



Monterey County

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Board Report

Legistar File Number: A 14-185

July 22, 2014

Introduced: 7/3/2014

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

Approve and authorize the Director of Health to sign Amendment No. 7 to Master System Agreement No. A-11307, with Oregon Community Health Information Network, Inc., to replace "Exhibit D, HIPAA Compliance Terms and Exhibit D-A, Additional HIPAA Compliance Terms" with a new Exhibit D, to include HIPAA compliance language as related to the Health Information Technology for Economic and Clinical Health Act (HITECH Act) regulations.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Approve and authorize the Director of Health to sign Amendment No. 7 to Master System Agreement No. A-11307, with Oregon Community Health Information Network, Inc., to replace "Exhibit D, HIPAA Compliance Terms and Exhibit D-A, Additional HIPAA Compliance Terms" with a new Exhibit D, to include HIPAA compliance language as related to the Health Information Technology for Economic and Clinical Health Act (HITECH Act) regulations.

SUMMARY/DISCUSSION:

Membership in the Oregon Community Health Information Network, Inc. (OCHIN) enables the Monterey County Health Department to utilize Epic's Practice Management (PM) and Electronic Medical Record (EMR) Systems. In June, 2007, The Health Department's Clinic Services Bureau (Clinic Services) entered into an agreement with OCHIN for EMR and PM services.

The U.S. Department of Health and Human Services Health Information Portability and Accountability Act (HIPAA) mandated specific language regarding protected health information be included in service agreements that have the potential for an exchange of patient health information. Exhibits D and D-A of the Agreement with OCHIN specifically address required HIPAA compliance language. From time to time, this language is updated as required by Federal or State mandates.

In September, 2013, the Health Information Technology for Economic and Clinical Health Act (HITECH Act) mandated updated HIPAA language. To be compliant with this new HIPAA language requirement, OCHIN has requested that Exhibits D and D-A of the Master System Agreement, addressing HIPAA language and compliance, be replaced with Exhibit D which includes the newly updated HITECH Act-specific language.

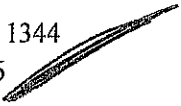
OTHER AGENCY INVOLVEMENT:

County Counsel and Contracts/Purchasing has reviewed and concur with this recommendation.

FINANCING:

Authorization of this Amendment incurs no financial impact as this is a change to HIPAA language only and does not affect any fiscal terms previously set through the original agreement and subsequent amendments.

Prepared by: Robin Kimball, Management Analyst, 1344

Approved by: Ray Bullick, Director of Health, 4526 

Attachments:

Agreement A-11307 is on file with the Clerk of the Board

Amendment No. 1 is on file with the Clerk of the Board

Amendment No. 2 is on file with the Clerk of the Board

Amendment No. 3 is on file with the Clerk of the Board

Amendment No. 4 is on file with the Clerk of the Board

Amendment No. 5 is on file with the Clerk of the Board

Amendment No. 6 is on file with the Clerk of the Board

Amendment No. 7 is on file with the Clerk of the Board



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Board Order

Agreement No.: A-11307

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

Approved and authorized the Director of Health to sign Amendment No. 7 to Master System Agreement No. A-11307, with Oregon Community Health Information Network, Inc., to replace "Exhibit D, HIPAA Compliance Terms and Exhibit D-A, Additional HIPAA Compliance Terms" with a new Exhibit D, to include HIPAA compliance language as related to the Health Information Technology for Economic and Clinical Health Act (HITECH Act) regulations.

PASSED AND ADOPTED on this 22nd day of July 2014, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 77 for the meeting on July 22, 2014.

Dated: July 24, 2014
File Number: A 14-185

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By

Deputy

Amendment to Master System Agreement

This Amendment to Master System Agreement ("Amendment") is entered into by and between OCHIN, Inc. ("OCHIN") and County of Monterey ("Member") effective as of the last date signed as set forth below ("Effective Date").

