

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 C.F.R. 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. The City of New Haven (The City), is a covered entity as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. The City of New Haven Health Department (NHHD) is a department within the city of New Haven, and provides health care services in its public health clinic, including diagnoses and treatment for sexually transmitted diseases (STDs), tuberculosis testing, and adult and pediatric immunizations. Patients receive a variety of health care services from NHHD in which their insurance is electronically billed. NHHD therefore transmits health information in connection with covered transactions.

HHS and the City of New Haven shall together be referred to herein as the “Parties.”

2. Factual Background and Covered Conduct. On January 24, 2017, HHS received notification from NHHD regarding a breach of its protected health information (PHI). On May 1, 2017, HHS notified NHHD of its investigation regarding NHHD’s compliance with the HIPAA Rules. OCR’s investigation revealed that on July 19, 2016, an employee was terminated during her probationary period. On July 27, 2016, the former employee and a union representative entered NHHD. Using her work key, the former employee entered her old office and locked herself and the union representative inside. While inside the office, the former employee logged into her old computer, with her user name and password, and downloaded information off of her computer onto a USB drive. The former employee removed boxes containing personal items and paper documents. This was witnessed by a student intern who was present at the time. The former employee and the union representative then both exited the building.

HHS’ investigation indicated the following covered conduct occurred (“Covered Conduct”):

- A. The City impermissibly disclosed the PHI of 498 individuals (See 45 C.F.R. § 164.502(a));
- B. During the period of December 1, 2014 to December 31, 2018, The City failed to implement Privacy Rule policies and procedures (See 45 C.F.R. § 164.530(i)(1));
- C. The City failed to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information (ePHI) held by NHHD (See 45 C.F.R. § 164.308(a)(1)(ii));
- D. During the period of December 1, 2014 to December 31, 2018, The City failed to implement procedures for terminating access to ePHI when the employment of, or other arrangement with, a workforce member ends (See 45 C.F.R. § 164.308(a)(3)(ii)(C));
- E. During the period of December 1, 2014 to December 31, 2018, The City failed to assign a unique name and/or number for identifying and tracking user identity (See 45 C.F.R. § 164.312 (a)(2)(i)).

3. No Admission. This Agreement is not an admission of liability by the City.

4. No Concession. This Agreement is not a concession by HHS that the City is not in violation of the HIPAA Rules and not liable for civil money penalties (“CMPs”).

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve HHS Transaction Number: 01-17-263741 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 further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

II. Terms and Conditions

6. Payment. HHS has agreed to accept, and the City has agreed to pay HHS, the amount of \$202,400.00 (Two Hundred Two Thousand Four Hundred Dollars) (“Resolution Amount”). The City agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 pursuant to written instructions to be provided by HHS.

7. Corrective Action Plan. NHHD 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 the City breaches the CAP, and fails to cure the breach as set forth in the CAP, then the City will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph II.8 of this Agreement.

8. Release by HHS. In consideration of and conditioned upon the City's performance of its obligations under this Agreement, HHS releases the City from any actions it may have against the City 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 the City from, nor waive 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.

9. Agreement by Released Parties. The City 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. The City 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.

10. Binding on Successors. This Agreement is binding on the City and its successors, heirs, transferees, and assigns.

11. 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.

12. 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.

13. 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.

14. 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).

15. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a CMP must be imposed within six (6) 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, NHHD agrees that the time between the Effective Date of this Agreement (as set forth in Paragraph 14) and the date the Agreement may be terminated by reason of the City'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. The City 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.

16. Disclosure. HHS places no restriction on the publication of the Agreement.

17. 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.

18. Authorizations. The individual(s) signing this Agreement on behalf of the City represent and warrant that they are authorized by the City to execute this Agreement. 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 the City of New Haven

_____/s/_____
Justin Elicker
Mayor
City of New Haven

_____10/12/20_____
Date

Approved as to Form and Correctness

_____/s/_____
Catherine E. LaMarr
Deputy Corporation Counsel

For Department of Health and Human Services

_____/s/_____
Susan M. Pezzullo Rhodes
Regional Manager
Office for Civil Rights

_____10/13/20_____
Date

Appendix A
CORRECTIVE ACTION PLAN
BETWEEN THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
THE CITY OF NEW HAVEN

I. Preamble

The City of New Haven Health Department (hereinafter known as “the City”) 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, the City is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. The City enters into this CAP as part of consideration for the release set forth in paragraph II.8 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

The City has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and for receipt and submission of notifications and reports:

