

Davis Behavioral Health HIPAA Policies

Effective 4/14/03

Updated 9/14/21

Uses and Disclosures

Policy 1 Uses and Disclosures: For Treatment, Payment, and Health Care Operation

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the uses and disclosures of PHI from individuals with whom it has a direct treatment relationship.

Policy

Davis Behavioral Health will use and disclose PHI of clients for treatment, payment, and health care operations without obtaining explicit permission from those clients. However, Davis Behavioral Health will make our best effort to obtain a release of information from those clients in the areas of treatment and payment. We will not request an authorization to release information in the area of health care operations. Additionally, Davis Behavioral Health will make our best effort to obtain a written acknowledgement from each client that he/she has received a copy of our Privacy Notice prior to providing treatment.

Individuals seeking treatment have the right to request that Davis Behavioral Health restricts our uses and disclosures of their PHI for treatment, payment, and health care operations. Davis Behavioral Health is not obliged to agree to those restrictions, but, if we do, we must abide by them. Therefore, restrictions will not be granted without the express permission of the Privacy Officer who will evaluate an individual's request and determine:

1. If the restrictions are reasonable and
2. If it is possible to implement the restriction in our practice.

Should the request be granted, the Restriction Form will reflect the restrictions that have been allowed. See Policy 13 for complete information on Restrictions.

Davis Behavioral Health will, in all cases where a personal representative requests PHI on behalf of a client, consider the appropriateness of the request. In any case where Davis Behavioral Health elects not to treat a person as a legal representative, we will do so because:

1. Davis Behavioral Health has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

2. Davis Behavioral Health, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the client's legal representative.

In any such case, it is the policy of Davis Behavioral Health to document that decision in the medical record and inform the Privacy Officer.

Uses and Disclosures

Policy 2 Uses and Disclosures: Authorizations

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the conditions for obtaining authorization, from individuals with whom it has a direct treatment relationship, for any use and/or disclosure of PHI that is not covered by the consent requirement or is not otherwise permitted or required under the Privacy Rule.

Policy

Davis Behavioral Health will obtain a signed authorization that meets the standards of the Privacy Rules from individuals prior to using or disclosing PHI in those situations in which authorizations are required under the Rule. A copy of the authorization form presently in use in the Agency is found at the end of this policy.

Individuals seeking treatment have the right to refuse to provide authorizations for use and disclosure of their PHI. Davis Behavioral Health may not refuse to treat individuals who withhold their authorization except in the following circumstances:

1. Treatment is research-related for the use or disclosure of PHI for such research; or
2. The authorization is for PHI to be created in the course of treatment for the purpose of disclosure to a third party.

Clients may revoke an authorization at any time. The revocation must be in writing. Any actions that Davis Behavioral Health has taken in reliance on a client's consent will not be affected by the revocation. Davis Behavioral Health is not required, for example, to retrieve PHI that we have disclosed prior to the revocation. Should any employee be informed verbally that an individual has revoked an authorization provided to another entity, that employee should immediately inform the Privacy Officer

Davis Behavioral Health may amend the authorization form presently in use as long as it is written in plain language and the following elements are present in the amended authorization form:

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
2. The name or specific ID of the person(s), or class of persons, authorized to make the requested use or disclosure;
3. The name or other specific ID of the person(s), or class of persons, to whom Davis Behavioral Health may make the requested use or disclosure;
4. A description of each purpose of the requested use or disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose;
5. An expiration date or event that relates to the individual or the purpose of the use or disclosure. The statement “end of the research study”, “none”, or similar language is sufficient if the authorization is for a use or disclosure of PHI for research, including for the creation and maintenance of a research database or research repository.
6. The signature of the individual and the date. If signed by a personal representative, a description of the authority of that person to act for the individual must be provided.

Required Statements in the Authorization Form

In addition to the core elements listed above, an authorization must contain statements that put the individual on notice of all of the following:

1. The individual’s right to revoke authorization in writing and either:
 - a. The exceptions to the right to revoke along with a description of how to revoke; or
 - b. A reference to the Privacy Notice if Davis Behavioral Health’s Notice contains the information in a. above.
2. Davis Behavioral Health may only condition treatment (or payment by Davis Behavioral Health if applicable) on obtaining a signed authorization when:
 - a. It is providing research-related treatment and the authorization provides for the use or disclosure of PHI for such research; or
 - b. It is providing treatment solely for the purpose of creating PHI for disclosure to a third party and the authorization is for the disclosure of PHI to that third party.
3. The potential for PHI disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by the Privacy Rule.

An authorization that lacks any of these elements or statements is a defective authorization and will have no effect, therefore, Davis Behavioral Health requires that all of these elements or statements be in place in any authorization form version that may be developed in the future.

In any situation where the specificity of the request is inadequate to provide assurance that Davis Behavioral Health will disclose the correct information, the authorization should be considered defective.

In any situation where the relevant PHI will require extensive redaction, the individual will be given their entire record that he/she can redact prior to disclosure to the requestor of the information.

In any situation where Davis Behavioral Health has conflicts between two or more authorizations or other forms of legal permission in our possession for the same individual for the use and disclosure the same PHI, Davis Behavioral Health will attempt to obtain a new, conforming written authorization that resolves the conflict between the other documents. When a new authorization cannot be obtained, Davis Behavioral Health will rely upon the most restrictive form of permission in our possession.

Substance Abuse Providers

Federal regulations governing the confidentiality of substance abuse information (42 CFR, Part 2) are generally more restrictive than HIPAA and, therefore, Davis Behavioral Health will follow these regulatory requirements whenever the PHI of any client in a federally-assisted alcohol or drug abuse program is disclosed. In any of our federally-assisted alcohol or drug abuse programs, Davis Behavioral Health must always obtain specific authorization for each disclosure of client records or other information concerning a client unless one of the regulatory exceptions applies. See Policy 1, Uses and Disclosures (the section for Substance Abuse Providers). The authorization form (called a “consent” form in the substance abuse federal regulations) will meet the regulatory requirements incorporated in the Form attached to this Policy.

Davis Behavioral Health

934 South Main Street, Layton, UT 84041 (801) 773-7060

AUTHORIZATION TO USE AND DISCLOSE HEALTH INFORMATION

Name: _____ Date of Birth: _____

Address: _____ SSN: _____

City: _____ State: _____ Zip Code: _____

Former Name: _____ Phone Number: _____

SECTION A: USE OR DISCLOSURE OF HEALTH INFORMATION

By signing this Authorization, I authorize the use or disclosure of my individually-identifiable health information maintained

by Davis Behavioral Health, Inc. (the "Provider") to the recipient(s) named below. I also expressly consent to the

disclosure by Provider and its therapists of any confidential information disclosed by me to a mental health therapist.

Check if applicable:

I also waive the patient-mental health therapist privilege set forth in Rule 506, Utah Rules of Evidence, as it relates to

any such information.

My health information may be disclosed under this Authorization to the following individual(s) or organization(s) (the "Recipient"):

Print Name or Organization

Print Address, City, State, Zip Code Print Phone Number

Health information includes information collected from me or created by the Provider, or information received by the Provider from

another health care provider, a health plan, my employer, or a health care clearinghouse. Health information may relate to my

past, present or future physical or mental health or condition, the provision of my health care, or payment for my health care

services. Any provider that operates a federally-assisted alcohol or drug abuse program is prohibited from disclosing information

about treatment for alcohol or drug abuse without my specific written authorization unless a disclosure is otherwise authorized by

federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR, Part 2).

SECTION B: SPECIFIC INFORMATION TO BE RELEASED:

Psychiatric Evaluation/Assessment Discharge Summary

Treatment Plans Alcohol and Drug Records

Progress Notes Other: _____

Medication History

Please choose one of the following:

I authorize only copies of records to be sent (immediately) to the person(s) listed in Section A.

I authorize only verbal communication with the person(s) listed in Section A.

I authorize both verbal communication and copies of records (to be sent immediately) to the person(s) listed in Section A.

I authorize both verbal communication and copies of records (to be sent only upon my further notice) to the person(s)

listed in Section A.

SECTION C: PURPOSE OF THE USE OR DISCLOSURE

The purpose(s) of this Authorization is (are):

Continuation of care.

Specifically, the following purpose(s) : _____

This request for information to be used or disclosed has been initiated by the Client and the Client does not elect to

disclose its purpose. Note: This box may NOT be checked if the information to be used or disclosed pertains

to alcohol or drug abuse identity, diagnosis, prognosis or treatment.

