

RESOLUTION AGREEMENT

I. Recitals

1. Parties. The Parties to this Resolution Agreement (“Agreement”) are:
 - A. The United States Department of Health and Human Services, Office for Civil Rights (“HHS”), which enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”), the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”), and the Federal standards for notification in the case of breach of unsecured protected health information (45 Part 160 and Subparts A and D of 45 C.F.R. Part 164, the “Breach Notification Rule”). HHS has the authority to conduct compliance reviews and investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules (the “HIPAA Rules”) by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews and investigations. *See* 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).
 - B. Dignity Health, doing business as St. Joseph’s Hospital and Medical Center (“SJHMC”), meets the definition of “covered entity” under 45 C.F.R. § 160.103 and therefore is required to comply with the HIPAA Rules.
 - C. HHS and SJHMC shall together be referred to herein as the “Parties.”
2. Factual Background and Covered Conduct. On April 25, 2018, OCR received a complaint against SJHMC in which the Complainant alleged that she requested records from SJHMC starting on January 24, 2018 and had not received them as of the date of her complaint.

HHS’ investigation revealed that the Complainant submitted a written request on January 24, 2018 for four specific sets of medical records. The Complainant requested the same records on March 22, April 3 and May 2, 2018. SJHMC provided some of the records requested during this time period. The Complainant also contacted SJHMC multiple times to request the remainder of the records she requested. On May 2, May 10 and May 15, 2018 the Complainant contacted SJHMC to request the missing records. SJHMC sent additional records, but not all the records requested. SJHMC produced all the requested records on December 19, 2019.

HHS’ investigation indicated that the following conduct occurred (Covered Conduct):

 - a. SJHMC failed to provide timely access to protected health information about an individual in a designated record set. *See* 45 C.F.R. § 164.524(b).
3. No Admission. This Agreement is not an admission of liability by SJHMC.
4. No Concession. This Agreement is not a concession by HHS that SJHMC is not in violation of the HIPAA Rules and not liable for civil money penalties.

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve HHS Transaction Number: 18-303843 and any violations of the HIPAA Rules related to the Covered Conduct specified in paragraph I.2 of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden, and expense of formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

II. Terms and Conditions

1. Payment. HHS has agreed to accept, and SJHMC has agreed to pay HHS, the amount of **\$160,000** ("Resolution Amount"). SJHMC agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.9 by automated clearing house transaction pursuant to written instructions to be provided by HHS.
2. Corrective Action Plan. SJHMC has entered into and agrees to comply with the Corrective Action Plan ("CAP"), attached as Appendix A, which is incorporated into this Agreement by reference. If SJHMC breaches the CAP, and fails to cure the breach as set forth in the CAP, then SJHMC will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph II.3 of this Agreement.
3. Release by HHS. In consideration of and conditioned upon SJHMC's performance of its obligations under this Agreement, HHS releases SJHMC from any actions it may have against SJHMC under the HIPAA Rules arising out of or related to the Covered Conduct identified in paragraph I.2 of this Agreement. HHS does not release SJHMC from, nor waives any rights, obligations, or causes of action other than those arising out of or related to the Covered Conduct and referred to in this paragraph. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.
4. Agreement by Released Parties. SJHMC shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. SJHMC waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a- 7a) and 45 C.F.R. Part 160 Subpart E, and HHS claims collection regulations at 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.
5. Binding on Successors. This Agreement is binding on SJHMC and its successors, heirs, transferees, and assigns.
6. Costs. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
7. No Additional Releases. This Agreement is intended to be for the benefit of the Parties only and by this instrument the Parties do not release any claims against or by any other person or entity.
8. Effect of Agreement. This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement shall be set forth in writing and signed by all Parties.

