

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is by and between Empire HealthChoice, Inc. d/b/a Empire Blue Cross and Blue Shield (“Empire”), which agreement was assigned to WellChoice, Inc. (“WellChoice”) as of November 7, 2002 and the undersigned broker (“Broker”).

WHEREAS, WellChoice has determined that Broker performs certain functions or services for WellChoice involving the creation, use or disclosure of Protected Health Information as that term is defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); and

WHEREAS, WellChoice and Broker mutually agree to enter into this Agreement to comply with the requirements of HIPAA and its implementing regulations (the “Privacy Rule”, 45 C.F.R. Parts 160-64). For purposes of this Agreement, WellChoice shall be considered a “Covered Entity” and Broker shall be considered a “Business Associate”, as these terms are defined below.

For purposes of this Agreement, WellChoice shall include a corporation which directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with WellChoice, Inc., and specifically includes Empire HealthChoice Assurance, Inc., d/b/a Empire Blue Cross Blue Shield, and Empire HealthChoice HMO, Inc., d/b/a/Empire Blue Cross Blue Shield HMO.

For purpose of this Agreement, the term Broker in certain instances as reasonably determined by WellChoice shall include any duly individual licensees and licensed brokers who are represented or held out to be employees, agents or affiliates of the Broker.

NOW, THEREFORE, the parties agree as follows:

HIPAA PRIVACY AND SECURITY REQUIREMENTS

A. Definitions.

- (i). The “Privacy Rule” shall mean the HIPAA regulations governing individually identifiable health information codified at 45 C.F.R. Parts 160 and 164.
- (ii). “Protected Health Information” or “PHI” shall have the meaning given to such term under the Privacy Rule, including 45 C.F.R. § 160.103, created or received by Broker under the terms of this Agreement.
- (iii). “Covered Entity” shall have the meaning given to such term under the Privacy Rule, including 45 C.F.R. § 160.103.
- (iv). “Business Associate” shall have the meaning given to such term under the Privacy Rule, including 45 C.F.R. § 160.103.
- (v). "Individual" shall have the same meaning given to such term under the Privacy Rule, including 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

- B. Obligations of Broker under the Privacy Rule. Pursuant to this Agreement or in connection with Broker's agreement(s) with WellChoice , WellChoice may be required to disclose certain PHI to Broker, and Broker may receive such PHI or create PHI on WellChoice 's behalf in connection with its obligations under this Agreement. Broker shall use appropriate safeguards to protect the privacy and provide for the security of PHI disclosed to Broker pursuant to this Agreement in compliance with the Privacy Rule. Broker may use and disclose PHI created or received pursuant to this Agreement only as follows:
- (i). To Carry Out the Purposes of this Agreement. Broker may use and disclose PHI received from WellChoice or created on behalf of WellChoice to perform its obligations under this Agreement or in connection with Broker's agreement(s) with WellChoice , solely in accordance with the specifications set forth in this Agreement or as required by law.
 - (ii). Specific Use and Disclosure
 - (a). Except as otherwise limited in this Agreement or in Broker's agreement(s) with WellChoice , Broker may use PHI for the proper management and administration of the Broker or to carry out the legal responsibilities of the Broker.
 - (b). Except as otherwise limited in this Agreement or in Broker's agreement(s) with WellChoice , Broker may disclose PHI for the proper management and administration of the Broker, provided that disclosures are required by law, or Broker obtains reasonable written assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Broker of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (c) Except as otherwise limited in this Agreement or in Broker's agreement(s) with WellChoice , Broker may use PHI to provide Data Aggregation services to WellChoice as permitted by 42 CFR 164.504(e)(2)(i)(B).
 - (iii). Nondisclosure. Broker shall not use or further disclose the PHI received from or created on behalf of WellChoice in a manner that would violate the requirements of the Privacy Rule (including the minimum necessary requirements), if done by WellChoice or any covered entity that WellChoice serves in the capacity of a business associate.
 - (iv). Safeguards. Broker shall use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for under this Agreement, including adopting policies and procedures regarding the safeguarding of PHI; providing training to relevant employees, independent contractors and subcontractors on such policies and procedures to prevent the improper use or disclosure of PHI; and implementing appropriate technical safeguards to protect PHI.
 - (v). Reporting Improper Disclosures. Broker shall report in writing to WellChoice any use or disclosure of the PHI not provided for under this Agreement, of which Broker becomes aware promptly but in no event later than five (5) Business Days of first learning of any such use or disclosure.