SECTION D: EXPIRATION

This authorization and consent is subject to revocation at any time except to the extent that Provider has already taken action in reliance on it. If not

previously revoked, this consent will terminate in 90-days, unless otherwise noted here:

_____ Insert applicable event or date – mm/dd/yy) Note: If an expiration event is used, the event must relate to the consumer or the purpose of the

use or disclosure.

SECTION E: OTHER IMPORTANT INFORMATION

1. . I understand that I may refuse to sign this Authorization and that my refusal to sign will not affect my ability to obtain treatment (or

payment, if applicable) from Provider, except when I am (i) receiving research-related treatment or (ii) receiving health care solely for

the purpose of creating information for disclosure to a third party. If either of these exceptions apply, my refusal to sign an authorization

will result in my not obtaining treatment (or payment, if applicable) from Provider.

2. . I understand that I may revoke this Authorization in writing at any time, except that the revocation will not have any effect on any

action taken by the Provider in reliance on this Authorization before written notice of revocation is received by the Provider. I further

understand that that I must provide any notice of revocation in writing to the Provider's Privacy Office. The address of the Privacy

Office is 934 South Main Street, Layton, Utah, 84041.

3. . This paragraph is only applicable to certain Authorizations to disclose health information for marketing purposes: I

understand that Provider may, directly or indirectly, receive remuneration from a third party in connection with marketing activities

undertaken by Provider.

4. . Provider hereby binds itself to safeguard the records and not re-disclose any medical records in violation of law.

5.. I understand that the Provider cannot guarantee that the Recipient will not re-disclose my health information to a third party. The

Recipient may not be subject to federal laws governing privacy of health information. However, if the disclosure consists of treatment

information about a consumer in a federally-assisted alcohol or drug abuse program, the Recipient is prohibited under federal law from

making any further disclosure of such information unless further disclosure is expressly permitted by written consent of the consumer or

as otherwise permitted under federal law governing Confidentiality of Alcohol and Drug Abuse Patient Records.

(42 CFR, Part 2). Any authorized disclosure of drug or alcohol treatment information will be

accompanied by the following notice:

I have read and understand the terms of this Authorization. I have had an opportunity to ask questions about the use or

disclosure of my health information.

Client signature: _____ Date of signature:

Print client's full name:

Staff Member/Witness Signature: _____ Date of signature:

Relationship to client: _____

*When client is not able (e.g. incompetent) to give consent, the signature of a parent, guardian, or other authorized legal

representative is required.

Signature of legal representative: _____ Date of signature
: _____

Print legal representative's name: _____ Relationship to client: _____

Uses and Disclosures

Policy 3 Uses and Disclosures: Opportunity for the Individual to Agree or Object

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the conditions for providing clients with an opportunity, in advance of the use or disclosure of PHI for

- a. Involving other people in the individual's care, or
- b. For notification about a client's location, general condition, or death
to agree to that particular use or disclosure, to prevent it, or to restrict it.

Policy

Davis Behavioral Health will verbally inform each individual, during the intake process, of their right to prevent or restrict Davis Behavioral Health from

- a. Disclosing PHI about them to persons involved in their care; and
- b. Notifying persons about their location, general condition, or death.

The HIPAA Privacy Rules allows for Davis Behavioral Health to maintain facility directories. However, Davis Behavioral Health does not maintain a facility directory at any of our units. If asked, we will not confirm orally, in writing, or through any other medium that an individual is our current or former client.

With regard to clients who are present and have the capacity to make decisions, PHI may only be disclosed to people involved in their care (meaning relatives, friends, or community support people), if we:

1. Notify the client in advance of the anticipated disclosure and obtain their agreement to disclose;
2. Provide the clients with the opportunity to object to disclosures of PHI and the client does not express an opinion; or
3. Can, in the exercise of our professional judgment, infer from the circumstances that the client does not object to the disclosure of PHI.

With regard to clients who are not present or who are incapacitated or in an emergency situation, Davis Behavioral Health will disclose the minimum necessary PHI to persons involved in the client's care:

- 1) If the client is not a ward of the state or does not have a Advance Directive, court-appointed guardian, or other fiduciary, and
- 2) If Davis Behavioral Health determines in the exercise of our professional judgment that it is in the client's best interest.

It will be our policy, when disclosing PHI to persons involved in the client's care, to limit disclosures to PHI about the current circumstance. In addition, should the care provider believe, in the exercise of his/her professional judgment, that a disclosure of PHI might cause the client serious harm, the care provider may withhold PHI from the person involved in their care. Care providers should use their professional judgment about the scope of the person's involvement in the client's care (both to the length of time of that person's involvement and to the depth of disclosure of PHI that is appropriate) in a particular circumstance.

In disaster situations, no individual agreement will be required prior to disclosure of PHI to federal, state, or local agencies involved in disaster relief activities. This policy also applies to any private disaster relief organization that is authorized by law or their charters to assist in disaster relief efforts.

Uses and Disclosures

Policy 4 Uses and Disclosures: No Permission Required

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, sets out, in this policy, the conditions for responding to requests for disclosure of PHI in compliance with law and limited to the relevant requirements of the law that do not require the initial authorization or prior consent of the client.

Policy

Davis Behavioral Health has appointed a Privacy Officer, who is responsible for processing all requests for disclosures of PHI from external authorities in compliance with law and limited to the relevant requirements of that law. We recognize that we are not compelled to make disclosures by the Privacy Rule, but that we may do so without fear of further penalty under the Privacy Rule.

Disclosures of PHI, without permission or consent of the client, may or will (depending on the law and duty to report) occur under the following circumstances.

Public Health Uses: Disclosures of PHI may be made by Davis Behavioral Health without individual authorization to:

- 1) A public health authority authorized to receive PHI for the purpose of preventing or controlling disease, injury, or disability;
- 2) A public health authority or any other appropriate authority authorized by law to receive reports and do investigations of child abuse or neglect;
- 3) A person subject to FDA jurisdiction (who is responsible for the quality, safety, or effectiveness activities of a particular product) to collect/report adverse events, product defects, or biological product deviations, to track FDA regulated products, to enable product recalls, repairs, or replacement/look backs, or to conduct post-marketing surveillance;
- 4) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition and who was authorized by law to be notified (typically in the conduct of a public health investigation or intervention); or
- 5) An employer generally in those situations where there are work-related injuries or workplace medical surveillance. Agencies, who make disclosures to employers, must provide notice to individuals that they do.

Victims of Abuse, Neglect or Domestic Violence: (other than child abuse, see above) When Davis Behavioral Health reasonably believes an individual is a victim of abuse, neglect, or domestic violence, disclosures of PHI may be made without individual authorization to a legally appointed governmental authority when:

- 1) It is required by law and the disclosure complies with and is limited to the requirements of the law, and Davis Behavioral Health informs the individual (victim) that the report has been made;
- 2) The individual (victim) agrees to the disclosure; or
- 3) It is expressly authorized by statute or regulation and either
 - a. Davis Behavioral Health, in the exercise of its professional judgment, believes that disclosure is necessary to prevent serious harm to the individual or other potential victims; or
 - b. The individual is unable to agree due to incapacity and the official who is to receive the information represents that he/she does not intend to use the PHI against that individual, and that an immediate enforcement activity depends upon the PHI and would be materially and adversely affected by waiting for the individual to recover.

In each of these cases, the individual must be notified that the disclosure was made. There are two exceptions:

- a. If Davis Behavioral Health believes, in the exercise of its professional judgment, that informing the individual would place the individual at risk of serious harm or
- b. If the person to be informed, as a personal representative, is the one believed responsible for the abuse, neglect, or other injury and that it would not be in the individual's best interest as determined Davis Behavioral Health, exercising professional judgment, to inform the personal representative.

Health Oversight: Disclosures of PHI may be made by Davis Behavioral Health without individual authorization to health oversight agencies. Disclosures must be for the purpose of oversight of the health care system.

Judicial and Administrative Proceedings: Disclosures of PHI may be made by Davis Behavioral Health without individual authorization when the request for PHI is made through or pursuant to an order from a court or administrative tribunal, or in response to a subpoena or discovery request, or other lawful process, by a party to the proceeding. Any staff member receiving a subpoena must consult with the Privacy Officer or his designee, who will determine in consultation with legal counsel, the appropriateness of our response. In this process, Davis Behavioral Health must ensure that the client's privileged communication is protected and that the client has the opportunity to assert that privilege.

