
**CABINET FOR HEALTH AND FAMILY SERVICES
MEMORANDUM OF UNDERSTANDING
SAFEGUARDING INFORMATION
EXCHANGED BETWEEN THE CABINET AND FAMILY RESOURCE YOUTH SERVICE CENTERS**

This agreement, entered into on this the first day of June, 2007 by and between the Cabinet for Health and Family Services (hereinafter referred to as the "Cabinet"), and [*name and address of particular County Board of Education*] (hereinafter referred to as the "Second Party"),

WITNESSETH:

WHEREAS, KRS 194A.060(2) permits the Cabinet to share pertinent information from within the agency's records with public, quasi-public and private agencies if the agency has a direct, tangible and legitimate interest in the Cabinet's records; and

WHEREAS, KRS 205.177 permits the Cabinet to share information with any other state or local governmental agency of similar function when such agency has a direct, tangible and legitimate interest in the individual concerned or their immediate family; and

WHEREAS, KRS 620.050 (5)(d) permits the Cabinet to release information obtained by the Cabinet, or its delegated representative, as a result of an investigation or assessment made pursuant to KRS Chapter 620, to other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, that have a legitimate interest in the case; and

WHEREAS, Family Resource Youth Services Centers have been established to provide services which will enhance students' ability to succeed in school and promote identification and coordination of existing resources; and

WHEREAS, Family Resource Youth Service Centers have been established as part of the local Boards of Education; and

WHEREAS, the Cabinet and the Second Party desire to work cooperatively to provide services to the families of the Commonwealth of Kentucky, recognizing that the sharing information enables both parties to better assist families; and

WHEREAS, the Cabinet must comply with its statutory obligations and limitations pursuant to KRS Chapter 600 et seq.;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. The Second Party, by signing this agreement, agrees to:
 - a. Assure that information received from the Cabinet will be maintained as confidential and will not be copied or given to any other governmental agency, individual or private concerns without written permission of the Cabinet;
 - b. Take all precautions to assure that information is safeguarded and to maintain security over such information to assure it does not become available to unauthorized individuals;
 - c. Assure that only employees of the Second Party who are subject to the same standards of confidentiality as the Cabinet's employees will have access to information provided under this agreement;

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- d. ~~Only request from the Cabinet, information on individuals or their immediate families in which the Second Party has a direct, tangible and legitimate interest;~~
2. The Cabinet shall have access to any information the Second Party has, if deemed necessary to provide services to clients.
 3. Either party shall have the right to terminate this agreement at any time, upon 30 days written notice to the other party or immediately for cause.
 4. Both parties shall comply with the following provisions:

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996,
PUBLIC LAW 104-191, 45 CFR PARTS 160 AND 164 ("HIPAA PRIVACY RULE")..**

Section 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule").

This contract involves health information that is protected by HIPAA, thus, the following applies:

4.1 The Cabinet is a Covered Entity and the Second Party is a Business Associate under the HIPAA Privacy Rule. The Second Party may have access to Protected Health Information (as defined below) in fulfilling its responsibility under this Agreement. In the event of an inconsistency between the provisions of this agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this agreement are different from those mandated in the HIPAA Privacy Rule but are nonetheless permitted by the HIPAA Privacy Rule, the provision of the agreement shall control.

Any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule.

The term "Protected Health Information" (hereafter "PHI") means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, 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; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. The Second Party acknowledges and agrees that all PHI that is created or received by the Cabinet and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by the Cabinet or its operating units to the Second Party or is created or received by the Second Party on the Cabinet's behalf shall be subject to this Agreement.