Catherine E. LaMarr
Deputy Corporation Counsel
City of New Haven
City Hall – Office of the Corporation Counsel
165 Church Street, 4th Floor
New Haven, Connecticut 06510
CLaMarr@newhavenct.gov
Direct: 203.946.7974
Mobile: 203.410.0509
Facsimile: 203.946.7942

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

Susan M. Pezzullo Rhodes
Office for Civil Rights, New England Region
U.S. Department of Health and Human Services
JFK Federal Building, Room 1875
Boston, MA 02203
Telephone: 617-565-1347
Fax: 617-565-3809

The City and HHS agree to promptly notify each other of any changes in the contact persons 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, 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.14 of the Agreement (“Effective Date”). The period for compliance (“Compliance Term”) with the obligations assumed by the City 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 the City under section VIII hereof of its determination that the City breached this CAP. After the Compliance Term ends, the City 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. In the event HHS notifies the City of a breach under section VIII hereof, the Compliance Term shall not end until HHS notifies the City that HHS has determined the City failed to meet the requirements of section VIII.C of this CAP and issues a written notice of intent to proceed with an imposition of a civil money penalty against the City pursuant to 45 C.F.R. Part 160. The City is otherwise required 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

The City agrees to the following:

A. Risk Analysis

1. NHHD shall conduct a comprehensive and thorough Risk Analysis of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information (ePHI) held by NHHD. This Risk Analysis shall incorporate all ePHI from all of NHHD's clinics and anywhere throughout the City Department's that contain ePHI, and evaluate the risks to the ePHI on all of its electronic equipment, data systems, and applications controlled, administered or owned by NHHD or any NHHD entity, that contain, store, transmit, or receive ePHI. Prior to conducting the Risk Analysis, NHHD shall develop a complete inventory of all of its facilities, electronic equipment, data systems, and applications that contain or store ePHI that will then be incorporated into its Risk Analysis. NHHD may submit a Risk Analysis currently underway for consideration by HHS for compliance with this provision. NHHD shall provide documentation supporting a review of current security measures and level of risk to its ePHI.

2. The Contact Person shall provide the Risk Analysis, consistent with section V.A.1, to HHS within one hundred eighty (180) days of the Effective Date for HHS' review. Within sixty (60) days of its receipt of NHHD's Risk Analysis, HHS will inform the Contact Person whether HHS approves or disapproves of the Risk Analysis. If HHS disapproves of the Risk Analysis, HHS shall provide the Contact Person with technical assistance, as necessary, regarding the basis for disapproval so that NHHD may prepare a revised Risk Analysis. NHHD shall have sixty (60) days in which to revise its Risk Analysis accordingly, and then have the Contact Person submit the revised Risk Analysis to HHS for review and approval. This submission and review process shall continue until HHS approves the Risk Analysis.

3. NHHD shall develop an enterprise-wide Risk Management Plan to address and mitigate any security risks and vulnerabilities found in the Risk Analysis described above. The Risk Management Plan shall include a process and timeline for NHHD's implementation, evaluation, and revision of its risk remediation activities. NHHD may submit a Risk Management Plan currently underway for consideration by HHS for compliance with this provision.

B. Policies and Procedures

1. NHHD shall review and revise, as necessary, its written 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 164, Subparts A and C of 45 C.F.R. Part 164, the "Privacy Rule"), the Federal standards for notification in the case of breach of unsecured protected health information (45 C.F.R. Part 160 Subparts A and D of 45 C.F.R. Part 164, the "Breach Notification Rule"), and the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and 164, Subparts A, and E of 45 C.F.R. Part 164, the "Privacy Rule").

NHHD shall review and revise the following policies and procedures:

- a. NHHD's Privacy Rule policies and procedures with respect to PHI that are designed to comply with the standards, implementation specifications, or other requirements of the Privacy Rule.
- b. NHHD's policies and procedures regarding terminating access to ePHI when the employment of, or other arrangement with, a workforce member ends (See 45 C.F.R. § 164.308(a)(3)(ii)(C));
- c. NHHD's policies and procedures regarding assigning a unique name and/or number for identifying and tracking user identity (See 45 C.F.R. § 164.312 (a)(2)(i)).

2. NHHD shall provide the policies and procedures identified in section V.B.1 above to HHS for review and approval within ninety (90) days of HHS' approval of its risk analysis, as required by A.2. Upon receiving any recommended changes to such policies and procedures from HHS, NHHD 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. NHHD shall adopt (in accordance with its applicable administrative procedures) the policies and procedures approved by HHS pursuant to section V.B.2 within thirty (30) days of receipt of HHS' approval.