Prior to delivering the subpoenaed records, Davis Behavioral Health should review the record and identify and redact any "sensitive information", such as HIV status or other information limited by state law, unless they have obtained a specific authorization of the individual to disclose such information. If there is information regarding substance abuse, Davis Behavioral Health must comply with the policies and procedures below regarding substance abuse records.

Law Enforcement Purposes: Disclosures of PHI may be made by Davis Behavioral Health, without individual authorization, to law enforcement officers for law enforcement purposes when disclosure of the PHI is required by law or the PHI is made in compliance with:

- a. A court order or court-ordered warrant or a subpoena or summons issued by a judicial officer;
- b. A grand jury subpoena;
- c. A civil investigative demand, administrative subpoena or summons or similar process if the request meets certain conditions related to the nature of the information sought.

Davis Behavioral Health may also disclose limited identifying information in response to a request from law enforcement for the purpose of identifying a suspect, fugitive, material witness, or missing person, but only if the individual agrees to the disclosure or Davis Behavioral Health determines that the law enforcement purpose is to meet a serious danger to the individual or other persons.

Davis Behavioral Health may also disclose PHI about an individual who is a victim of a crime, without a court order or without being required to do so by law. However, Davis Behavioral Health may do so only if the disclosure has been requested by a law enforcement official and the victim agrees to the disclosure or, in the case of the victim's incapacity, the following occurs:

- a. The law enforcement official represents to Davis Behavioral Health that (i) the victim is not the subject of the investigation and (ii) an immediate law enforcement activity to meet a serious danger to the victim or others depends upon the disclosure; and
- b. Davis Behavioral Health determines, exercising professional judgment, that the disclosure is in the victim's best interest.

Davis Behavioral Health may also disclose to law enforcement officials, PHI about an individual who has died for the purpose of alerting law enforcement to the death of the individual if Davis Behavioral Health suspects that the death may be the result of criminal conduct.

About Decedents: Disclosures of PHI, including psychotherapy notes, may be made by Davis Behavioral Health, without individual authorization, to the medical examiners for identification of a deceased person or to determine the cause of death provided that the chief medical examiner or his designee has deemed the PHI relevant to establishing the cause and manner of death. PHI may also be disclosed to funeral directors as necessary to carry out their legal duties.

Cadaveric Donation of Organs, Eyes, or Tissues: Disclosures of PHI may be made by Davis Behavioral Health, without individual authorization, to organ procurement and similar organizations.

Research Purposes: Disclosures of PHI may be made by Davis Behavioral Health, without individual authorization, as long as Davis Behavioral Health obtains:

1. Certain representations from the researcher;
2. Documentation identifying the IRB or privacy board and the date on which the alteration or waiver of authorization has been approved;
3. A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:
 - a. That the use or disclosure of PHI involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements:
 - 1) An adequate plan to protect the identifiers from improper use and disclosure;
 - 2) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct or the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and
 - 3) Adequate written assurances that the PHI will not be reused or disclosed to any other person or entity, except as required by law for oversight purposes or for other research that would be permitted under the Privacy Rule.
 - b. The research could not be conducted without the waiver or alteration; and
 - c. The research could not be conducted without access to and use of the PHI.

4. A brief description of the PHI that is determined to be necessary;
5. A statement that the alteration or waiver of authorization has been reviewed and approved under either normal or expedited review procedures, as follows:
 - a. An IRB must follow the requirement of the Common Rule;
 - b. A privacy board must review the proposed research at convened meetings at which a majority of members are present (at least one of whom is not affiliated with Davis Behavioral Health, the research sponsor, or related to any person who is affiliated with such entities);
 - c. With respect to a privacy board, an expedited review procedure can be used if the research involves no more than minimal risk to the privacy of individuals who are subject of the PHI for which use or disclosure is sought. The review and approval may be carried out by the chair of the privacy board or by a member designated by the chair; and
 - d. The documentation of the waiver or alteration must be signed by the chair or designated member.

To Avert a Serious Threat to Health or Safety: Disclosures of PHI may be made by Davis Behavioral Health, without individual authorization, when Davis Behavioral Health believes, in good faith, that PHI:

- a. Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and that the disclosure is to a person(s) reasonably able to prevent or lessen the threat, including the target of the threat; or
- b. Is necessary for law enforcement authorities to identify or apprehend an individual who has made a statement admitting participation in a past violent crime that Davis Behavioral Health reasonably believes may have caused serious physical harm or where the individual appears to have escaped from a correctional institution or lawful custody.

PHI may not be disclosed if it was learned in the course of treatment provided to affect the propensity to commit the crime, or counseling or therapy or through a request for such treatment, counseling, or therapy.

Specialized government functions: Disclosures of PHI may be made by Davis Behavioral Health, without individual authorization, to military authorities typically for the purpose of assuring proper execution of the military mission or for the purpose of determining eligibility for benefits. PHI may also be disclosed to authorized federal authorities for the conduct of lawful intelligence or other lawful national security activities authorized by the National Security Act.

Correctional institutions: Disclosures of PHI may be made by Davis Behavioral Health, without individual authorization, to a correctional institution, or an official having lawful custody of an inmate, if it is necessary for the provision of healthcare, for health and safety purposes, or for maintenance of good order of the correctional institution.

Workers' Compensation: Disclosures of PHI may be made by Davis Behavioral Health, without individual authorization, as authorized by and to the extent necessary to comply with the state's Workers' Compensation law.

Substance Abuse Providers

Federal Regulations governing the confidentiality of substance abuse information (42 CFR, Part 2) are generally more restrictive than HIPAA and should be followed when PHI of any client in a federally-assisted alcohol or drug abuse (“substance abuse”) program is disclosed. The Federal Regulations prohibit the disclosure of records or other information concerning any client in a federally-assisted substance abuse program without the specific consent of the client, except:

- a. For internal program communication purposes. Under this exception, program staff may disclose information to other staff within the program, or to an entity having direct administrative control over that program, if the recipient needs the information in connection with the provision of substance abuse diagnosis, treatment or referral for treatment.
- b. For medical emergencies posing an immediate threat to health and requiring immediate medical intervention. Under this exception, disclosures may be made to public or private medical personnel to the extent necessary to meet a bona fide medical emergency of the client or any other person.
- c. In response to court-ordered disclosures where the court order has been issued in accordance with procedures specified by the Federal Regulations. Court-ordered disclosures must be limited to the information essential to fulfill the purpose of the order, and they must be restricted to those persons who need the information.

If the order is sought by law enforcement officials or prosecutors, there are five additional criteria that must be met:

- i. The crime must be extremely serious,
- ii. The records requested must be likely to have information of significance to the investigation or prosecution;
- iii. There is no other practical way to obtain the information;
- iv. The public interest in disclosure outweighs any actual or potential harm to the patient or the client-patient relationship and the ability of the program to provide services to other patients; and
- v. When law enforcement personnel seek the order, the program has had an opportunity to be represented by counsel.

A federally-assisted substance abuse program is prohibited from disclosing PHI about clients in response to subpoenas unless:

- i. The client has signed a proper consent form for the disclosure or
 - ii. A court has ordered the program to release the PHI after giving the client and the program an opportunity to be heard and after making a “good cause” determination.
- d. When a client has committed or threatened to commit a crime on the program premises or against program personnel. Under these circumstances the program may report the crime to a law enforcement agency or seek its assistance. The program may disclose the circumstances of the incident, including the suspect’s name, address, last known whereabouts, and the suspect’s status as a client at the program.
 - e. When the disclosure is for research purposes. Under this exception the program may release PHI to researchers the program director determines are qualified.

- f. When a government agency that funds or regulates the program, a third-party payor or a peer review organization requests access to program records. The auditor or evaluator must agree in writing that it will re-disclose identifying information only:
 - i. Back to the program;
 - ii. Pursuant to a court order to investigate or prosecute the program (not a client), or
 - iii. To a government agency that is overseeing a Medicare or Medicaid audit or evaluation.

Records may be removed only upon a promise in writing to safeguard the records, not to re-disclose the records in violation of law, and to destroy all client-identifying information when the audit or evaluation is completed.

- g. When the program is reporting under state law incidents of suspected child abuse and neglect to appropriate authorities.
- h. When the disclosure is to a “qualified service organization” (QSO). A QSO is a person or entity that provides services to the program.

If the program receives a request for disclosure of a client’s record that is not permitted under the Federal Regulations, the program must refuse to make the disclosure and must ensure that the refusal is accomplished in a way that does not reveal the individual has ever been diagnosed or treated for an alcohol or drug problem.