9. Execution of Agreement and Effective Date. The Agreement shall become effective (*i.e.*, final and binding) upon the date of signing of this Agreement and the CAP by the last signatory (Effective Date).
10. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty (“CMP”) must be imposed within six years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this Agreement, SJHMC agrees that the time between the Effective Date of this Agreement and the date the Agreement may be terminated by reason of SJHMC’s breach, plus one- year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. SJHMC waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the Covered Conduct identified in paragraph I.2 that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Agreement.
11. Disclosure. HHS places no restriction on the publication of the Agreement. In addition, HHS may be required to disclose material related to this Agreement to any person upon request consistent with the applicable provisions of the Freedom of Information Act, 5 U.S.C. § 552, and its implementing regulations, 45 C.F.R. Part 5.
12. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.
13. Authorizations. The individual(s) signing this Agreement on behalf of SJHMC represents and warrant that they are authorized by SJHMC to execute this Agreement and bind SJHMC, as set forth in paragraph I.1.B. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

For St. Joseph’s Hospital and Medical Center

/s/

Gabrielle Finley-Hazle
Hospital President
Dignity Health, dba St. Joseph’s Hospital and Medical Center

09/25/2020

Date

For United States Department of Health and Human Services

/s/

Michael Leoz
Regional Manager, Pacific Region
U.S. Department of Health and Human Services
Office for Civil Rights

09/25/2020

Date

Appendix A

CORRECTIVE ACTION PLAN BETWEEN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND DIGNITY HEALTH d/b/a ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER

I. Preamble

Dignity Health, dba St. Joseph's Hospital and Medical Center ("SJHMC") hereby enters into this Corrective Action Plan ("CAP") with the United States Department of Health and Human Services, Office for Civil Rights ("HHS"). Contemporaneously with this CAP, SJHMC is entering into the Agreement ("Agreement") with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. SJHMC enters into this CAP as part of consideration for the release set forth in paragraph II.3 of the Agreement. Capitalized terms without definition in this CAP shall have the same meaning assigned to them under the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

SJHMC has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports ("SJHMC Contact") is:

Lori Lamb, RN, BSN, MBA, LNC, CPHRM
System Vice President & National Privacy Officer, Corporate Responsibility
CommonSpirit Health™ Catholic Health Initiatives and Dignity Health
11045 E. Lansing Drive
Englewood, Colorado 80112
Via email: lorilamb@catholichealth.net

HHS has identified the following individual as its authorized representative and contact person with whom SJHMC is to report information regarding the implementation of this CAP:

Emma Roberts, Equal Opportunity Specialist
Office for Civil Rights, Pacific Region
U. S. Department of Health and Human Services
90 7th Street, Suite 4-100
San Francisco, CA 94103
Emma.Roberts@hhs.gov

SJHMC and HHS agree to promptly notify each other of any changes in the contact person or the other information provided above.

B. Proof of Submissions.

Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, electronic mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

III. Effective Date and Term of CAP

The Effective Date for this CAP shall be calculated in accordance with paragraph II.9 of the Agreement (“Effective Date”). The period for compliance (“Compliance Term”) with the obligations assumed by SJHMC under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date, unless HHS has notified SJHMC under Section VIII hereof of its determination that SJHMC breached this CAP. In the event of such a notification by HHS under Section VIII hereof, the Compliance Term shall not end until HHS has notified SJHMC that it has determined that the breach has been cured. After the Compliance Term ends, SJHMC shall still be obligated to: (a) submit the final Annual Report as required by section VI; and (b) comply with the document retention requirement in section VII. Nothing in this CAP is intended to eliminate or modify SJHMC’s obligation to comply with the document retention requirements in 45 C.F.R. §§ 164.316(b) and 164.530(j).

IV. Time

In computing any period of time prescribed or allowed by this CAP, all days referred to shall be calendar days. The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

V. Corrective Action Obligations

SJHMC agrees to the following:

A. Policies and Procedures

1. SJHMC shall develop, maintain and revise, as necessary, its written access policies and procedures to comply with the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”). SJHMC’s policies and procedures shall address, but not be limited to, the Covered Conduct specified in paragraph I.2. of the Agreement.
2. SJHMC shall provide such access policies and procedures, consistent with paragraph 1 above, to HHS within sixty (60) days of the Effective Date for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, SJHMC shall have thirty (30) days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval.
3. SJHMC shall implement any revised access and policies and procedures within forty-five (45) days of receipt of HHS’ approval.