C. Distribution of Policies and Procedures

1. NHHD shall distribute the policies and procedures identified in section V.A. and V.B. to all members of the NHHD's workforce who use or disclose electronically protected health information (ePHI) within thirty (30) days of HHS approval of such policies and procedures, and thereafter to new members of the workforce who will use or disclose ePHI within thirty (30) days of their becoming a member of the workforce.

D. Training

1. All NHHD workforce members who have access to ePHI shall receive specific training on the policies and procedures submitted to HHS under section V.B. within ninety (90) days of the adoption of those policies and procedures in accordance with section V.B.3 and at least annually thereafter. Any individuals who will have access to ePHI that join NHHD's workforce after the initial training period described in this section shall be trained within thirty (30) days of their becoming a member of the workforce.

2. Each NHHD workforce member 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.

3. NHHD 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.

E. Reportable Events.

1. During the Compliance Term, in the event that NHHD receives information that a workforce member may have failed to comply with the policies and procedures submitted to HHS under sections V.A. and V.B., NHHD shall promptly investigate this matter. If NHHD determines, after such investigation, that during the Compliance Term a member of its workforce has failed to comply with the policies and procedures submitted to HHS under section V.B., NHHD shall notify HHS in writing within thirty (30) days. Such violations shall be known as Reportable Events. The report to HHS shall include the following information:

- a. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and
- b. A description of the actions taken and any further steps NHHD 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 the policies and procedures submitted to HHS under section V.B.

2. If no Reportable Events occur within the Compliance Term, NHHD shall so inform HHS in its Implementation Report as specified in section VI below.

VI. Implementation Report

A. Within one-hundred and eighty (180) days after HHS approves Policies and Procedures specified in section V.B. above, NHHD shall submit a written report with the documentation described below to HHS for review and approval (“Implementation Report”). The Implementation Report shall include:

1. An attestation signed by an officer of NHHD attesting that the policies and procedures submitted to HHS under section V.B. have been implemented;
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 NHHD attesting that all members of the NHHD workforce that use or disclose ePHI have completed training as required by this CAP and have executed the training certifications required by section V.D.2.;
4. An attestation signed by an officer of NHHD attesting that he or she has reviewed the Implementation Report, has made a reasonable inquiry regarding its content and believes, based upon such inquiry, that the information is accurate and truthful.

B. Annual Reports. The one-year period beginning on the Effective Date and each subsequent one-year period during the course of the period of compliance obligations shall be referred to as “the Reporting Periods.” NHHD also shall submit to HHS Annual Reports with

respect to the status of and findings regarding NHHD's compliance with this CAP for each of the two (2) Reporting Periods. NHHD shall submit each Annual Report to HHS no later than sixty (60) days after the end of each corresponding Reporting Period. The Annual Report shall include:

1. A schedule, topic outline, and copies of the training materials for the training programs attended in accordance with this CAP during the Reporting Period that is the subject of the report;
2. An attestation signed by an owner or officer of NHHD attesting that it is obtaining and maintaining written training certifications from all persons that require training that they received training pursuant to the requirements set forth in this CAP;
4. A summary of Reportable Events (defined in Section V.E.1) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;
5. An attestation signed by an owner or officer of NHHD 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

The City 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

The City is expected to fully and timely comply with all provisions contained in this CAP.

A. Timely Written Requests for Extensions

The City 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.

B. Notice of Breach of this CAP and Intent to Impose Civil Monetary Penalty. The parties agree that a breach of this CAP by the City constitutes a breach of the Agreement. Upon a determination by HHS that the City has breached this CAP, HHS may notify the City of: (1) the City's breach; and (2) HHS' intent to impose a civil money penalty ("CMP") pursuant to 45 C.F.R. Part 160, or other remedies 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. NHHD's Response. The City 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. The City 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-day (30) period, but that:
(a) NHHD has begun to take action to cure the breach; (b) the City is pursuing such action with due diligence; and (c) the City has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the thirty-day (30) period, the City 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 the City pursuant to 45 C.F.R. Part 160 for any violations of 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 the City in writing of its determination to proceed with the imposition of a CMP pursuant to 45 C.F.R. Part 160.

For the City of New Haven

_____/s/_____
Justin Elicker
Mayor
City of New Haven

_____/10/12/20_____
Date

Approved as to Form and Correctness

_____/s/_____
Catherine E. LaMarr
Deputy Corporation Counsel

For United States Department of Health and Human Services

_____/s/_____
Susan M. Pezzullo Rhodes
Regional Manager, New England Region
Office for Civil Rights

_____/10/13/20_____
Date