RECITALS

A. OCHIN and Member have entered into that certain Master System Agreement, including the addendums attached thereto (collectively, "Agreement"). Unless otherwise defined, capitalized terms in this Amendment have the meanings given in the Agreement or exhibits to the Agreement.

B. OCHIN and Member desire to amend the terms of the Agreement to include additional terms, including compliance obligations related to the Health Information Technology for Economic and Clinical Health Act, codified at 42 U.S.C. § 17930, et seq, and its implementing regulations ("HITECH Act").

Agreement

In consideration of the following agreements and covenants, the parties agree as follows:

- 1. Exhibit D.** Exhibit D, "HIPAA Compliance Terms," and Exhibit D-A, "Additional HIPAA Compliance Terms" of the Agreement are hereby deleted in their entirety and replaced with the "Exhibit D" attached hereto.
- 2. References to Exhibit D-A.** All references in the Agreement to "Exhibit D-A" are hereby deleted and replaced with "Exhibit D."
- 3. Use of Electronic Health Information Exchanges.** Member wishes to use and disclose PHI as authorized under HIPAA through the use of electronic health information exchanges ("HIE"). Member can request that OCHIN facilitate the electronic exchange and disclosure of PHI related to Member's patients by transmitting data through HIEs on Member's behalf through a Statement of Work. In that instance Member authorizes OCHIN to disclose PHI related to Member's patients through HIEs as may be requested and directed by Member. Member authorizes OCHIN to manage Member's requests for, and disclosures of, PHI from and to the other participants in HIEs. Any corresponding potential cost will be agreed to by Member prior to the beginning of the related project. Member represents and warrants that all consents required under HIPAA for the transmission of PHI through an HIE shall have been obtained by Member and that the transmissions and disclosures requested by Member will be in furtherance of and in compliance with Member's permitted uses and disclosures of PHI as a covered entity under HIPAA. Member will indemnify, defend, and hold harmless OCHIN and its officers, directors, employees, and agents from and against all Claims arising from any improper use or disclosure of PHI and incurred as a result of Member's request or directive to use or disclose PHI through an HIE. This indemnification obligation will be in addition to all other indemnification obligations provided for in the Agreement.
- 4. Compliance with Laws and Regulations.** Each party will at all times comply with all applicable laws and regulations including, without limitation, all governmental, Medicare, Medicaid, and whistleblower laws, rules, and regulations governing each party's performance hereunder. Member and OCHIN specifically acknowledge that Member will provide services to beneficiaries of federal and state health care programs, including Medicare, and that OCHIN and Member have an obligation to comply with the requirements of such programs. Additionally, OCHIN shall inform any employees in writing, in the predominate native language of the workforce, that they are subject to whistleblower rights and remedies to the extent applicable under 41 USC 4712.
- 5. Effect of Amendment.** This Amendment modifies the Agreement. The Agreement, as amended by this Amendment, is in full force and effect, and the parties hereby ratify and affirm the same. In the event of any conflict between the provisions of the Agreement and this Amendment, the provisions of this Amendment shall control.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

OCHIN:

OCHIN, Inc

By: SEAN WITREWYROS

Title: CFR

Signature: [Signature]

Dated: 8/7/14

Member:

County of Monterey

By: Ray Bullick

Title: Director of Health

Signature: [Signature]

Dated: 7-30-14

Approved as to Form:

By: Stacy Saetta
Stacy Saetta, Deputy County Counsel

Date: 7/1/14

Approved as to Fiscal Provisions:

By: [Signature]
Gary Gibony, Auditor-Controller

Date: 7/2/14

N/A

Contracts/Purchasing Officer

Date: _____

Exhibit D HIPAA Compliance Terms

Unless otherwise defined, capitalized terms in this Exhibit have the meanings given on the Cover Pages or the other exhibits.

