

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is executed this _____ day of _____ (the "Effective Date", by and between Adaptive Nursing and Healthcare, an Indiana corporation ("Adaptive Nursing and Healthcare" and "Covered Entity"), and _____, a healthcare company licensed to practice in the State of Indiana ("Business Associate"). Business Associate and Adaptive Nursing and Healthcare may each be referred to as the "Parties."

PRELIMINARY STATEMENTS

The purpose of this agreement is to provide coordination for services being offered between two or more agencies. The following agency will assume responsibility to ensure client safety, client is receiving appropriate services for their care, and be accountable as the primary agency in the patient care:

Agency: _____

Patient: _____

Responsibilities	Adaptive Nursing and Healthcare	
Primary Agency		
Private Duty Non-Medical HHA <ul style="list-style-type: none"> • Extended hourly • Personal care • Light housekeeping • ADL assistance 	***	***
Private Duty Nursing <ul style="list-style-type: none"> • Extended hourly • Personal care • Medication administration • Wound care • Enteral feedings • Infusion Therapy • Physician plan of care 	***	***
Companion Care <ul style="list-style-type: none"> • Housekeeping • Errands • Companionship 		
Skilled Intermittent Home Health Services <ul style="list-style-type: none"> • Case Management • Skilled nursing, PT, OT, ST 		
Home Health Hospice <ul style="list-style-type: none"> • Case Management • Skilled nursing, PT, OT, ST 		
Assisted Living Community <ul style="list-style-type: none"> • Housing • Medication • Administration 		
Case Management (SDOH) <ul style="list-style-type: none"> • Pest Control • Home Modifications • Coordination for resources available 		

Business Associate provides various medical, administrative, and management services to Adaptive Nursing and Healthcare under contract, and in so doing may have access to certain protected health information (collectively “Relationship”).

Business Associate acknowledges that by receiving, creating, maintaining, or transmitting protected health information concerning Covered Entity’s patients, Business Associate has obligations to protect such information in accordance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the related Privacy and Security Standards, codified at 45 CFR, Parts 160, 162 and 164, as amended from time to time (“Privacy Rules and Security Rules”), and certain provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act (the “HITECH Act”) and the regulations promulgated thereunder.

This Agreement establishes Business Associate’s assurances and obligations that it will treat such information in accordance with HIPAA and the related Privacy and Security Rules applicable to business associates.

Unless otherwise defined or the context clearly suggests a different interpretation, terms and phrases used within this Agreement shall have the same meaning as those terms used or defined in HIPAA and the Privacy and Security Rules.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and the mutual benefits to be derived here from, and such other good and valuable consideration described herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENTS

1. Business Associate’s Privileges and Obligations. During the term of this Agreement, Business Associate agrees that it will not use or disclose Protected Health Information (“PHI”) received from, or created or received by Business Associate on behalf of, Covered Entity for any purpose that is not contemplated by the Relationship or this Agreement.

1.1 Permitted Uses and Disclosures. Business Associate will not use or further disclose the PHI in any manner that would violate the requirements of the Privacy and Security Rules if done by Covered Entity, except that:

1.1.1 Business Associate may use PHI for Business Associate’s proper management and administration of its responsibilities, or to carry out the legal responsibilities of Business Associate.

1.1.2 Business Associate may provide Data Aggregation services relating to Covered Entity’s health care operations.

1.1.3 Business Associate may use or disclose PHI for Business Associate's proper management and administration of its responsibilities, or to carry out the legal responsibilities of the Business Associate, if:

(a) the disclosure is required by law; or

(b) Business Associate obtains reasonable assurances from the person to whom PHI is disclosed that (i) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (ii) the person will notify Business Associate of any instances of which it is aware that the confidentiality of the PHI has been breached.

1.2 Obligations. Business Associate agrees that:

1.2.1 Business Associate will not use or further disclose PHI except as permitted or as required by this Agreement, or as required by law.

1.2.2 Business Associate will comply with applicable requirements of Subpart C of 45 CFR Part 164 with respect to electronic PHI and will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI, and prevent the use or disclosure of all PHI, except as permitted by this Agreement;

1.2.3 Business Associate will comply with the requirements of Title XII, Subtitle D of the HITECH Act, codified at 42 U.S.C. §§ 17921-17954, which are applicable to business associates, and Business Associate will comply with all regulations issued by the Department of Health and Human Services ("HHS") to implement these referenced statutes, as of the date by which business associates are required to comply with such referenced statutes and HHS regulations.