- (vi). Mitigation. Broker agrees to mitigate to the extent practicable, any harmful effect that is known to Broker of a use or disclosure of PHI by Broker in violation of the requirements of this Agreement.
- (vii). Use of Agents and Subcontractors. Broker shall ensure that any Subcontractors or agents to whom Broker provides PHI created or received pursuant to this Agreement agree in writing to the same restrictions and conditions, as set forth in this Agreement, that apply to Broker with respect to such PHI.
- (viii). Availability of Information to WellChoice. Within ten (10) Business Days of receipt of a request from WellChoice , Broker shall, in accordance with such WellChoice request, make PHI available to WellChoice , provide WellChoice access to PHI, and/or make a copy of PHI available to WellChoice , all in accordance with the Privacy Rule, including 45 C.F.R. § 164.524. If an individual requests PHI directly from Broker, Broker shall not give the individual access to the PHI unless access is approved by WellChoice . WellChoice shall have full discretion to determine whether the individual shall be given access. If Broker receives, directly or indirectly, a request from an individual requesting PHI, Broker shall notify WellChoice in writing promptly after and of such individual's request for PHI no later than ten (10) business days of receiving such request.
- (ix). Amendment of PHI. Within ten (10) business days of a request from WellChoice , Broker shall make WellChoice 's PHI available to WellChoice as it may request to fulfill its obligations to amend such PHI pursuant to the Privacy Rule, including 45 C.F.R. § 164.526. Broker shall incorporate any amendments to WellChoice 's PHI into any and all PHI Broker maintains. If the individual requests an amendment to PHI directly from Broker, Broker shall not amend the PHI unless directed by WellChoice . WellChoice shall have full discretion to determine whether the amendment shall occur. If Broker receives, directly or indirectly, a request from an individual requesting an amendment to PHI, Broker shall notify WellChoice in writing promptly after and of such individual's request for an amendment to PHI no later than ten (10) business days of receiving such request.
- (x). Accounting of PHI. Within ten (10) business days of notice by WellChoice of a request for an accounting of disclosures of PHI by Broker or its subcontractors, Broker shall make available the account of such disclosures to WellChoice as requested for WellChoice to fulfill its obligations to provide an accounting pursuant to the Privacy Rule, including 45 C.F.R. § 164.528. Broker shall implement a process that allows for such an accounting. If the individual requests an accounting of disclosures of PHI directly from Broker, Broker shall not provide the individual the account of such disclosures unless directed by WellChoice . WellChoice shall have full discretion to determine whether the individual shall be given such accounting. If Broker receives, directly or indirectly, a request from an individual requesting an accounting of PHI, Broker notify WellChoice in writing promptly after and of such individual's request for an accounting of disclosures of PHI no later than ten (10) business days of receiving such request.
- (xi). Availability of Books and Records. Broker shall make its internal practices, books, and records relating to the use and disclosure of PHI received or created pursuant to this Agreement available to the Secretary of Health and Human Services for purposes of determining WellChoice 's (or any covered entities that WellChoice services) compliance with the Privacy Rule.

- (xii). Record Retention. Broker shall retain all PHI received from WellChoice , or created or received in the course of performing its obligations under this Agreement, for the duration of the term of this Agreement unless otherwise directed by WellChoice .
- (xiii). Minimum Necessary Amount of PHI. Broker shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purposes of the request, use or disclosure.
- (xiv). Audits and Inspection. Notwithstanding any provision set forth in this Agreement to the contrary, if WellChoice , in good faith, believes that Broker has breached any provision of this Agreement, then upon providing five (5) business days' written notice, WellChoice may inspect Broker's facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement, for the purpose of determining whether Broker has complied with this Agreement.

C. Obligations of WellChoice under the Privacy Rule.

- (i) WellChoice shall notify Broker of any limitation(s) in its notice of privacy practices of WellChoice in accordance with 45 CFR §164.520, to the extent that such limitation may affect Broker's use or disclosure of PHI.
- (ii) WellChoice shall notify Broker of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Broker's use or disclosure of PHI.
- (iii) WellChoice shall notify Broker of any restriction to the use or disclosure of PHI that WellChoice has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Broker's use or disclosure of PHI..
- (iv) WellChoice shall not request Broker to use or disclosure PHI in any manner that would not be permissible under the Privacy Rule if done by WellChoice , except that the Broker may use or disclose PHI as permitted by the contract, for data aggregation or management and administrative activities of Broker.

D. Termination.

- (i). Upon termination of this Agreement for any reason, Broker shall return and/or destroy all PHI received or created pursuant to this Agreement that Broker maintains in any form, and shall retain no copies of such PHI; or, if return or destruction is not feasible, Broker shall notify WellChoice in writing and continue to extend protections of this Agreement to such information, and shall certify to WellChoice in writing that it will limit further use or disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as Broker maintains such PHI. Upon the return to WellChoice or destruction of all PHI, Broker shall certify to WellChoice in writing its return to WellChoice or destruction of all such PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Broker.
- (ii). Subject to Agreement (iii), WellChoice may terminate this Agreement, if Broker violates a material term of this Agreement.

Cure. Upon WellChoice 's knowledge of a material breach by Broker of this Agreement, Broker shall have the opportunity to cure such violation, as set forth in the Agreement, or if there is no such provision to cure, then within thirty (30) days of notice by WellChoice to Broker of such violation. If such violation is not cured within the time period set forth in the Agreement or this Agreement, WellChoice may declare a material breach of the Agreement and terminate the Agreement or, if not feasible to terminate the Agreement, report the problem to the Secretary of U.S. Health and Human Services, as set forth in 45 C.F.R. § 164.504(e)(1)(ii)(B).

- E.** Indemnity. Broker will indemnify and hold harmless WellChoice and any WellChoice affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of PHI or other breach of this Agreement by Broker or any subcontractor, agent, person or entity under Broker's control.
- F.** Modifications to Privacy Rule. If the Privacy Rule is modified in any way impacting this Agreement, the Parties shall as soon as reasonably possible, but no later than the compliance date for such modifications, amend this Agreement to ensure compliance with such modifications.
- G.** Interpretation of this Agreement. Any ambiguity in the terms set forth in this Agreement shall be construed to permit WellChoice 's full compliance with the Privacy Rule.
- H.** Other HIPAA Administrative Simplification Regulations. As soon as reasonably possible but no later than the compliance date for any other HIPAA Administrative Simplification regulations, the Parties shall review this Agreement, and, as necessary, modify this Agreement to incorporate any relevant provisions.
- I.** Conflicts. The terms and conditions of this Agreement will override and control any conflicting term or condition of the Agreement. All non-conflicting terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, WellChoice and Broker execute this Agreement in multiple originals to be effective on the last date written below.

Broker/Brokerage

WellChoice, Inc.

By (Signature): _____

By (Signature): _____

By (Print): _____

By: (Print): Bryan D. Birch

Title: _____

Title: Senior Vice President & Chief Sales Officer

Date: _____

Date: _____

Social Security #: _____

License#: _____