

PRIVACY AND SECURITY AGREEMENT

FOR PROVIDERS AS HPHCONNECT USERS AND/OR EDI TRADING PARTNERS

Overview

The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and regulations promulgated thereunder in Title 45, Parts 160 and 164 of the Code of Federal Regulations contemplate that payors, providers, providers' Business Partners and others given access to health information concerning individual persons will enter into agreements with each other to maintain information security and protect the privacy of such health information.

Given that Harvard Pilgrim Health Care and the Provider will be accessing or sharing such health information in conjunction with a number of aspects of Harvard Pilgrim's relationship with providers, including without limitation claims submission and payment activities, through a number of media, including without limitation electronic data interchange via secure File Transfer Protocol (FTP), Virtual Private Network (VPN), secure modems or various other electronic channels, and the Provider will be responsible for managing and monitoring its user access, the terms and provisions of this Privacy and Security Agreement (the "Agreement") are intended to reflect the parties' recognition of their respective legal obligations to protect the privacy and security of such health information pursuant to HIPAA and the related regulations.

Definitions

AUTHORIZED EMPLOYEES OR AGENTS shall mean Provider's employees and agents with a need to know Protected Information and who have been authorized by Provider to have access to Protected Information.

BUSINESS PARTNER" OR "BUSINESS ASSOCIATE shall mean a person or entity (other than an employee of Provider) that performs, or assists in the performance of a function or activity involving the use or disclosure of Protected Information, including without limitation claims processing or administration, data analysis, processing or administration, billing, or practice management, or a person or entity (other than an employee of Provider) that provides legal, actuarial, accounting, consulting, management, administrative, or financial services to or for Provider, where the provision of the service involves the disclosure of Protected Information.

PROTECTED INFORMATION shall mean information obtained from Harvard Pilgrim, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, including demographic information collected from an individual, which information either identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. Protected Information shall also include but not be limited to (whether or not specifically designated as "confidential" by Harvard Pilgrim) enrollment information, claims data, demographic data and any and all patient specific information and rate information or specific utilization information relating to clinical practices.

Confidentiality and Security

Maintaining Confidentiality of Protected Information

Provider shall not, without the prior written consent of Harvard Pilgrim:

- Use or access any protected information except (1), in the conduct of its business as a provider of health care or (2), as a business partner or business associate of a health care provider, and as provided herein; or
- Disclose any portion of the protected information to any persons or entities other than to provider's authorized employees, business partners, or business associates as provided herein.

Confidentiality Safeguards

Provider shall use its best efforts, including employment of all reasonable safeguards, to prevent any use, access or disclosure of the protected information not authorized by this agreement. Such safeguards shall include, but not be limited to:

- Limiting authorized employees to those having a need to know such information
- Limiting the number of Authorized Employees
- Ensuring that access to such information of any Authorized Employee who is no longer employed by Provider is terminated immediately upon their departure
- Ensuring that Authorized Employees understand the obligations of Provider under this Agreement
- Establishing a disciplinary policy for breach of confidentiality
- Instituting appropriate password controls
- Immediately notifying Harvard Pilgrim in the event Provider has knowledge that any employee or agent has breached this Agreement.

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- v Provider shall immediately notify Harvard Pilgrim of the identity of such individuals, the nature of the breach, and the action taken by Provider.

Security Standards

Provider further agrees that it shall employ all reasonable safeguards, including those safeguards Provider takes to protect its own confidential information, to prevent any use, access or disclosure of the Protected Information that would result in a breach of this Agreement. With respect to Provider's facilities where it receives, maintains or transmits the Protected Information, Provider shall implement the administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of such Protected Information as required by, and as more specifically set forth in, the Final Security Regulations issued under HIPAA. Provider will provide to Harvard Pilgrim copies of its confidentiality and information security policies upon the request of Harvard Pilgrim. In addition, Provider will report in writing to Harvard Pilgrim, and to any state or federal authority as required by law, any incident of which it becomes aware relating to a breach of security and/or privacy of the Protected Information including, but not limited to, any attempted or successful unauthorized use or disclosure of the Protected Information.

Practices for Information Security

Harvard Pilgrim has developed a list of security and confidentiality practices which Provider may use to develop confidentiality and security procedures. The list of security and confidentiality practices is in Harvard Pilgrim's Provider Manual, in the Chapter captioned "Requirements for EDI and Online Solutions."

Return or Destruction of Protected Information

Protected Information shall remain the property of Harvard Pilgrim and shall, at Harvard Pilgrim's request (which may be at any time), be returned forthwith to Harvard Pilgrim or be destroyed if so directed by Harvard Pilgrim together with all copies made by Provider and by anyone to whom such Protected Information has been made available by Provider. Upon request, Provider shall provide to Harvard Pilgrim a certificate as to the return or destruction of such Protected Information.

Compliance with Policy and Laws

Provider agrees to comply with all applicable and effective state and federal regulatory and statutory requirements related to the confidentiality of Protected Information, including but not limited to, the Massachusetts privacy statute (M.G.L. ch. 214 § 1B), the Standards for the Protection of Personal Information of Residents of the Commonwealth (201 CMR 17.00), New Hampshire Revised Statutes Chapter 359-C, Maine Revised Statutes Chapter 210-B, and Connecticut General Statutes, Chapters 669 (section 36A-701B) and 743dd (hereinafter "the applicable state laws").