4.2 Confidentiality Requirements

4.2.1. The Second Party agrees:

- a. to use or disclose any PHI solely (1) for meetings its obligations as set forth in any agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom CE is required to disclose such information or as otherwise is permitted under this Agreement, or the HIPAA Privacy Rule;

b. at termination of this Agreement (or any similar documentation of the business relationship of the Parties, or upon request of the Cabinet,, whichever occurs first), if feasible, the Second Party will return or destroy all PHI received from or created or received by the Second Party on behalf of the Cabinet that the Second Party still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, the Second Party will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

c. to ensure that its agents, including a subcontractor, to whom it provides PHI received from or created by the Second Party on behalf of the Cabinet, agrees to the same restriction and conditions that apply to the Second Party with respect to such information. In addition, the Second Party agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause the Second Party to breach the terms of this Agreement.

4.2.2 Notwithstanding the prohibitions set forth in this Agreement, the Second Party may use and disclose PHI as follows:

a. if necessary, for the proper management and administration of the Second Party or to carry out the legal responsibility of the Second Party, provided that as to any such disclosure, the following requirements are met:

(i) the disclosure is required by law; or

(ii) the Second Party obtains reasonable assurances from the person to whom the information is disclosed that it 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 the person notifies the Second Party of any instances of which it is aware in which the confidentiality of the information has been breached.

b. for data aggregation services, if to be provided by the Second Party for health care operations of a covered entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of PHI by the Second Party with the PHI received by the Second Party in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

4.2.3 The Second Party will implement appropriate safeguards to prevent use or disclosure of PHI other than as permitted in this Agreement. The Cabinet shall have the right to audit the Second Party's records and practices related to use and disclosure of PHI to ensure the Cabinet and the Second Parties' compliance with the terms of the HIPAA Privacy Rule. The Second Party shall report to the Cabinet any use or disclosure of PHI, which is not in compliance with the terms of this Agreement of which it becomes aware. In addition, the Second Party agrees to mitigate to the extent practicable, any harmful effect that is known to the Second Party of a use or disclosure of PHI by the Second Party, its agents, or subcontractors in violation of these terms.

4.3 Availability of PHI

The Second Party agrees to make available PHI to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. The Second Party agrees to make PHI available for amendment and incorporate any amendments to PHI in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, the Second Party agrees to make PHI available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

4.4 Termination

Notwithstanding anything in this Agreement to the contrary, the Cabinet shall have the right to terminate this Agreement immediately if the Cabinet determines that the Second Party has violated any material term of this Agreement. If the Cabinet reasonably believes that the Second Party will violate a material term of this Agreement and, where practicable, the Cabinet gives written notice to the Second Party of such belief within a reasonable time after forming such belief, and the Second Party fails to provide adequate written assurances to the Cabinet that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, the Cabinet shall have the right to terminate this Agreement immediately.

4.5 Miscellaneous

Except as expressly stated herein or the HIPAA Privacy Rule, the Parties to this Agreement do not intend to create any rights in any third parties. The obligations of the Second Party under this Section shall survive the expiration, termination, or cancellation of this Agreement, and/or the business relationship of the Parties, and shall continue to bind the Second Party, its agents, employees, contractors, successors, and assigns as set forth herein.

The parties agree that, in the event that any documentation of the arrangement pursuant to which the Second Party provides services to the Cabinet contains provisions relating to the use or disclosure of PHI which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of the Agreement are intended to establish the minimum requirements regarding the Second Party's use and disclosure of PHI.

The Cabinet may seek an injunction for a breach of this business associate agreement.

5. This Agreement may be amended or modified only in writing and only by mutual consent of the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement is intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the Commonwealth of Kentucky and the Parties hereby agree that any legal action brought on the basis of this agreement shall be filed in the Circuit Court of Franklin County, Kentucky. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

6. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

7. This agreement shall be effective on July 1, 2007 and will terminate on June 30, 2008, unless previously terminated or canceled by one of the parties, pursuant to the terms herein..

For _____ Board of Education

For the Cabinet for Health & Family Services:

Title: Superintendent

Date: _____

Approved as to form and legality:

Attorney
Cabinet for Health & Family Services

Date: _____

Title: Commissioner

Date: _____