Any PHI disclosed without authorization of a client in a federally-assisted substance abuse program authorization, may only be made in consultation with the Privacy Officer.

Uses and Disclosures

Policy 5 Uses and Disclosures: Business Associates

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, sets out, in this policy, the nature of the third party relationships that will be considered to be Business Associates and the requirements for contracting with them.

Policy

Any vendor or independent contractor who proposes to do business with Davis Behavioral Health will be subjected to procedures that will determine if the vendor or subcontractor is a Business Associate. We will consider any vendor or independent contractor to be a Business Associate if they have the following characteristics:

1. they perform a function or activity on our behalf that involves the use or disclosure of PHI or provide any legal, actuarial, accounting, consulting, data aggregation or management, administrative, accreditation, or financial services to or for us;
2. they are not involved in the treatment of a client; and
3. they are not providing consumer-conducted financial transactions.

Any vendor or independent contractor (but not any member of our workforce) who qualifies as a Business Associate will be required to sign a Business Associate Agreement or an Agreement that includes Business Associate provisions. The Agreement will be attached to this policy (see page ____).

Amendments to the Business Associates Agreement may not be made without the approval of legal counsel.

Protection of our client's health information is important to us, therefore we require our employees to be sensitive to the behavior of our Business Associates and to report any conduct that appears inappropriate.

Form 1 – Business Associate Agreement – New Contracts

BUSINESS ASSOCIATE AGREEMENT
With [Full Legal Name of Business Associate]
Effective Date: [Insert Effective Date of this Agreement]

This **Business Associate and Chain of Trust Agreement** (the “Agreement”) is made as of the Effective Date set forth above, by and between **Davis Behavioral Health, Inc.** (“Health Care Provider”) with a principal office at **291 South 200 West, Farmington, UT 84025** and **[Insert full legal name of Business Associate]** (“Business Associate”) with a principal office at **[Insert address of Business Associate]**.

Whereas, Health Care Provider desires to disclose, and Business Associate desires to use, disclose, create, and/or receive, Individually Identifiable Health Information (i) on behalf of the Health Care Provider in the performance of certain functions or activities involving Individually Identifiable Health Information, or (ii) while providing certain designated services (including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services) to or for the Health Care Provider;

Whereas, Health Care Provider and Business Associate wish to comply with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320(d)) (“HIPAA”) including without limitation the Standards for Privacy of Individually Identifiable Health Information (42 C.F.R., Part 160 and 164), the Standards for Electronic Transactions (45 C.F.R., Part 160 and 162) and the Security Standards (45 C.F.R., Part 142) (collectively, the “Standards”) promulgated or to be promulgated by the Secretary of Health and Human Services (the “Secretary”).

I. Definitions.

The following terms, as used in this Agreement, shall have the meanings set forth below:

- 1.1 **"Data Aggregation"** means, with respect to Protected Health Information created or received by Business Associate in its capacity as the business associate of Health Care Provider, the combining of such Protected Health Information by Business Associate with the Protected Health Information received by Business Associate 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.
- 1.2 **"Designated Record Set"** means a group of records maintained by or for Health Care Provider that is (i) the medical records and billing records about individuals maintained by or for Health Care Provider, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Health Care Provider to make decisions about individuals. As used in this Agreement, the term "Record" means any item, collection, or grouping of information that includes Protected Health information and is maintained, collected, used, or disseminated by or for the Health Care Provider.
- 1.3 **"Electronic Media"** means the mode of electronic transmissions. It includes the internet, extranet (using internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.
- 1.4 **"Individually Identifiable Health Information"** means information that is a subset of health information, including demographic information collected from an individual, and

(a) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(b) 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 (i) identifies the individual, or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

- 1.5 **"Protected Health Information" or "PHI"** means Individually Identifiable Health Information that is (a) transmitted by electronic media, (b) maintained in any medium constituting Electronic Media; or (c) transmitted or maintained in any other form or medium. "Protected Health Information" does not include (a) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. §1232g and (b) records described in 20 U.S.C. §1232g(a)(4)(B)(iv).

II. Obligations of Business Associate With Respect to PHI.

- 2.1 **Use and Disclosure of PHI.** Business Associate shall use and disclose PHI only as required to satisfy its obligations under this Agreement or as required by law and shall not otherwise use or disclose any PHI. Health Care Provider shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Standards for Individually Identifiable Health Information (hereinafter, the "Privacy Standards") if done by Health Care Provider [**Optional:** except with respect to uses and disclosures of PHI for data aggregation or management and administrative activities of Business Associate, as provided in Sections 2.12 and 2.13 of this Agreement, respectively].

2.2 Purposes and Limitations on Use or Disclosure of PHI.

- 2.2.1 **Purposes.** Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Health Care Provider only for the following purposes, so long such use or disclosure of PHI would not violate the Privacy Standards if used or disclosed by the Health Care Provider:

[List specific purposes for Business Associate's use or disclosure of PHI] i.e., to conduct a survey and determine the accreditation status of Health Care Provider; to provide accounting services to Provider; to conduct research services using patient medical records for XYZ purposes, etc.

- 2.2.2 **Property Rights in PHI.** Business Associate hereby acknowledges that, as between Business Associate and Health Care Provider, all PHI shall be and remain the sole property of Health Care Provider, including any forms of PHI developed by Business Associate in the course of fulfilling its obligations under this Agreement.

- 2.2.3 **Minimum Necessary.** Business Associate further represents that, to the extent Business Associate requests Health Care Provider to disclose PHI to Business Associate, such request is only for the minimum necessary PHI for the accomplishment of Business Associate's purposes.

2.3 Safeguards and Security.

- 2.3.1 **Safeguards.** Business Associate agrees to use all appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement or as required by law.

- 2.3.2 **Security.** Business Associate shall establish security policies, processes and procedures in compliance with the Security Standards including without limitation administrative procedures, physical safeguards, technical security

services, and technical security mechanisms, in order to protect the integrity and confidentiality of PHI exchanged electronically. Business Associate acknowledges and agrees that the legal, technical or business requirements for security of PHI may change and that, at any time during the term of this Agreement, Health Care Provider shall have the right to require Business Associate to adopt new policies, processes and procedures, or to require modifications to existing policies, processes and procedures. Health Care Provider shall communicate in writing such new or altered requirements to Business Associate, and Business Associate agrees to promptly implement such requirements. Business Associate shall supply a written copy of its security policies and procedures to Health Care Provider upon the execution of this Agreement.

- 2.4 **Reporting Disclosures of PHI: Mitigation.** Business Associate shall report any use or disclosure in violation of this Agreement within two business days of learning of such violation by Business Associate or its officers, directors, employees, contractors or other agents or by any third party to which Business Associate has disclosed PHI. Business Associate agrees to mitigate promptly at the direction of Health Care Provider any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement. Health Care Provider may, at its sole discretion, access records of Business Associate, direct an investigation of a use or disclosure by Business Associate, and determine the appropriate method of mitigation; Business Associate agrees to cooperate fully with Health Care Provider in any such investigation or mitigation.
- 2.5 **Employees, Subcontractors, and Agents.** Business Associate hereby represents and warrants that its employees and agents will be specifically advised of, and shall comply in all respects with, the terms and conditions of this Agreement. Business Associate shall obtain and maintain, in full force and effect, a binding contract with each of its agents including without limitation subcontractors who will have access to PHI and whose PHI is received from, or created or received by, Business Associate on behalf of the Health Care Provider. Business Associate shall further ensure that any such agent agrees in such contract to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI.
- 2.6 **Accounting of Disclosures.**
 - 2.6.1 **Accounting by Business Associate.** Business Associate agrees to document any disclosures of PHI made by Business Associate, as well as other information related to such disclosures, as would be required for Health Care Provider to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Business Associate also agrees to provide Health Care Provider, in a time and manner designated by Health Provider, information collected in accordance with this section of the Agreement, to permit Health Care Provider to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
 - 2.6.2 **Recordkeeping.** Business Associate agrees to implement an adequate record keeping process to enable it to comply with the requirements of this section of the Agreement.
- 2.7 **Privacy Practices.** Business Associate hereby acknowledges and agrees that Health Care Provider has provided it with a copy of its Notice of Privacy Practices. Business Associate agrees to comply with the practices identified in the Notice of Privacy Practices, to the extent that such practices would apply to Health Care Provider if it were performing Business Associate's functions, and will utilize as appropriate Health Care Provider's form documents. Health Care Provider hereby reserves the right to change the applicable privacy practices and related documents at any time. To the extent that such

changes affect the duties and obligations of Business Associate under this Agreement, Business Associate will implement such changes within 10 days of receipt of notice of the change.