- 1. Purpose.** The purpose of this exhibit ("Exhibit") is to set forth the terms and conditions of OCHIN's uses and disclosures of Member's "Protected Health Information," which includes "Limited Data Sets" (as defined in Section 2.1 of this Exhibit). It is the intent of OCHIN and Member that this Exhibit will meet the requirements of 45 CFR § 164.504(e) and 45 CFR § 164.514(e) of the privacy regulations and 45 CFR § 164.314(a) of the security regulations promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and all regulations issued under the Health Information Technology for Economic and Clinical Health Act ("HITECH") (collectively the "HIPAA Regulations").
- 2. Use and Disclosure of PHI.**

 - 2.1 Definitions.** For purposes of this Exhibit, the term "Protected Health Information" (PHI) means Individually Identifiable Health Information transmitted or maintained in any form or medium. "Individually Identifiable Health Information" is information, including demographic information, that: (a) relates to (i) the past, present, or future physical or mental health or condition of an individual person, (ii) the provision of health care to an individual person, or (iii) the past, present, or future payment for the provision of health care to an individual person; and (b) identifies that person (or with respect to which there is a reasonable basis to believe the information can be used to identify the person). "PHI" includes "Limited Data Sets," which means PHI that excludes the identifiers as defined by 45 C.F.R. 164.514(e). "Electronic Protected Health Information" (EPHI) means the subset of PHI that is transmitted or maintained by electronic media. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations of an information system. Terms used by but not otherwise defined in this Exhibit shall have the same meaning as those in 45 CFR Parts 160, 162, and 164.
 - 2.2 Security and Confidentiality.** If Member discloses any PHI to OCHIN, or if OCHIN creates or receives any PHI on behalf of
- Member, OCHIN will maintain the security and confidentiality of such PHI in OCHIN's possession as is required by the HIPAA Regulations.
- 2.3 Use and Disclosure.** OCHIN may use and disclose PHI in a manner consistent with Member's permitted uses and disclosures of PHI as a covered entity under HIPAA and OCHIN's policies. OCHIN shall not disclose PHI other than as permitted by this Exhibit, the Master System Agreement between Member and OCHIN ("Agreement"), or as otherwise permitted or required by law.
- 2.4 Disclosure Procedure.** Unless such disclosure is required by law, OCHIN may not disclose PHI unless: (a) OCHIN obtains reasonable assurances from the person to whom the PHI is disclosed that 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 (b) the person notifies OCHIN of any instances of which the person is aware of breaches of confidentiality of the PHI.
- 2.5 Responses to Third Party Requests.** As required by OCHIN's policies, OCHIN will provide Member with notification of any third party requests for Member's PHI that are otherwise permitted or required by law. Member's failure to object to OCHIN's processing of PHI consistent with any such lawful requests constitutes Member's consent to the uses or disclosures of PHI contained within any such request. OCHIN may charge Member reasonable fees for responding to third party PHI disclosure requests; subject to the mutual agreement of the parties.
- 3. Data Aggregation.** Exhibit B permits OCHIN to use PHI for certain Data Aggregation services relating to Member's health care operations, including a state-wide data warehouse and the Epic Data Service. "Data Aggregation" means, with respect to PHI disclosed to OCHIN, combining such PHI with PHI received by OCHIN in its capacity as a business associate of another entity covered by the HIPAA Regulations to permit data analyses that relate to the health care operations of the respective covered entities.
- 4. Other Obligations.**