1.2.4 Specifically, with respect to Section 13401 of the HITECH Act, codified at 42 U.S.C. § 17931(a), Business Associate will satisfy all applicable Security Rule obligations imposed pursuant to 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316, directing the implementation of administrative, physical and technical safeguards for electronic PHI and development and enforcement of related policies, procedures, and documentation standards, including designation of a security official.

1.2.5 Business Associate will promptly report to Covered Entity any Security Incident, and use or disclosure of PHI not allowed by this Agreement, of which Business Associate becomes aware. Business Associate shall take prompt corrective action to mitigate any harmful effect that is known to Business Associate of any unauthorized use or disclosure and to prevent a recurrence of any similar unauthorized use or disclosure. Notwithstanding the foregoing, Business Associate shall not be required to report any unsuccessful Security Incidents that are not reasonably considered by Business Associate to constitute an actual threat to an information system or to the security or confidentiality of PHI.

1.2.6 Business Associate will ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate in connection with the

Relationship with Covered Entity agree to the same restrictions and conditions that apply to Business Associate with respect to Covered Entity's PHI, including the commitment to implement reasonable and appropriate safeguards to protect such PHI.

1.2.7 Within 10 business days following Covered Entity's request, Business Associate will give Covered Entity access (or if requested by Covered Entity, Business Associate will give the requesting Individual access) to PHI maintained by Business Associate in a Designated Record Set in order for Covered Entity to meet its requirements under 45 C.F.R § 164.524.

1.2.8 Business Associate will make or incorporate any amendment(s) to PHI maintained by Business Associate in a Designated Record Set in order for Covered Entity to comply with 45 C.F.R. § 164.526.

1.2.9 Business Associate will document (and within 10 business days following Covered Entity's request, Business Associate will provide Covered Entity with an accounting of) Business Associate's disclosures of PHI as required for Covered Entity to respond to an Individual's request for an accounting of any such disclosures pursuant to 45 C.F.R. § 164.528.

1.2.10 Business Associate will make its internal practices, books, and records related to the use, security and disclosure of PHI available to the Secretary of the Department of Health and Human Services ("Secretary") for the purpose of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rules.

1.2.11 Business Associate agrees to restrict its uses and disclosures of PHI to the minimum amount of information necessary to accomplish the purpose of the use or disclosure.

1.2.12 To the extent the Relationship includes an agreement between Business Associate and Covered Entity to delegate to the Business Associate one or more of Covered Entity's HIPAA obligations under Subpart E of 45 CFR Part 164, Business Associate will comply with the requirements of such Subpart in the performance of that obligation.

2. Amendment. The parties acknowledge that HIPAA and the Privacy and Security Rules may be amended from time to time. If required, in response to an amendment to HIPAA and the Privacy Rules and Security Rules, Business Associate and Covered Entity agree to negotiate to amend this Agreement to conform it to any such amendments to the Privacy Rules and Security Rules or to conform it to any other privacy/security requirement that may apply to the Relationship. Covered Entity may terminate this Agreement and any other agreements between the parties that require the use or disclosure of PHI upon thirty (30) days written notice if the parties are unable to agree to an amendment to this Agreement sufficient to satisfy any such amendment to HIPAA or other applicable privacy requirement.

3. Termination.

3.1 *Term.* With the exception of those terms that specifically extend beyond the termination of this Agreement, this Agreement shall expire or terminate upon the expiration or termination of the Relationship.

3.2 *Termination.* Covered Entity may promptly terminate the Relationship and this Agreement, and any other agreements between the parties that require the use or disclosure of PHI, if Covered Entity determines that Business Associate has breached any term of this Agreement. Alternatively, Covered Entity may permit Business Associate take reasonable steps to cure such breach. If Business Associate fails to cure such breach within thirty (30) days of Covered Entity's notice, Covered Entity may terminate this Agreement and any other agreements between the parties that involve PHI.

3.3 *Effect of Termination.*

3.3.1 Except as provided in Section 3.3.2 below, upon the termination or expiration of this Agreement, for any reason, Business Associate shall return or destroy all PHI and not retain any copies thereof. If Business Associate destroys the PHI, it shall certify in writing to Covered Entity that the PHI has been destroyed. This Section 3.3.1 also applies to PHI that is in the possession of Business Associate's subcontractors or agents.