- 2.8 **Revocation or Modification of Consumer Permission.** Health Care Provider shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- 2.9 **Consumer Restrictions on Uses and Disclosures.** Health Care Provider shall notify Business Associate of any restriction to the use or disclosure of PHI that Davis Behavioral Health has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 2.10 **Availability of Books and Records.** Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, or received by Business Associate (on behalf of Health Care Provider) available to Health Care Provider, or at the request of Health Care Provider to the Secretary, in a time and manner designated by the Health Care Provider or the Secretary, for purposes of the Secretary determining Health Care Provider's compliance with the Privacy Standards. The provisions of this section shall survive termination of this Agreement.
- 2.11 **Notice of Request for PHI.** Business Associate agrees to notify Health Care Provider within two business days of receipt of any request, subpoena or other legal process to obtain PHI or an accounting of PHI. Health Care Provider in its discretion shall determine whether Business Associate may disclose PHI pursuant to such request, subpoena, or other legal process. Business Associate agrees to cooperate fully with Health Care Provider in any legal challenge initiated by Health Care Provider in response to such request, subpoena, or other legal process. The provisions of this section shall survive the termination of this Agreement.

[Optional: Include the following section only if you intend Business Associate to be able to use PHI in its own management or administration functions.]

2.12 Proper Management and Administration of Business Associate.

- 2.12.1 **Permissible Uses.** Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 2.12.2 **Permissible Disclosures.** Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or that Business Associate obtains reasonable 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

[Optional: Include the following section only if you intend Business Associate to perform Data Aggregation functions.]

- 2.13 **Data Aggregation.** Except as other limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Health Care Provider as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

[Optional: Include the following section only if Business Associate will receive PHI in Designated Record Sets.]

- 2.14 **Access to Records in a Designated Record Set.** At the request of Health Care Provider and in the time and manner designated by Health Care Provider, Business Associate agrees to provide access to PHI in a Designated Record Set to Health Care Provider (and its employees and agents) or, as directed by Health Care Provider, to an individual in order to meet the requirements under 45 C.F.R. § 164.524.

[Optional: Include the following section only if Business Associate will receive PHI in Designated Record Sets.]

- 2.15 **Amendment of Records in a Designated Record Set.** At the request of Health Care Provider and in the time and manner designated by Health Care Provider, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Health Care Provider (or its employees or agents) directs or agrees to pursuant to 45 C.F.R. § 164.526.

III. Other Obligations of Business Associate.

[Insert Duties and Obligations of Business Associate Not Related to HIPAA]

IV. Other Obligations of Health Care Provider.

[Insert Duties and Obligations of Health Care Provider Not Related to HIPAA]

V. Term and Termination.

5.1 Term.

[Insert provisions relating to term of this Agreement – the Term to commence with the Effective Date. If Business Associate functions are the only activities to be performed under this Agreement, you may use the following provision:]

The term of this Agreement shall commence upon the Effective Date and continue thereafter for a period of **[Insert period (in days, months or years) that contract is in effect]** or until earlier terminated in accordance with Section 5.2 below.

5.2 Termination.

5.2.1 General Termination Provisions.

[Insert general provisions relating to the termination of this Agreement. If Business Associate functions are the only activities to be performed under this Agreement and you wish to permit Business Associate to terminate this Agreement without cause, you may use the following provision:]

Either Health Care Provider or Business Associate may terminate this Agreement at any time without cause with **[Insert number of days of required notice – typically 30 to 120 days, depending upon the time period needed for a transition]** day's prior written notice.

- 5.2.2 **Termination Upon Breach.** Any other provision of this Agreement notwithstanding, this Agreement may be terminated by Health Care Provider upon five business days written notice to Business Associate in the event that the Business Associate breaches any provision (including any covenant, representation, warranty, or condition) contained in Article II of this Agreement or any other such provision of this Agreement that relates to PHI and such breach is not cured within the five day notice period; provided, however, that in the event that termination of this Agreement is not feasible in Health Care Provider's sole discretion, Business Associate hereby acknowledges that Health Care Provider shall have the right to report the breach to the Secretary.

5.2.3 Return or Destruction of PHI upon Termination.

- 5.2.3.1 **General Provisions.** Upon termination of this Agreement, Business Associate shall either return or destroy, at the option of Health Care

Provider, all PHI received from the Health Care Provider, or created or received by Business Associate on behalf of the Health Care Provider and which Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI.

5.2.3.2 **Alternative Arrangement.** Notwithstanding the foregoing, to the extent that the Health Care Provider agrees that it is not feasible to return or destroy such PHI, Business Associate shall provide Health Care Provider with a written acknowledgement and notification of the conditions that make return or destruction infeasible. Business Associate hereby agrees to (a) extend the protections of this Agreement to such PHI only for those purposes that make the return or destruction infeasible, (b) limit further uses and disclosures of such PHI to such purposes, and (c) extend any term or provision of this Agreement relating to PHI so that such term or condition shall survive termination of this Agreement. Thereafter, such PHI shall be used or disclosed solely for such purpose or purposes, which prevented the return or destruction of such PHI.

5.2.3.3 **Applicability of Provisions.** The provisions of this section of the Agreement shall apply, to the same extent that it applies to Business Associate, to PHI that is in the possession of agents of Business Associate.

5.2.4 **Health Care Provider's Right to Cure.** At the expense of Business Associate, Health Care Provider shall have the right to cure any breach of Business Associate's obligations under this Agreement with respect to PHI. Health Care Provider shall give Business Associate notice of its election to cure any such breach and Business Associate shall cooperate fully in the efforts by the Health Care Provider to cure Business Associate's breach. All requests for payment for such services of the Health Care Provider shall be paid within 30 days of Business Associate's receipt of the request for payment.

VI. Miscellaneous.

6.1 Indemnification.

[Insert an indemnification provision for this Agreement. If the only purpose of this Agreement is to comply with HIPAA's business associate requirements, you may use the following indemnification provision.]

Business Associate hereby agrees to indemnify and hold Health Care Provider and its employees and agents harmless from and against any and all loss, liability, or damages, including reasonable attorneys' fees, arising out of or in any manner occasioned by a breach of any provision of this Agreement by Business Associate, or its employees or agents.

6.2 Insurance.

[Insert insurance provision for this Agreement. If the only purpose of this Agreement is to comply with HIPAA's business associate requirements, you may use the following insurance provision.]

Business Associate shall obtain and maintain, at its sole expense, during the term of this Agreement liability insurance on an occurrence basis with responsible insurance companies covering claims based upon a violation of any of the Standards or any applicable state law or regulation concerning the privacy of patient information and claims based upon its obligations pursuant to Section 6.1 of this Agreement in amount not less than **[Insert minimum amount of required coverage; for high risk business**

associates – suggest \$1,000,000 per claim.] [Optional, suggest inserting for high or medium risk business associates: Such insurance policy shall name Health Care Provider as an additional named insured and shall provide for 30 days prior written notice to Health Care Provider in the event of any decrease, cancellation, or non-renewal of such insurance.] A copy of such policy or a certificate evidencing the policy shall be provided to Health Care Provider upon written request.

- 6.3 **Injunction.** Business Associate hereby agrees that Health Care Provider will suffer irreparable damage if Business Associate breaches this Agreement and that such damages will be difficult to quantify. Business Associate hereby agrees that Health Care Provider may file an action for an injunction to enforce the terms of this Agreement against Business Associate, in addition to any other remedy Health Care Provider may have.
- 6.4 **Independent Contractor.** Under this Agreement, Business Associate shall at all times be acting and performing in the status of independent contractor to Health Care Provider. Business Associate shall not by virtue of this Agreement be deemed a partner or joint venturer of Health Care Provider. No person employed by Business Associate will be an employee of Health Care Provider, and Health Care Provider shall have no liability for payment of any wages, payroll taxes, and other expenses of employment for any employee of Business Associate. Business Associate is constituted the agent of Health Care Provider only for the purpose of, and to the extent necessary to, carrying out its obligations under this Agreement.
- 6.5 **Authorization for Agreement.** Business Associate represents and warrants that the execution and performance of this Agreement by Business Associate has been duly authorized by all necessary laws, resolutions and corporate action, and this Agreement constitutes the valid and enforceable obligations of the Business Associate in accordance with its terms.
- 6.6 **Governing Law and Choice of Forum.** The parties agree that this Agreement shall be construed in accordance with the laws of the State of Utah, without regard to conflict of laws principles. The parties further agree that any litigation concerning this Agreement shall only be brought in a court of competent jurisdiction within the State of Utah. To the extent that the Privacy Standards apply to any provision in this Agreement, any ambiguity shall be resolved in favor of a meaning that permits Health Care Provider to comply with the Privacy Standards.
- 6.7 **Binding Agreement: Assignment.** This Agreement shall inure to the benefit and be binding upon the parties hereto and their respective successors and assigns; provided, however, that Business Associate may not assign any rights or obligations under this Agreement without the prior written consent of Health Care Provider.
- 6.8 **Notices.** Any notice, request, demand, report, approval, election, consent or other communication required or permitted under the terms of this Agreement (collectively, “Notice”) shall be in writing and either delivered personally, by registered or certified mail, return receipt requested, postage prepaid, or by reputable overnight courier, addressed as follows:

To Health Care Provider:

**Davis Behavioral Health, Inc.
291 South 200 West
Farmington, UT, 84025**

With a copy to:

To Business Associate:

[Insert Full Legal Name of Entity]
[Street Address]
[City or Town, State, Zip Code]
Attn: [Insert Title of Officer in Business Associate's
Organization, i.e., President]

With a copy to: **[If copy is desired, insert name and address of person to whom copy should be sent.]**

or at such other address as either party may designate by Notice. Notice shall be deemed to have been given when received if delivered personally, three days after postmarked if sent by certified mail, or one day after deposited with an overnight courier.

- 6.9 **Integration.** This Agreement constitutes the sole and only agreement of the parties hereto with respect to the subject matter herein. Any and all prior agreements, promises, proposals, negotiations or representations, whether written or oral, which are not expressly set forth in this Agreement are hereby superseded and are of no force or effect.
- 6.10 **Amendment.** This Agreement may not be amended, modified or terminated orally, and no amendment, modification, termination or attempted waiver shall be valid unless in writing signed by the party against whom the same is sought to be enforced.
- 6.11 **Severability.** Should any provision of this Agreement or application thereof be held invalid, illegal or unenforceable for any reason whatsoever, then notwithstanding such invalidity, illegality or unenforceability, the remaining terms and provisions of this Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law unless to do so would defeat the purposes of this Agreement.
- 6.12 **Survival.** All matters that (a) expressly survive the termination of this Agreement including without limitation the provisions of Sections 2.10, 2.11, 5.2.3, and 5.2.4, (b) relate to the termination of this Agreement, or (c) in the normal course would not occur or be effectuated until after any such termination, as well as all rights and obligations of the parties pertaining thereto, shall survive any termination and be given full force and effect notwithstanding any termination of this Agreement.
- 6.13 **Waiver.** The failure at any time by either party to require or demand performance of any provision of this Agreement shall not constitute a waiver by such party of such provision and shall not affect such party's full right to require performance at any later time.
- 6.14 **Legislative, Regulatory or Administrative Changes.** In the event of a change in federal, state or local law, any of which could, in Health Care Provider's reasonable judgment, materially and adversely affect the manner in which either party may perform services under this Agreement, the parties shall immediately amend this Agreement to comply with the law, regulation, or policy and approximate as closely as possible the arrangements set forth in this Agreement as it existed immediately prior to the change in law, regulation or policy.
- 6.15 **Joint Notices.** If applicable, in this Agreement the term "covered entity" shall include all entities covered by a joint Notice of Privacy Practices.
- 6.16 **Business Associates That Are Covered Entities.** In the event a Business Associate is a "covered entity" under the Privacy Standards, Business Associate may designate a

“health care component” of that entity, pursuant to 45 C.F.R. § 164.504(a) as the Business Associate for purposes of this Agreement.

- 6.17 **No Third Party Beneficiary.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties to this Agreement and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 6.18 **Headings.** The headings to the various paragraphs of this Agreement have been inserted for convenient reference only and shall not modify, define, limit or expand the provisions of this Agreement.
- 6.19 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument.

In Witness Whereof, Health Care Provider and Business Associate have caused this instrument to be duly executed by their authorized representatives as of the Effective Date.
Davis Behavioral Health, Inc.

By: [**Insert “President” or Title of Other Authorized Officer**]

[**Insert Full Legal Name of Business Associate**]

By: [**Insert “President” or Title of Other Authorized Officer**]

Form 2 – Business Associate Addendum – Amendment to Existing Contract

BUSINESS ASSOCIATE ADDENDUM With [Full Legal Name of Business Associate] Effective Date: [Insert Effective Date of this Addendum]

This **Business Associate and Chain of Trust Addendum** (the “Addendum”) is made as of the Effective Date set forth above, by and between **Davis Behavioral Health, Inc.** (“Health Care Provider”) and **[Insert full legal name of Business Associate]** (“Business Associate”) as a duly executed amendment to **[Insert name of original contract]** originally effective as of **[Insert effective date of original contract]** (the “Agreement”).

Whereas, Health Care Provider and Business Associate desire to amend the Agreement with this Addendum in order to permit the use or disclosure of Individually Identifiable Health Information between Health Care Provider and Business Associate and to permit Business Associate as necessary to use, disclose, create and/or receive Individually Identifiable Health Information (i) on behalf of the Health Care Provider in the performance of certain functions or activities involving Individually Identifiable Health Information, or (ii) while providing certain designated services (including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services) to or for the Health Care Provider;

Whereas, Health Care Provider and Business Associate wish to comply with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320(d)) (“HIPAA”) including without limitation the Standards for Privacy of Individually Identifiable Health Information (42 C.F.R., Part 160 and 164), the Standards for Electronic Transactions (45 C.F.R., Part 160 and 162) and the Security Standards (45 C.F.R., Part 142) (collectively, the “Standards”) promulgated or to be promulgated by the Secretary of Health and Human Services (the “Secretary”).

I. Definitions.

The following terms, as used in this Addendum, shall have the meanings set forth below:

- 1.1 **"Data Aggregation"** means, with respect to Protected Health Information created or received by Business Associate in its capacity as the business associate of Health Care Provider, the combining of such Protected Health Information by Business Associate with the Protected Health Information received by Business Associate 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.
- 1.2 **"Designated Record Set"** means a group of records maintained by or for Health Care Provider that is (i) the medical records and billing records about individuals maintained by or for Health Care Provider, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for Health Care Provider to make decisions about individuals. As used in this Agreement, the term "Record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Health Care Provider.
- 1.3 **"Electronic Media"** means the mode of electronic transmissions. It includes the internet, extranet (using internet technology to link a business with information only

accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.

- 1.4 **“Individually Identifiable Health Information”** means information that is a subset of health information, including demographic information collected from an individual, and:
- (a) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - (b) 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 (i) identifies the individual, or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- 1.5 **“Protected Health Information” or “PHI”** means Individually Identifiable Health Information that is (a) transmitted by electronic media, (b) maintained in any medium constituting Electronic Media, or (c) transmitted or maintained in any other form or medium. "Protected Health Information" does not include (a) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. §1232g and (b) records described in 20 U.S.C. §1232g(a)(4)(B)(iv).

II. Integration of Addendum.

- 2.1 **Effect of this Addendum.** The terms and provisions of this Addendum shall supercede any other conflicting or inconsistent terms and provisions in the Agreement to which this Addendum is attached, including all exhibits or other attachments to, and all documents incorporated by reference in, the Agreement. Without limitation of the foregoing, any limitation or exclusion of damages provisions contained in the Agreement shall not be applicable to this Addendum.

III. Obligations of Business Associate With Respect to PHI.

- 3.1 **Use and Disclosure of PHI.** Business Associate shall use and disclose PHI only as required to satisfy its obligations under the Agreement or as required by law and shall not otherwise use or disclose any PHI. Health Care Provider shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Standards for Individually Identifiable Health Information (hereinafter, the “Privacy Standards”) if done by Health Care Provider [**Optional:** except with respect to uses and disclosures of PHI for data aggregation or management and administrative activities of Business Associate, as provided in Sections 3.12 and 3.13 of this Addendum, respectively].
- 3.2 **Purposes and Limitations on Use or Disclosure of PHI.**
- 3.2.1 **Purposes.** Except as otherwise provided in this Addendum, Business Associate may use or disclose PHI on behalf of, or to provide services to, Health Care Provider only for the following purposes, so long such use or disclosure of PHI would not violate (a) the minimum necessary policies and procedures of Health Care Provider and (b) the Privacy Standards if used or disclosed by the Health Care Provider:
- [List specific purposes for Business Associate’s use or disclosure of PHI]**
i.e., to conduct a survey and determine the accreditation status of Health Care Provider; to provide accounting services to Provider; to conduct research services using patient medical records for XYZ purposes, etc.