- 4.1 Safeguards.** OCHIN will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as permitted by this Exhibit. Where applicable, OCHIN will comply with 45 C.F.R. § 164, Subpart C, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that OCHIN creates, receives, maintains, or transmits on behalf of Member.
- 4.2 Reports.** OCHIN will report to Member any use or disclosure of PHI by OCHIN or its Workforce not provided for by this Exhibit of which OCHIN becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410. In addition, OCHIN shall report to Member any Security Incident of which OCHIN becomes aware in a reasonable time and manner considering the nature of the Security Incident and the information to be reported.
- 4.3 Agents and Subcontractors.** OCHIN will ensure that any agents and subcontractors that create, maintain, or transmit PHI on behalf of OCHIN agree to the same restrictions and conditions that apply to OCHIN with respect to such PHI.
- 4.4 Availability.** OCHIN shall make PHI in its possession available to the individual who is the subject of the PHI as required by the HIPAA Regulations.
- 4.5 Amendment.** OCHIN shall make available PHI in its possession for amendment of the PHI by the person identified in the PHI and incorporate any such amendments in accordance with the HIPAA Regulations.
- 4.6 Member.** If OCHIN has PHI in a designated record set, OCHIN will provide Member, upon Member's reasonable request, access for inspection of OCHIN's books, records, policies, practices, and procedures concerning the use and disclosure of PHI for purposes of assisting Member with its obligations for record keeping and compliance with complaint investigations and compliance reviews as required by the HIPAA Regulations.
- 4.7 Mitigation.** OCHIN agrees to mitigate, to the extent practicable, any harmful effect that is known to OCHIN of a use of PHI by OCHIN in violation of the terms of this Exhibit D
- 4.8 Member's Obligations.** To the extent that OCHIN carries out Member's obligations under the HIPAA Regulations, OCHIN shall comply with the requirements of the HIPAA Regulations that apply to the Member in the performance of such obligations.
- 5. Accounting of Disclosures.** Although OCHIN does not anticipate making disclosures other than for the purposes of the Agreement and this Exhibit, OCHIN will maintain a record of all disclosures of PHI made otherwise than for the purposes of the Agreement, including the date of the disclosure, the name and address (if known) of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure as necessary to permit Member to respond to a request by an individual for an accounting of disclosures in accordance with 45 CFR § 164.528. OCHIN will make such record available to Member on request.
- 6. Disclosure to U.S. Department of Health and Human Services.** OCHIN will make its internal practices, books, and records relating to the use and disclosure of PHI received from Member (or created or received by OCHIN on behalf of Member) available to the Secretary of the United States Department of Health and Human Services, for purposes of determining OCHIN's and Member's compliance with the HIPAA Regulations.
- 7. Termination.** In the event of a material breach of these HIPAA Compliance Terms by OCHIN, Member shall provide OCHIN notice and not less than thirty (30) days opportunity to cure. Member may terminate the Agreement if OCHIN does not cure the breach within this thirty (30) day period.
- 8. Procedure upon Termination.** Upon termination of the Agreement, OCHIN will, if feasible, return or destroy all PHI that OCHIN maintains in any form, and will retain no copies of such PHI or, if the parties agree that return or destruction is not feasible, OCHIN will continue to extend the protections of this Exhibit to such PHI, and limit further use of the PHI to those purposes that make the return or destruction of the PHI infeasible.
- 9. No Third Party Beneficiaries.** There are no third party beneficiaries to the Agreement or this Exhibit.
- 10. Business Associate Status.** Nothing contained in the Agreement or this Exhibit causes OCHIN to be a "covered entity" as defined in the HIPAA Regulations or otherwise requires OCHIN to comply with the HIPAA Regulations as a covered entity.
- 11. HITECH Compliance.** OCHIN shall comply with the requirements of HITECH, codified at

42 U.S.C. §§ 17921–17954, which are applicable to business associates, and shall comply with all regulations issued by the Department of Health and Human Services to implement HITECH as of the date by which business associates are required to comply.

12. **Limited Data Sets.** In addition to the permitted uses set forth in Sections 20.2 and 27.1 of Exhibit B, Member authorizes OCHIN to create Limited Data Sets of Member information for certain research activities consistent with applicable law ("Activities") which may require access to such Limited Data Sets. OCHIN may disclose Limited Data Sets to third party researchers, provided that OCHIN obtains and maintains with each such third party researcher an agreement that is consistent with the requirements for Limited Data Set use agreements under HIPAA.