B. Distribution and Updating of Policies and Procedures

1. SJHMC shall distribute the access policies and procedures identified in section V.A. to appropriate members of its workforce and relevant business associates within thirty (30) days of HHS approval of such revised policies, if any, and to new members of the workforce within thirty (30) days of their beginning of service.
2. SJHMC shall require, at the time of distribution of such revised policies and procedures, a signed written or electronic initial compliance certification from all appropriate members of its workforce and relevant business associates stating that the workforce members have read, understand, and shall abide by such policies and procedures.
3. SJHMC shall assess, update, and revise, as necessary, the policies and procedures at least annually or as needed. SJHMC shall provide such revised policies and procedures to HHS for review and approval. Within thirty (30) days of the effective date of any approved substantive revisions, SJHMC shall distribute such revised policies and procedures to appropriate members of its workforce and relevant business associates and shall require new compliance certifications.

C. Minimum Content of Policies and Procedures

The Policies and Procedures shall include, but not be limited to:

1. Review and update as necessary SJHMC's Designated Record Set Policy contained within its Right of Access to PHI policy to ensure comprehensive responses to requests for records.
2. Protocols for training all SJHMC's workforce members and business associates that are involved in receiving or fulfilling access requests as necessary and appropriate to ensure compliance with the policies and procedures provided for in section V.A. above.
3. Application of appropriate sanctions against SJHMC workforce members who fail to comply with policies and procedures provided for in subparagraph (1) above.
4. A process for reviewing business associate performance with regard to access requests and responses and terminating relationships with business associates who fail to permit SJHMC to comply with policies and procedures provided for in subparagraph (1) above.
5. Designation of one or more individuals who are responsible for ensuring that SJHMC's business associate agreement with any business associates involved in SJHMC's access responsibilities under the Privacy Rule are properly executed.

D. Reporting to HHS Regarding Business Associate and Certain Business Associate Agreements

1. Within thirty (30) days of the Effective Date and for one year following the Effective Date, SJHMC shall provide HHS with the following: (a) the names of all SJHMC's business associates that receive, approve, deny, bill for, and/or fulfill access requests for access to copies or inspection of an individual's PHI, and (b) copies of the business associate agreements that SJHMC maintains with such business associates.

E. Training

1. SJHMC shall provide HHS with training materials per section V.C. above for all appropriate members of the workforce and relevant business associates within sixty (60) days of the approval of its policies and procedures per section V.A.
2. Upon receiving notice from HHS specifying any required changes, SJHMC shall make the required changes and provide revised training materials to HHS within thirty (30) days.
3. Upon receiving approval from HHS of any revised training materials, SJHMC shall provide training on any revised training materials for each appropriate workforce member and relevant business associates within sixty (60) days of HHS approval and annually thereafter. SJHMC shall also provide such training to each new member of the workforce or relevant new business associate within thirty (30) days of their beginning of service.
4. Each workforce member and relevant business associate who is required to attend training shall certify, in electronic or written form, that he or she has received the training. The training certification shall specify the date training was received. All course materials shall be retained in compliance with section VII.
5. SJHMC shall review the training at least annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during audits or reviews, and any other relevant developments.

F. Reportable Events

During the Compliance Term, SJHMC shall, upon receiving information that a workforce member may have materially failed to comply with the policies and procedures described in Section V.A.1. or a business associate may have materially failed to comply with the provision of access requirements in its business associate agreement with SJHMC, promptly investigate this matter. If SJHMC determines, after review and investigation, that a member of its workforce has materially failed to comply with these policies and procedures or a business associate has materially failed to comply with the provision of access requirements in its business associate agreement, SJHMC shall notify HHS in writing within thirty (30) days and in the Annual Report, as set forth in Section VI.B.4. Such violations shall be known as Reportable Events. The report to shall include the following information:

1. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and
2. A description of the actions taken and any further steps SJHMC plans to take to address the matter to mitigate any harm, and to prevent it from recurring, including application of appropriate sanctions against workforce members who failed to comply with its Privacy Rule policies and procedures.
3. If no Reportable Events occur during the Compliance term, SJHMC shall so inform HHS in the Implementation Report as specified in Section VI below.