- 3.2.2 **Property Rights in PHI.** Business Associate hereby acknowledges that, as between Business Associate and Health Care Provider, all PHI shall be and remain the sole property of Health Care Provider, including any forms of PHI developed by Business Associate in the course of fulfilling its obligations under this Agreement.
- 3.2.3 **Minimum Necessary.** Business Associate further represents that, to the extent Business Associate requests Health Care Provider to disclose PHI to Business Associate, such request is only for the minimum necessary PHI for the accomplishment of Business Associate's purposes.
- 3.3 **Safeguards and Security.**
- 3.3.1 **Safeguards.** Business Associate agrees to use all appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Addendum or as required by law.
- 3.3.2 **Security.** Business Associate shall establish security policies, processes and procedures in compliance with the Security Standards including without limitation administrative procedures, physical safeguards, technical security services, and technical security mechanisms, in order to protect the integrity and confidentiality of PHI exchanged electronically. Business Associate acknowledges and agrees that the legal, technical, or business requirements for security of PHI may change and that, at any time during the term of this Agreement, Health Care Provider shall have the right to require Business Associate to adopt new policies, processes and procedures, or to require modifications to existing policies, processes and procedures. Health Care Provider shall communicate in writing such new or altered requirements to Business Associate, and Business Associate agrees to promptly implement such requirements. Business Associate shall supply a written copy of its security policies and procedures to Health Care Provider upon the execution of this Agreement.
- 3.4 **Reporting Disclosures of PHI; Mitigation.** Business Associate shall report any use or disclosure in violation of this Addendum within two business days of learning of such violation by Business Associate or its officers, directors, employees, contractors or other agents or by any third party to which Business Associate has disclosed PHI. Business Associate agrees to mitigate promptly at the direction of Health Care Provider any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum. Health Care Provider may, at its sole discretion, access records of Business Associate, direct an investigation of a use or disclosure by Business Associate, and determine the appropriate method of mitigation; Business Associate agrees to cooperate fully with Health Care Provider in any such investigation or mitigation.
- 3.5 **Employees, Subcontractors, and Agents.** Business Associate hereby represents and warrants that its employees and agents will be specifically advised of, and shall comply in all respects with, the terms and conditions of this Addendum. Business Associate shall obtain and maintain, in full force and effect, a binding contract with each of its agents including without limitation subcontractors who will have access to PHI and whose PHI is received from, or created or received by, Business Associate on behalf of the Health Care Provider. Business Associate shall further ensure that any such agent agrees in such contract to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI.
- 3.6 **Accounting of Disclosures.**
- 3.6.1 **Accounting by Business Associate.** Business Associate agrees to document any disclosures of PHI made by Business Associate, as well as other information

related to such disclosures, as would be required for Health Care Provider to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Business Associate also agrees to provide Health Care Provider, in a time and manner designated by Health Provider, information collected in accordance with this section of the Addendum, to permit Health Care Provider to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.

- 3.6.2 **Record keeping.** Business Associate agrees to implement an adequate record keeping process to enable it to comply with the requirements of this section of the Addendum.
- 3.7 **Privacy Practices.** Business Associate hereby acknowledges and agrees that Health Care Provider has provided it with a copy of its Notice of Privacy Practices. Business Associate agrees to comply with the practices identified in the Notice of Privacy Practices, to the extent that such practices would apply to Health Care Provider if it were performing Business Associate's functions, and will utilize as appropriate Health Care Provider's form documents. Health Care Provider hereby reserves the right to change the applicable privacy practices and related documents at any time. To the extent that such changes affect the duties and obligations of Business Associate under this Agreement, Business Associate will implement such changes within 10 days of receipt of notice of the change.
- 3.8 **Revocation or Modification of Consumer Permission.** Health Care Provider shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- 3.9 **Consumer Restrictions on Uses and Disclosures.** Health Care Provider shall notify Business Associate of any restriction to the use or disclosure of PHI in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 3.10 **Availability of Books and Records.** Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Health Care Provider available to Health Care Provider, or at the request of Health Care Provider to the Secretary, in a time and manner designated by Health Care Provider or the Secretary, for purposes of the Secretary determining Health Care Provider's compliance with the Privacy Standards. The provisions of this section of the Addendum shall survive the termination of this Agreement.
- 3.11 **Notice of Request for PHI.** Business Associate agrees to notify Health Care Provider within two business days of receipt of any request, subpoena or other legal process to obtain PHI or an accounting of PHI. Health Care Provider in its discretion shall determine whether Business Associate may disclose PHI pursuant to such request, subpoena, or other legal process. Business Associate agrees to cooperate fully with Health Care Provider in any legal challenge initiated by Health Care Provider in response to such request, subpoena, or other legal process. The provisions of this section shall survive the termination of this Agreement.

[Optional: Include the following section only if you intend Business Associate to be able to use PHI in its own management or administration functions.]

3.12 **Proper Management and Administration of Business Associate.**

- 3.12.1 **Permissible Uses.** Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

- 3.12.2 **Permissible Disclosures.** Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or that Business Associate obtains reasonable 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

[Optional: Include the following section only if you intend Business Associate to perform Data Aggregation functions.]

- 3.13 **Data Aggregation.** Except as other limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Health Care Provider as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

[Optional: Include the following section only if Business Associate will receive PHI in Designated Record Sets.]

- 3.14 **Access to Records in a Designated Record Set.** At the request of Health Care Provider and in the time and manner designated by Health Care Provider, Business Associate agrees to provide access to PHI in a Designated Record Set to Health Care Provider (and its employees and agents) or, as directed by Health Care Provider, to an individual in order to meet the requirements under 45 C.F.R. § 164.524.

[Optional: Include the following section only if Business Associate will receive PHI in Designated Record Sets.]

- 3.15 **Amendment of Records in a Designated Record Set.** At the request of Health Care Provider and in the time and manner designated by Health Care Provider, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Health Care Provider (or its employees or agents) directs or agrees to pursuant to 45 C.F.R. § 164.526.

IV. Termination.

- 4.1 **Termination Upon Breach.** Any other provision of this Agreement notwithstanding, this Agreement may be terminated by Health Care Provider upon five business days written notice to Business Associate in the event that the Business Associate breaches any provision (including any covenant, representation, warranty, or condition) contained in Article III of this Addendum or any other such provision of this Addendum that relates to PHI and such breach is not cured within the 5 day notice period; provided, however, that in the event that termination of this Agreement is not feasible in Health Care Provider's sole discretion, Business Associate hereby acknowledges that Health Care Provider shall have the right to report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary.
- 4.2. **Return or Destruction of PHI upon Termination.**
- 4.2.1 **General Provisions.** Upon termination of this Agreement, Business Associate shall either return or destroy, at the option of Health Care Provider, all PHI received from the Health Care Provider, or created or received by Business Associate on behalf of the Health Care Provider and which Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI.
- 4.2.2. **Alternative Arrangement.** Notwithstanding the foregoing, to the extent that the Health Care Provider agrees that it is not feasible to return or destroy such PHI, Business Associate shall provide Health Care Provider with a written acknowledgement and notification of the conditions that make return or destruction infeasible. Business Associate hereby agrees to (a) extend the

protections of this Agreement to such PHI only for those purposes that make the return or destruction infeasible, (b) limit further uses and disclosures of such PHI to such purposes, and (c) extend any term or provision of this Agreement relating to PHI so that such term or condition shall survive termination of this Addendum. Thereafter, such PHI shall be used or disclosed solely for such purpose or purposes, which prevented the return or destruction of such PHI.

4.2.3 **Applicability of Provisions.** The provisions of this section of the Addendum shall apply, to the same extent that it applies to Business Associate, to PHI that is in the possession of agents of Business Associate.

4.2.4 **Health Care Provider's Right to Cure.** At the expense of Business Associate, Health Care Provider shall have the right to cure any breach of Business Associate's obligations under this Addendum. Health Care Provider shall give Business Associate notice of its election to cure any such breach and Business Associate shall cooperate fully in the efforts by the Health Care Provider to cure Business Associate's breach. All requests for payment for such services of the Health Care Provider shall be paid within 30 days of Business Associate's receipt of the request for payment.

1.2.5 **Survival.** The provisions of this Article IV of the Addendum shall survive the termination of this Agreement.

