

- 1) Individual shall have the same meaning as the term “individual” in 45 CFR Sect. 164.501 of the Privacy Rule and shall include a person who qualifies as a personal representative in accordance with 45 CFR Sect. 164.502(g) of the Privacy Rule.
- 2) Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended from time to time.
- 3) Potentially Indirect Identifiers shall mean data elements that when used in conjunction with other data elements may enable the identification of an individual.
- 4) Protected Health Information or PHI shall have the same meaning as the term “protected health information” in 45 CFR Sect. 164.501 of the Privacy Rule, to the extent such information is created or received by Data Recipient from Covered Entity.
- 5) Required by Law shall have the same meaning as the term “required by law” in 45 CFR Sect. 164.501 of the Privacy Rule.
- 6) NH HealthWRQS Standard Indicator Reports shall mean the products of the NH HealthWRQS Standard Indicator Reports Module.
- 7) NH HealthWRQS Standard Indicator Reports Module shall mean the HealthWRQS Cognos password protected system that generates the Standard Indicator Reports.

B. SCOPE AND PURPOSE

1. This Agreement sets forth the terms and conditions pursuant to which Covered Entity will disclose access to the NH HealthWRQS Standard Indicator Reports Module to the Data Recipient.

2. Except as otherwise specified herein, Data Recipient may make all uses and disclosures of the NH HealthWRQS Standard Indicator Reports Module.

C. OBLIGATIONS AND ACTIVITIES OF DATA RECIPIENT

1. Data Recipient agrees to not Use or Disclose the NH HealthWRQS Standard Indicator Reports Module tool for any purpose other than as Required by Law.

2. Data Recipient agrees to use appropriate safeguards to prevent Use or Disclosure of the NH HealthWRQS Standard Indicator Reports Module tool other than as provided for by this Agreement.

3. Data Recipient agrees to report to the Covered Entity any Use or Disclosure of the NH HealthWRQS Standard Indicator Reports Module tool not provided for by this Agreement, of which it becomes aware, including without limitation, any Disclosure to an unauthorized subcontractor, within ten (10) days of its discovery.

4. Data Recipient agrees to ensure that any agent, including a subcontractor, to whom it provides the access to the NH HealthWRQS Standard Indicator Reports Module tool, agrees to the same restrictions and conditions that apply through this Agreement to the Data Recipient with respect to such information.

5. Data Recipient agrees not to constructively identify information about an individual contained in the NH HealthWRQS Standard Indicator Reports Module reports.

6. Data Recipient will indemnify, defend and hold harmless Covered Entity and any of Covered Entity's affiliates, and their respective trustees, officers, directors, employees and agents from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any unauthorized or prohibited Use or Disclosure of the NH HealthWRQS Standard Indicator Reports Module tool or reports or any other breach of this Agreement by Data Recipient or any subcontractor, agent or person under Data Recipient's control.

D. TERM AND TERMINATION

1. The provisions of this Agreement shall be effective as of the earlier of Effective Date or January 1, 2007 and shall terminate when access to the NH HealthWRQS Standard Indicator Reports Module provided by Covered Entity to Data Recipient is terminated by Covered Entity.

2. This agreement may be cancelled or terminated without cause at any time, subject to the restrictions and prohibits set forth herein, by providing not less than thirty (30) days prior written notice thereof to the Parties.

E. MISCELLANEOUS

1. A reference in this Agreement to a section in the Privacy Rule means the section as amended or as renumbered.

2. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and any and all uses and disclosures of data not presently addressed herein.

3. The respective rights and obligations of Data Recipient under Section C of this Agreement shall survive termination of this Agreement.

4. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

5. There are no intended third party beneficiaries to this Agreement. Without in any way limiting the foregoing, it is the parties' specific intent that nothing contained in this Agreement gives rise to any right or cause of action, contractual or otherwise, in or on behalf of the individuals whose PHI is Used or Disclosed pursuant to this Agreement.

