or (d) a Disclosure of PHI where Business Associate has a good faith belief that an unauthorized person to whom the Disclosure was made would not reasonably have been able to retain such information.

1.2. "Compliance Date" means, in each case, the date by which compliance is required under the referenced provision of HITECH.

1.3. "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its employees.

1.4. "HITECH" means the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5, and any regulations promulgated thereunder. References in this Addendum to a section or subsection of title 42 of the United States Code are references to provisions of HITECH. Any reference to provisions of HITECH in this Addendum shall be deemed a reference to that provision and its existing and future implementing regulations, when and as each is effective.

1.5. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R Part 160 and Part 164, Subparts A and E.

1.6. "Protected Health Information" or "PHI" means information, including demographic information that (a) relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (c) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate for Covered Entity, or is made accessible to Business Associate by Covered Entity.

1.7. "Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R Part 164, Subpart C.

1.8. "Unsecured Protected Health Information" or "Unsecured PHI" means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.

1.9. "Use" or "Uses" mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Protected Health Information within Business Associate's internal operations.

2. **Confidentiality Obligation.** Business Associate will not Use or Disclose PHI other than as permitted by the Agreement or this Addendum, or as Required by Law.

3. **Permitted Uses and Disclosures of PHI.** Business Associate shall Use or Disclose PHI only as necessary to perform services under the Agreement or as Required by Law, provided such Use or Disclosure would not: (i) violate the Privacy Rule, Security Rule, other applicable provisions of HIPAA or HITECH if done by Covered Entity; or (ii) violate the minimum necessary policies and procedures of Covered Entity.

4. **Safeguards.** Business Associate shall protect PHI from any improper oral or written disclosure by enacting and enforcing safeguards to maintain the security of and to prevent any Use or Disclosure of PHI other than is permitted by this Agreement. Such safeguards shall include administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. As of the Compliance Date for 42 U.S.C. § 17931, Business Associate shall comply with the Security Rule requirements set forth at 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316, as well as additional requirements of HITECH that relate to security and are applicable to Covered Entity. As of the Compliance Date for 42 U.S.C. § 17934, Business Associate shall also comply with the requirements of Subtitle D of HITECH that relate to privacy and are applicable to Covered Entity.

5. **Access and Amendment.** Upon the request of Covered Entity, Business Associate shall: (a) make the PHI specified by Covered Entity available to Covered Entity or to the Individual(s) identified by Covered Entity as being entitled to access in order to meet the requirements under 45 C.F.R. § 164.524 ; and (b) make PHI available to Covered Entity for the purpose of amendment and incorporate changes or amendments to PHI when notified to do so by Covered Entity.

6. **Accounting.** Upon Covered Entity's request, Business Associate shall provide to Covered Entity or, when directed in writing by Covered Entity, directly to an Individual in a time and manner specified by Covered Entity, an accounting of each Disclosure of PHI made by Business Associate or its employees, agents, representatives or subcontractors as would be necessary to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528. Any accounting provided by Business Associate under this subsection shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the PHI; (c) a brief description of PHI disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this subsection, Business Associate shall document the information specified in (a) through (d), above, and shall securely retain this documentation for six (6) years from the date of the Disclosure.

7. **Access to Books and Records.** Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI pursuant to this Addendum available to the Secretary of the Department of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA. Covered Entity shall have the right to access and examine ("Audit") the books, records, and other information of Business Associate related to this Addendum. Such Audit rights shall be in addition to and notwithstanding any audit provisions set forth in the Agreement. Business Associate shall cooperate fully with any such Audit(s) and shall provide all books, records, data and other documentation reasonably requested by Covered Entity. Covered Entity may make copies of such documentation. To the extent possible, Covered Entity will provide Business Associate reasonable notice of the need for an Audit and will conduct the Audit at a reasonable time and place. Notwithstanding the foregoing, Covered Entity will not have access to any books, records, data and/or documentation related to any of Business Associate's other clients.

8. **Agents and Subcontractors.** Business Associate shall require all subcontractors and agents to which it provides PHI received from, or created or received on behalf of Covered Entity, to agree to all of the same restrictions and conditions concerning such PHI to which Business Associate is bound in this Addendum.

9. **Reporting of Violations.** Business Associate shall report to Covered Entity any Use or Disclosure of PHI not authorized by this Addendum immediately upon becoming aware of it. This reporting obligation includes, without limitation, the obligation to report any Security Incident, as that term is defined in 45 C.F.R. § 164.304.