Required Disclosure

Notwithstanding the foregoing, if Provider is requested or required in a judicial, administrative or governmental proceeding to disclose any Protected Information, Provider will notify Harvard Pilgrim as promptly as practicable so that Harvard Pilgrim may either seek an appropriate protective order or waive the provisions of this Agreement. If Harvard Pilgrim promptly seeks and is unable to obtain a protective order or waiver, and Provider, in the opinion of its counsel, is required to disclose Protected Information in any court, governmental agency or tribunal or else stand liable for contempt under penalty, Provider may disclose such Protected Information without liability hereunder.

Costs

Provider, at its own expense, shall provide and maintain the personnel, equipment, software, services and testing necessary to effectively and reliably implement the confidentiality and security standards contemplated by this Agreement. Provider shall be responsible for all equipment necessary to maintain the security of Protected Information, including hardware, software and telecommunication services.

Certification

Provider shall upon request certify to Harvard Pilgrim that it complies with the terms of this Agreement, which may be in the form of self-certification.

Business Partners/Business Associates

Direct access

If Provider engages any Business Partners or Business Associates, and such Business Partner or Business Associate has a need to know and will have access to Protected Information directly from Harvard Pilgrim, then any such Business Partner will be required to execute a privacy and security agreement with Harvard Pilgrim prior to being given such access, and any such Business Associate will be required to execute a Business Associate Agreement with Provider prior to being given such access by Harvard Pilgrim.

Other

If Provider engages any other Business Partner or Business Associate who has a need to know and will have access to Protected Information from Provider, then Provider shall be responsible for ensuring that each such Business Partner complies with the terms of this Agreement and that each such Business Associate complies with the terms of HIPAA to the same extent as if they were covered entities.

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Prior Confidentiality

The parties may have previously entered into a confidentiality agreement with respect to the Protected Information or other Harvard Pilgrim confidential information. Such agreements shall continue in full force and effect, provided, however, that to the extent the terms of such previous agreement conflict with this Agreement as to the Protected Information, the terms of this Agreement will govern.

Provider Responsibility for Employees and Agents

In connection with access to Harvard Pilgrim's secured provider web portal (HPHConnect), Provider shall be responsible for assuring that its employees and agents fully comply with all of the obligations of Provider under this Agreement, including the User Agreement, as set forth in the Provider Manual, in the Chapter captioned "Requirements for EDI and Online Solutions." Any violations by Provider's employees or agents shall be considered violations by the Provider.

MISCELLANEOUS TERMS**Term and Termination**

The term of this Agreement shall commence upon the effective date of the Provider's access to HPHConnect or the parties electronic data interchange via FTP, VPN or other electronic channels and shall continue until Provider no longer receives Protected Information from Harvard Pilgrim ("Term"). Harvard Pilgrim shall have the right to stop providing Protected Information at any time. Any termination will not alter the rights or duties of the parties with respect to Protected Information received before the effective date of the termination.

Severability

Any provision of this Agreement, which is determined to be invalid or unenforceable, will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

Entire Agreement

This Agreement constitutes the complete agreement of the parties relating to the matters specified in this Agreement and, except as otherwise provided herein, supersedes all prior representations or agreements, whether oral or written, with respect to such matters. This Agreement may be amended only by a written instrument signed by Harvard Pilgrim and Provider. This Agreement is for the benefit of, and shall be binding upon, the parties and their respective successors and assigns.

Governing Laws

This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws provisions, and the Commonwealth of Massachusetts shall be the sole forum for resolution of disputes regarding this Agreement or the subject matter thereof.

Specific Performance

The parties hereby agree and affirm that the subject matter of this Agreement is unique, and that it may be impossible to measure the damages, which would result to Harvard Pilgrim from violations by Provider of the agreements set forth herein. Accordingly, in addition to any other remedies which Harvard Pilgrim may have at law or in equity, the parties hereby agree that Harvard Pilgrim shall have the right to have all obligations and other provisions of this Agreement specifically performed by the Provider, as applicable, and that Harvard Pilgrim shall have the right to seek preliminary and permanent injunctive relief to secure specific performance, and to prevent a breach or contemplated breach, of this Agreement, without, in any case, proof of actual damages.

Audit

Harvard Pilgrim shall have the right, at its own expense, to conduct an audit of Provider at any time during normal working hours upon reasonable notice to Provider to determine if Provider is in compliance with the terms of this Agreement.

Limitation of Liability

To the full extent allowed by applicable law, Harvard Pilgrim and its directors, officers and employees, affiliates, subsidiaries, successors and assigns, and third-party agents will not be liable, directly or indirectly, for any incidental, punitive, exemplary, special, indirect or consequential damages, for any reason arising from or relating to Provider's use of or access to any Harvard Pilgrim Protected Information, or any provision of this agreement, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

To the full extent allowed by applicable law, in no event will Harvard Pilgrim and its directors, officers and employees, affiliates, subsidiaries, successors and assigns, and third-party agents' have any liability for any damages arising from or relating to this agreement or Provider's use of the any Protected Information except for damages arising solely from Harvard Pilgrim's gross negligence or willful misconduct.

Provider Agreements

If Provider is representing another entity for claims submission and payment activities, then Provider shall have an agreement with such entity. Provider also agrees to inform Harvard Pilgrim of the addition or deletion of entities which it is representing.