6. No provision of this Agreement may be waived or modified except by an agreement in writing signed by the waiving or modifying party. A waiver of any term or provision shall not be construed as a waiver or modification of any other term or provision.

7. The persons signing below have the right and authority to execute this Agreement and no further approvals are necessary to create a binding agreement.

8. In the event of any conflict between the terms and conditions stated within this Agreement and those contained within any other agreement or understanding between the parties, written, oral or implied, the terms of this Agreement shall govern. Without limiting the foregoing, no provision of

any other agreement or understanding between the parties limiting the liability of Data Recipient to Covered Entity shall apply to the breach of any covenant in this Agreement by Data Recipient.

9. This Agreement shall be construed in accordance with and governed by the laws of the State of New Hampshire.

10. No party shall be deemed to be the legal representative of the other. Each party agrees to assume complete responsibility for its own employees with regard to federal or state employers liability an withholding tax, workers compensation, social security, unemployment insurance, and Occupational Safety and Health Administration requirements and other federal, State and local laws.

11. In the event that any New Hampshire, or federal law hereinafter enacted (including applicable rulings of a State or federal regulatory agency) or any current law prohibits the State from providing certain or all of the data requested by Data Recipient, then the State will be relieved of its obligation to provide same.

F. SPECIAL PROVISIONS

Amend Section C.1 of this Agreement to read as follows:

1. Data Recipient agrees to not use or disclose the access to the NH HealthWRQS Standard Indicator Reports Module for any purpose other than as required by law and:

1.a. Data, statistics, or information derived from the data that directly or inferentially identifies any individual(s) (including cases, family members, or providers) shall not be published or released in any form. Derived tabular data, percentages, subtotals, totals, or statistics prepared for publication, or public presentation, or distribution of research/study results shall neither display cells with frequencies between one and four, nor information that allows the derivation of cells with frequencies between one and four when the unit of analysis is at the individual town level, or any grouping of towns smaller than a county level. Access to the NH HealthWRQS Standard Indicator Reports Module shall not be released, in whole or in part for any reason, to any other party without the written consent of the Office of Medicaid Business and Policy. In addition, linking this data to other databases not approved by the Office of Medicaid Business and Policy is prohibited. No attempt to match information with other databases containing identifying information shall be permitted. Commercial use, *i.e.*, sale or distribution for profit, of the requested health data is not permitted. Any attempt to identify individuals, including solving for suppressed cells, through any method including linkage is expressly prohibited and punishable under state law. Any attempts or requests to solve for or identify individuals must be reported to Covered Entity.

Amend Section E. of this Agreement by adding the following paragraphs numbered 12 and 13:

12. Any report using data or statistics derived from the NH HealthWRQS Standard Indicator Reports Module that has been prepared for publication, public presentation, or distribution shall acknowledge the Department of Health and Human Services as the source of data in any and all reports, or publications, or presentations generated by the requestor from these data. The requestor also agrees to specify that the analyses, conclusions, interpretations, and recommendations drawn from such data are solely those of the requestor, and are not necessarily those of the Department of Health and Human Services.

13. The Office of Medicaid Business and Policy must be notified if the identified contact person and/or overall responsible party change due to personnel turnover, or for any other reason.

IN WITNESS WHEREOF, the parties have executed this Agreement effective upon the Effective Date set forth above.

COVERED ENTITY

DATA RECIPIENT

Signature: _____

Signature: _____

Name: Andrew Chalsma

Name: _____

Title: Bureau Chief,

Title: _____

Bureau of Healthcare Analytics and
Data Systems

E-mail: _____

Phone: _____

Please return this completed application to:

Andrew Chalsma
Office of Medicaid Business and Policy
New Hampshire Department of Health and Human Services
129 Pleasant St.
Concord, NH 03301

Phone: 603-271-9425

E-Mail: AChalsma@dhhs.state.nh.us