3.3.2 If Business Associate reasonably determines that returning or destroying the PHI is infeasible, Business Associate shall continue to extend its obligations under this Agreement to such PHI and limit further uses and disclosures of it to those purposes that make the PHI's return or destruction infeasible.

4. Breach Notification

4.1 *Independent Contractor* – Business Associate acknowledges that the services it performs pursuant to the Relationship are performed in the capacity of an independent contractor and nothing within this Agreement is intended, nor shall they be construed in any manner, to create an agency relationship between Covered Entity and Business Associate.

4.2 *Prompt Discovery and Notice* – Business Associate agrees and understands that Business Associate must promptly identify and respond to a Breach of an Individual's Unsecured PHI, and that Business Associate has an affirmative responsibility to notify Covered Entity of a Breach of Unsecured PHI as required by 45 CFR 164.410.

4.3 *Breach Notification Responsibilities* – In the event either Party discovers a violation of the Privacy Rules resulting in a Breach of Unsecured PHI possessed by Business Associate in which Business Associate's actions were a substantial factor in causing the violation, the Parties shall fulfill the following responsibilities:

4.3.1 Business Associate shall take prompt, necessary and reasonable actions to prevent further violations of the Privacy Rule.

4.3.2 Consistent with Paragraph 4.2, Business Associate shall promptly notify Covered Entity of the discovery by any employee, contractor or agent of Business Associate of a Breach of Unsecured PHI, and shall initiate an investigation of a Breach of Unsecured PHI pursuant to Paragraph 4.3.3.

4.3.3 Business Associate shall promptly investigate the incident giving rise to the Breach of Unsecured PHI and shall produce to Covered Entity a written “Findings and Recommendations” report that includes, but not exclusively, the following:

- (a) The name(s) of the investigators;
- (b) The facts gathered from the investigation, including an identification of the number of individuals potentially affected by the Breach, and all available contact information for those individuals;
- (c) A proposed determination as to whether the Privacy Rule was violated;
- (d) A proposed risk assessment based on at least the factors set forth in 45 C.F.R. § 164.402; and
- (e) A recommendation as to whether the violation triggers the breach notification requirements within the HITECH Act and the Privacy Rules.

4.3.4 In the event Business Associate initiates an investigation pursuant to Paragraph 4.3, Covered Entity, its employees, contractors, and agents shall cooperate with Business Associate’s reasonable requests to facilitate the prompt completion of the investigation.

4.3.5 Upon receiving Business Associate’s “Findings and Recommendations” report, Covered Entity shall have the sole discretion to accept Business Associate’s report, to inquire further of the facts and conclusions offered in the report, or to reject the report as inadequate, incomplete, or incorrect.

4.3.6 If, in Covered Entity’s sole discretion, it is determined that a violation of the Privacy Rule triggers the breach notification requirements of the HITECH Act and the Privacy Rules, Covered Entity shall be responsible for implementing the notification requirements of the HITECH Act and the Privacy Rules.

5. Indemnification. Business Associate will indemnify, defend and hold Covered Entity harmless from and against any and all claims, losses, liabilities, costs and expenses (including reasonable attorneys’ fees) which, either directly or indirectly, result from, or are incurred in connection with: (i) any misrepresentation, breach, or nonfulfillment of any duty on the part of Business Associate under this Agreement; (ii) any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with Business Associate’s negligent act or omission under this Agreement; and (iii) any other conduct of Business Associate, its agents, employees or subcontractors, in violation of this Agreement. This section 5 will survive the termination or expiration of this Agreement and shall not be subject to any limitation in any other agreement between the Parties.

6. Compliance Contact Information. Any notice required by this Agreement by Business Associate to Covered Entity shall be given to James Quach at jquach@helppathome.com, Kristie Cable at kcable@helppathome.com or Amber Armuth at aarmuth@helppathome.com.

7. Interpretation. This Agreement shall be interpreted as broadly as necessary to facilitate Covered Entity's and Business Associate's compliance with HIPAA, the Privacy and Security Rules and applicable state privacy laws. Terms that are capitalized but not defined in this Agreement shall have the meaning given to them in the Privacy and Security Rules. A reference in this Agreement to a section or term in the Privacy and Security Rules means the section or term that is in effect at the time of the relevant conduct.

Each of the undersigned has executed and delivered this Business Associate Agreement as of the date first set forth above.

Business Associate ("Business Associate"):

By:

Name:

Covered Entity ("Adaptive"):

Adaptive Nursing and Healthcare

By: Adaptive Nursing

Name:

Title: