

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. Anchorage Community Mental Health Services, Inc. (“ACMHS”), which is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. ACMHS is a nonprofit, community, mental-health care provider that provides care, including care for the uninsured and underinsured, to the Anchorage community and surrounding areas.

HHS and ACMHS shall together be referred to herein as the “Parties.”

2. Factual Background and Covered Conduct.

On March 2, 2012, the HHS Office for Civil Rights (OCR) received notification from ACMHS regarding a breach of unsecured electronic protected health information (e-PHI) affecting 2,743 individuals due to malware compromising the security of its information technology resources. On June 1, 2012, OCR notified ACMHS of OCR’s investigation regarding ACMHS’s compliance with the Privacy, Security, and Breach Notification Rules. OCR’s investigation indicated that the following conduct occurred (“Covered Conduct”):

- A. From April 21, 2005, the compliance date of the Security Rule, until March 12, 2012, ACMHS failed to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality integrity, and availability of e-PHI held by ACMHS (*See* 45 C.F.R. § 164.308(a)(1)(ii)(A));
- B. From April 21, 2005, the compliance date of the Security Rule, until March 12, 2012, ACMHS failed to implement policies and procedures requiring implementation of security measures sufficient to reduce risks and

vulnerabilities to its e-PHI to a reasonable and appropriate level (*See* 45 C.F.R. § 164.308(a)(1)(ii)(B)); and

C. From January 1, 2008, until March 29, 2012, ACMHS failed to implement technical security measures to guard against unauthorized access to e-PHI that is transmitted over an electronic communications network (*See* 45 C.F.R. § 164.312(e)) by failing to ensure that firewalls were in place with threat identification monitoring of inbound and outbound traffic and that information technology resources were both supported and regularly updated with available patches.

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

4. No Concession. This Agreement is not a concession by HHS that ACMHS is not in violation of the Privacy Rule, the Security Rule, or the Breach Notification Rule and that ACMHS is not liable for civil money penalties.

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve OCR Transaction Number: 12-139936 and any violations of the HIPAA Privacy, Security, and Breach Notification 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 ACMHS has agreed to pay HHS, the amount of \$150,000 ("Resolution Amount"). ACMHS agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 by automated clearinghouse transaction pursuant to written instructions to be provided by HHS.

7. Corrective Action Plan. ACMHS 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 ACMHS breaches the CAP, and fails to cure the breach as set forth in the CAP, then ACMHS will be in breach of this Agreement and HHS will not be subject to the terms and conditions in the Release set forth in Paragraph 8 of this Agreement.

8. Release by HHS. In consideration of and conditioned upon ACMHS' performance of its obligations under this Agreement, HHS releases ACMHS from any actions it has or may have against ACMHS under the Privacy, Security, and Breach Notification Rules arising out of or related to the Covered Conduct specified in paragraph I.2. of this Agreement. HHS does not release ACMHS 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 Party. ACMHS 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. ACMHS waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a-7a); 45 C.F.R. Part 160, Subpart E; and HHS Claims Collection provisions, 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 ACMHS 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 must be set forth in writing and signed by both 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 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, ACMHS agrees that the time between the Effective Date of this Agreement and the date this Resolution Agreement may be terminated by reason of ACMHS’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. ACMHS waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the Covered Conduct specified 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. 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.

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 ACMHS represent and warrant that they are authorized by ACMHS 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 Anchorage Community Mental Health Services, Inc.

/s/	12/02/2014
_____	_____
Jerry Jenkins	Date
Chief Executive Officer	
Anchorage Community Mental Health Services, Inc.	

For the United States Department of Health and Human Services

/s/	12/02/2014
_____	_____
Linda Yuu Connor	Date
Regional Manager, Region X	
Office for Civil Rights	

Appendix A
CORRECTIVE ACTION PLAN
BETWEEN THE
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
ANCHORAGE COMMUNITY MENTAL HEALTH SERVICES, INC.

I. Preamble

Anchorage Community Mental Health Services, Inc. (hereinafter referred to as “ACMHS”) 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, ACMHS is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. ACMHS enters into this CAP as part of the consideration for the release set forth in paragraph 8 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons.

ACMHS 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:

Jerry Jenkins, Chief Executive Officer
Anchorage Community Mental Health Services, Inc.
4020 Folker Street
Anchorage, AK 99508
Telephone: 907-563-1000
Facsimile: 907-563-2045

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

Linda Yuu Connor, Regional Manager
Office for Civil Rights, Region X
Department of Health and Human Services
701 Fifth Avenue, Suite 1600, MS-11
Seattle, WA 98104

Telephone: 206-615-2290
Facsimile: 206-615-2297

ACMHS 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 14 of the Agreement (“Effective Date”). The period for compliance (“Compliance Term”) with the obligations assumed by ACMHS 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 ACMHS under section VIII hereof of its determination that ACMHS has breached this CAP. In the event of such a notification by HHS under section VIII hereof, the Compliance Term shall not end until HHS notifies ACMHS that it has determined that the breach has been cured. After the Compliance Term ends, ACMHS shall still be obligated to submit the final Annual Report as required by section VI and comply with the document retention requirement in section VII.

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 that is not one of the aforementioned days.

V. Corrective Action Obligations

ACMHS agrees to the following:

A. Revision and Distribution of Policies and Procedures

1. ACMHS shall provide an updated version of its Security Rule Policies and Procedures, which were submitted to OCR on May 20, 2013, 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, ACMHS 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. ACMHS shall officially adopt the revised Security Rule Policies and Procedures within thirty (30) days of receipt of HHS' approval.

4. ACMHS shall distribute its revised Security Rule Policies and Procedures to all members of the workforce who use or disclose e-PHI concomitantly with general security awareness training as required by section V.B.3 and to new members of the workforce who will use or disclose e-PHI within thirty (30) days of their beginning of service.

5. ACMHS shall require, at the time of distribution of its Security Rule Policies and Procedures, and shall maintain for its files, a signed written or electronic initial compliance certification from all members of the workforce, stating that the workforce members have read, understand, and shall abide by the Security Rule Policies and Procedures.

B. Training.

1. ACMHS shall provide HHS with general security awareness training materials for all workforce members who use or disclose e-PHI within sixty (60) days of the Effective Date for review and approval.

2. Upon receiving notice from HHS specifying any required changes, ACMHS shall make the required changes and provide revised general security awareness training materials to HHS within thirty (30) days for review and approval.

3. Upon receiving approval from HHS, ACMHS shall provide general security awareness training for each workforce member who uses or discloses e-PHI within sixty (60) days of HHS approval and at least every twelve (12) months thereafter. ACMHS shall also provide such training to each new member of the workforce who uses or discloses e-PHI within thirty (30) days of their beginning of service.

4. Each workforce member who is required to attend training shall certify, in electronic or written form, that he or she 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. ACMHS shall review the training at least annually, and, where appropriate, update the training to reflect any changes in Federal law or HHS guidance, any issues discovered during audits or reviews, or any other relevant developments.

C. Security Management Process.

ACMHS shall annually, as required by ACMHS' "IT Risk Management" policy and procedure, conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of e-PHI held by ACMHS and document the security measures ACMHS implemented or is implementing to

sufficiently reduce the identified risks and vulnerabilities to a reasonable and appropriate level.

D. Reportable Events.

1. During the Compliance Term, ACMHS shall, upon receiving information that a workforce member may have failed to comply with its Security Rule Policies and Procedures, promptly investigate the matter. If ACMHS determines, after review and investigation, that a member of its workforce has failed to comply with its Security Rule Policies and Procedures, ACMHS 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:

- a. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of ACMHS’s Security Rule Policies and Procedures implicated; and
- b. A description of the actions taken and any further steps ACMHS plans to take to address the matter, to mitigate any harm, and to prevent it from recurring, including the application of appropriate sanctions against workforce members who failed to comply with its Security Rule Policies and Procedures .

2. If no Reportable Events occur within the Compliance Term, ACMHS shall so inform OCR in its Annual Reports.

VI. 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.” ACMHS shall submit to HHS Annual Reports with respect to the status of and findings regarding ACMHS’s compliance with this CAP for each Reporting Period. ACMHS shall submit each Annual Report to HHS no later than twenty (20) days after the end of each corresponding Reporting Period. The Annual Report shall include the following items:

1. An attestation signed by an owner or officer of ACMHS attesting that the Security Rule Policies and Procedures have been distributed to all members of the workforce who use or disclose e-PHI and that ACMHS has obtained all of the compliance certifications required by section V.A.2;

2. An attestation signed by an owner or officer of ACMHS attesting that all members of the workforce have completed general security awareness training as required by this CAP and have executed the training certifications required by section V.B.4;

3. Either a copy of the general security awareness training materials used for the training required by this CAP if revised pursuant to section V.B.5. or an attestation signed by an owner or officer of ACMHS attesting that he or she has reviewed the general security awareness training materials and no revisions were made;
4. An attestation signed by an owner or officer of ACMHS attesting that all information system resources are currently supported and updated with available patches;
5. An updated risk analysis and updated risk management plan pursuant to section V.C.;
6. A summary of Reportable Events (defined in section V.D.1.) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;
7. An attestation signed by an owner or officer of ACMHS attesting that ACMHS has complied with the obligations of this CAP; and
8. An attestation signed by an owner or officer of ACMHS 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

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

VIII. Breach Provisions

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

A. Timely Written Requests for Extensions. ACMHS 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 Money Penalty. The Parties agree that a breach of this CAP by ACMHS constitutes a breach of the Agreement. Upon a determination by HHS that ACMHS has breached this CAP, HHS may notify ACMHS of (1) ACMHS’ 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 for 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. ACMHS Response. ACMHS 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. ACMHS is in compliance with the obligations of this 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 30-day period, but that: (a) ACMHS has begun to take action to cure the breach; (b) ACMHS is pursuing such action with due diligence; and (c) ACMHS has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30-day period, ACMHS fails to meet the requirements of section VIII.C. of this CAP to HHS’ satisfaction, HHS may proceed with the imposition of the CMP against ACMHS pursuant to 45 C.F.R. Part 160 for any violations of the Privacy, Security, and Breach Notification Rules related 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 Privacy, Security, or Breach Notification Rules. HHS shall notify ACMHS in writing of its determination to proceed with the imposition of a CMP.

For Anchorage Community Mental Health Services, Inc.

/s/	12/02/2014
Jerry Jenkins Chief Executive Officer Anchorage Community Mental Health Services, Inc.	Date

For the United States Department of Health and Human Services

/s/	12/02/2014
Linda Yuu Connor Regional Manager, Region X Office for Civil Rights	Date