VI. Implementation Report and Annual Reports

- A. Implementation Report. Within one hundred twenty (120) days after the receipt of HHS' approval of the policies and procedures required by section V.A.2, SJHMC shall submit a written report to HHS summarizing the status of its implementation of the requirements of this CAP. This report, known as the "Implementation Report," shall include:
1. An attestation signed by an officer of SJHMC attesting that the Policies and Procedures are being implemented, have been distributed to all appropriate members of the workforce and relevant business associates and that SJHMC has obtained all of the compliance certifications required by sections V.B.2. and V.B.3.;
 2. A copy of all training materials used for the training required by this CAP, a description of the training, including a summary of the topics covered, the length of the session(s) and a schedule of when the training session(s) were held;
 3. An attestation signed by an officer of SJHMC attesting that all appropriate members of the workforce and relevant business associates have completed the initial training required by this CAP and have executed the training certifications required by section V.E.4.;
 4. An attestation signed by an officer of SJHMC stating that he or she has reviewed the Implementation Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.
- B. Annual Report. The one (1) year period beginning on the Effective Date and each subsequent one (1) year period during the course of the Compliance Term shall be referred to as a "Reporting Period." Within sixty (60) days after the close of the Reporting Period, SJHMC shall submit a report or reports to HHS regarding SJHMC's compliance with this CAP for the Reporting Period ("Annual Report"). The Annual Report shall include:
1. A copy of the schedule, topic outline, and training materials for the training programs provided during the Reporting Period that is the subject of the Annual Report;
 2. An attestation signed by an officer of SJHMC attesting that it is obtaining and maintaining written or electronic training certifications from all persons that require training that they received training pursuant to the requirements set forth under this CAP;
 3. An attestation signed by an officer of SJHMC attesting that any revision(s) to the Policies and Procedures required by section V. were finalized and adopted within thirty (30) days of HHS' approval of the revision(s), which shall include a statement affirming that SJHMC distributed the revised Policies and

Procedures to all appropriate members of SJHMC's workforce within sixty (60) days of HHS' approval of the revision(s); and

4. A summary of Reportable Events (defined in section V.F), if any, the status of any corrective and preventative action(s) relating to all such Reportable Events, or an attestation signed by an officer or director of SJHMC stating that no Reportable Events occurred during the Compliance Term.
5. An attestation signed by an officer of SJHMC attesting that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VII. Document Retention

SJHMC shall maintain for inspection and copying, and shall provide to HHS, upon request, all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

VIII. Breach Provisions

SJHMC's is expected to fully and timely comply with all provisions contained in this CAP.

- A. Timely Written Requests for Extensions. SJHMC may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act required by this CAP. A "timely written request" is defined as a request in writing received by HHS at least five (5) days prior to the date such an act is required or due to be performed. This requirement may be waived by HHS only.
- B. Notice of Breach of this CAP and Intent to Impose CMP. The Parties agree that a material breach of this CAP by SJHMC constitutes a breach of the Agreement. Upon a determination by HHS that SJHMC has materially breached this CAP, HHS may notify SJHMC of: (1) SJHMC's breach; and (2) HHS' intent to impose a CMP pursuant to 45 C.F.R. Part 160, for the Covered Conduct set forth in paragraph I.2 of the Agreement and any other conduct that constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules ("Notice of Breach and Intent to Impose CMP").
- C. SJHMC's Response. SJHMC shall have thirty (30) days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS' satisfaction that:
 1. SJHMC is in compliance with the obligations of the CAP that HHS cited as the basis for the breach;

- 2. The alleged breach has been cured; or
 - 3. The alleged breach cannot be cured within the thirty (30) day period, but that SJHMC: (a) has begun to take action to cure the breach; (b) is pursuing such action with due diligence; and (c) has provided to HHS a reasonable timetable for curing the breach.
- D. Imposition of CMP. If at the conclusion of the thirty (30) day period, SJHMC fails to meet the requirements of section VIII.C. of this CAP to HHS' satisfaction, HHS may proceed with the imposition of a CMP against SJHMC pursuant to the rights and obligations set forth in 45 C.F.R. Part 160 for any violations of the HIPAA Rules applicable to the Covered Conduct set forth in paragraph I.2 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Rules. HHS shall notify SJHMC in writing of its determination to proceed with the imposition of a CMP pursuant to 45 C.F.R. §§ 160.312(a)(3)(i) and (ii).

For Dignity Health, dba St. Joseph's Hospital and Medical Center (SJHMC)

/s/

09/25/2020

 Gabrielle Finley-Hazle
 Hospital President
 Dignity Health dba St. Joseph's Hospital and Medical Center

Date

For United States Department of Health and Human Services

/s/

09/25/2020

 Michael Leoz
 Regional Manager, Pacific Region
 U.S. Department of Health and Human Services
 Office for Civil Rights

Date