9.1. **Breach Notification.** Business Associate also shall notify Covered Entity of any Breach of Unsecured PHI. Such notification shall occur without unreasonable delay and in no case later than sixty (60) calendar days after Business Associate discovers the Breach



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in accordance with 45 C.F.R. § 164.410. The notification shall comply with the Breach notification requirements set forth at 42 U.S.C. § 17832 and its implementing regulations at 45 C.F.R. § 164.410 and shall include: (a) to the extent possible, the identification of each person whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or Disclosed during such Breach; and (b) any other available information about the Breach, including:

(i) a description of what happened, including the dates of the Breach and discovery of the Breach, if known; (ii) a description of the types of Unsecured PHI involved in the Breach; (iii) any steps affected persons should take to protect themselves from potential harm resulting from the Breach; and (iv) the steps Business Associate is taking to investigate the Breach, mitigate harm to individuals, and to protect against any further Breaches. Business Associate shall provide Covered Entity with such additional information about the Breach either at the time of its initial notification to Covered Entity or as promptly thereafter as the information becomes available to Business Associate.

10. Term and Termination.

10.1. This Addendum begins on the Effective Date and remains in effect for the entire term of the Agreement unless otherwise terminated as provided below.

10.2. In addition to and notwithstanding the termination provisions set forth in the Agreement, both this Addendum and the Agreement may be terminated by Covered Entity in the event that Covered Entity determines Business Associate has violated a material term of this Addendum and such violation has not been remedied within fifteen (15) days following written notice to Business Associate.

10.3. Except as provided below, upon termination of this Addendum, Business Associate shall either return or destroy all PHI in the possession or control of Business Associate or its agents and subcontractors and shall retain no copies of such PHI. However, if Covered Entity determines that neither return nor destruction of PHI is feasible, Business Associate may retain PHI provided that it extends the protections of this Addendum to the PHI and limits further Uses and Disclosures to those purposes that make the return or destruction of the PHI infeasible, for so long as Business Associate maintains such PHI.

11. Inconsistent Terms; Interpretation. If any portion of this Addendum is inconsistent with the terms of the Agreement, the terms of this Addendum shall prevail. Except as set forth above, the remaining provisions of the Agreement are ratified in their entirety. Any ambiguity in this Addendum shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, other applicable provisions of HIPAA, and HITECH and any regulations promulgated thereunder.

12. Regulatory References. A reference in this Addendum to a section in the Privacy Rule, Security Rule, other applicable provisions of HIPAA or HITECH or any regulations promulgated thereunder means the section as in effect or as amended.

13. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the parties to comply with the requirements of the Privacy Rule, Security Rule, other applicable provisions of HIPAA, or HITECH and any regulations promulgated thereunder. Notwithstanding the foregoing, Covered Entity may unilaterally amend this Addendum as is necessary to comply with applicable laws and regulations and the requirements of applicable state and federal regulatory authorities. Covered Entity will provide written notice to Business Associate of such amendment and its effective date. Unless such laws, regulations or regulatory authorities require otherwise, the signature of Business Associate will not be required in order for the amendment to take effect.

14. Indemnification. Business Associate shall defend, indemnify and hold harmless Covered Entity and its directors, officers, employees, and agents (collectively, the "Indemnitees") from and against any and all claims, losses, damages, suits, fees, judgments, costs and expenses, including reasonable attorneys' fees, that the Indemnitees may suffer or incur arising out of or in connection with Business Associate's breach, non-performance, non-compliance, or failure to observe any term of this Addendum.

15. **Survival.** The respective rights and obligations of Business Associate under section 7, subsection 10.3 and section 14 of this Addendum shall survive the termination of this Addendum and the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their authorized representatives to execute this Business Associate Addendum effective as of the day and date first above written.

BUSINESS ASSOCIATE:

COVERED ENTITY:

GGNSC Administrative Services, LLC and its
Affiliates

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

(Make sure return address is visible
in window)

ATTN: MRD
1000 Fianna Way
Fort Smith, AR 72919

RESOLUTION 2010-56

WHEREAS, with the passage of the American Recovery and Reinvestment Act (ARRA) of 2009 brought changes to the Privacy and security Rules of the Health Insurance Portability and Accountability Act of 1996 (HIPPA); and

WHEREAS, one of those changes is the manner in which organizations who meet the HIPPA definition of “business associate” are regulated under the new law; and

WHEREAS, the Grand Island Emergency Center would be considered a “business associate” of Golden Living facilities, by receiving emergency medical information and broadcasting necessary emergency response information to responding agencies; and

WHEREAS, according to the new ARRA law, business associate agreements are required to be amended and updated to include these latest changes;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, to enter into an amended and updated business associate agreement addendum provided to Council.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, February 23, 2010.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
February 18, 2010	☐ City Attorney