V. Miscellaneous.

5.1 **Indemnification.** Business Associate hereby agrees to indemnify and hold Health Care Provider and its employees and agents harmless from and against any and all loss, liability, or damages, including reasonable attorneys' fees, arising out of or in any manner occasioned by a breach of any provision of this Addendum by Business Associate, or its employees or agents, without regard to any limitation or exclusion of damages provision otherwise set forth in this Agreement.

5.2 **Insurance.** Business Associate shall obtain and maintain, at its sole expense during the term of this Agreement, liability insurance on an occurrence basis with responsible insurance companies covering claims based on a violation of any of the Standards or any applicable state law or regulation concerning the privacy of patient information and claims based on its obligations pursuant to Section 5.1 of this Addendum in amount not less than **[Insert minimum amount of required coverage; for high risk business associates – suggest \$1,000,000 per claim.] [Optional, suggest inserting for high or medium risk business associates:** Such insurance policy shall name Health Care Provider as an additional named insured and shall provide for 30 days prior written notice to Health Care Provider in the event of any decrease, cancellation, or non-renewal of such insurance.] A copy of such policy or a certificate evidencing the policy shall be provided to Health Care Provider upon written request.

5.3 **Injunction.** Business Associate hereby agrees that Health Care Provider will suffer irreparable damage if Business Associate breaches this Addendum and that such damages will be difficult to quantify. Business Associate hereby agrees that Health Care Provider may file an action for an injunction to enforce the terms of this Addendum against Business Associate, in addition to any other remedy Health Care provider may have.

5.4 **Authorization for Addendum.** Business Associate represents and warrants that the execution and performance of this Addendum by Business Associate has been duly authorized by all necessary laws, resolutions and corporate action, and this Addendum constitutes the valid and enforceable obligations of the Business Associate in accordance with its terms.

- 5.5 **Legislative, Regulatory or Administrative Changes.** In the event of a change in federal, state or local law, any of which could, in Health Care Provider's reasonable judgment, materially and adversely affect the manner in which either party may perform services under this Addendum, the parties shall immediately amend this Addendum to comply with the law, regulation, or policy and approximate as closely as possible the arrangements set forth in this Addendum as it existed immediately prior to the change in law, regulation or policy.
- 5.6 **Interpretation.** Notwithstanding any other provision of this Agreement, any ambiguity in a provision of this Agreement that may require an interpretation of the Standards, shall be resolved in favor of a meaning that permits Health Care Provider to comply with the Standards including without limitation those standards relating to preemption of state laws.

In Witness Whereof, Health Care Provider and Business Associate have caused this instrument to be duly executed by their authorized representatives as of the Effective Date.

Davis Behavioral Health, Inc.

By: [Insert "President" or Title of Other Authorized Officer]

[Insert Full Legal Name of Business Associate]

By: [Insert "President" or Title of Other Authorized Officer]

Policy 6 The Designated Record Set and PHI

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the elements of the designated record set and the creation and maintenance of data sources that contain PHI. This Policy mandates that Davis Behavioral Health maintain accurate and complete medical and billing records for each of our clients so that they can exercise their rights to access, review, and amend their PHI maintained in a designated record set as required under HIPAA.

Policy

Davis Behavioral Health will maintain the following items in its designated record set:

The Medical Record (including all of the items listed below, and any other records of care that would be appropriate):

- a. The clinical diagnostic assessment
- b. The psychiatric diagnostic assessment
- c. The treatment plan
- d. Consents for treatment
- e. Reports/information from indirect treatment providers
- f. Functional status assessments
- g. Medication profiles
- h. Progress notes and documentation of care provided, for both treatment and reimbursement purposes. .
- i. Multidisciplinary progress notes/documentation
- j. Content of any consultation with internal or external individuals regarding the client's care
- k. Nursing assessments
- l. Orders for diagnostic tests and diagnostic study results
- m. Practice guidelines that imbed patient data
- n. Records of physical history, examinations, respiratory therapy, physical therapy, speech therapy, occupational therapy, and any other records of services provided by specialty providers
- o. Telephone consultation records
- p. Telephone orders

- q. Discharge instructions
- r. Discharge summaries
- s. Legal Documents and correspondence between the agency and the client or others involved in the client's care
- t. utilization management or utilization review forms that are used to determine or review level of care decisions including admission, continuing stay, and discharge

The Billing Record

- a. Signature on file
- b. Consent to bill third parties
- c. Individual Financial Assessment (i.e., Income Affidavit)
- d. Copies of any insurance cards and other data on insurance coverage
- e. Fee Agreement
- f. Requests for prior authorization of services
- g. Authorizations for services or other written acknowledgements of client eligibility for services
- h. Billing records including dates, services provided, provider, billing and payment records, and other information used to bill or to record and report encounters or services.

PHI is kept in many forms throughout Davis Behavioral Health. Each of the existing repositories of PHI have been identified, documented, and approved for usage. It is our policy that any new need for creation of an additional repository of PHI must follow the same process. Unsanctioned maintenance of PHI in any form will lead to disciplinary action.

Policy 7 Privacy Notice

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the conditions for providing notice to clients of our privacy practices.

Policy

Davis Behavioral Health will post a copy of our Privacy Notice, in English, in a prominent position at the Intake area of each service delivery site. In addition, copies of the Notice, in English and Spanish, will be available at the Front Desks for those who wish to have them. Any individual who is unable to read can request that the Notice be read to him/her.

Davis Behavioral Health will obtain a written acknowledgment of receipt of the Privacy Notice from each new client (other than in emergency situations) no later than their first service. Should we fail to obtain the written acknowledgment, we will document the good faith effort we made to obtain the acknowledgment and the reason why we were unable to obtain it. We will mail the Privacy Notice to all current clients, prior to April 14, 2003.

The Privacy Notice that is in effect will be the Notice that is attached to this Policy. This version of the Notice reflects the privacy practices in place at this time in our Agency.

It is our policy to conform our Privacy Notice to the content specified in the Privacy Rule. At the present time, this content is as follows and any version of our Privacy Notice must contain all of these items:

1. Header:

“THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.”

2. A description, including sufficient detail to place the individual on notice, and at least one example of the types of uses and disclosures for each of the following purposes: treatment, payment, and health care operations.

3. A description, including sufficient detail to place the individual on notice, of each of the other purposes a covered entity is either required or permitted to use or disclose PHI without the individual's written consent or authorization.
4. A description of any prohibitions or material limitations required by more stringent law.
5. A statement that other uses and disclosures will be made only with the individual's written authorization and that such authorization may be revoked.
6. If Davis Behavioral Health intends to do any of the following, there must be a separate statement that:
 - a. It will contact the individual to provide appointment reminders or information about treatment alternatives, or other health-related benefits and services that may be of interest;
 - b. It may contact the individual to raise funds on its behalf.
7. A statement of the individual's rights with respect to uses and disclosures of PHI and a description of how those rights may be exercised including:
 - a. The right to request restrictions, including a statement that Davis Behavioral Health is not required to agree to such a restriction;
 - b. The right to receive confidential communications of PHI;
 - c. The right to inspect and copy PHI;
 - d. The right to amend PHI;
 - e. The right to receive an accounting of disclosures of PHI; and
 - f. The right to obtain a paper copy of the notice upon request.
8. A statement about Davis Behavioral Health's duties to:
 - a. Maintain the privacy of PHI and to provide individuals with notice of its legal duties and privacy practices relative to PHI;
 - b. Abide by the terms of the privacy notice currently in effect; and
 - c. When retroactively applying a change in the notice, to provide a statement that it reserves the right to change the terms of its notice and to make the new notice effective for all PHI it maintains; and how it intends to provide individuals with a revised notice.
8. A statement that individuals may complain (to Davis Behavioral Health or the Department of Health and Human Services) if he/she believe their rights have been violated; a brief description of how to file a complaint with the covered entity; and a

statement that there will be no retaliation against the individual if a complaint is made.

9. The name, title, and telephone number of the person or office designated as responsible for receiving complaints and providing additional information.
10. The date on which the notice is first in effect which may not be earlier than the date on which the privacy notice is printed or otherwise published.

Davis Behavioral Health requires that revision of our privacy practices may only occur after deliberation by the ELT or its designated group and the Privacy Officer. Any changes arising from the revision process will be incorporated into the Privacy Notice and distributed to clients before those practices are effective.

Policy 8 Minimum Necessary

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out in this policy, the process for applying the minimum necessary standards to uses, disclosures, and requests for PHI.

Policy

Davis Behavioral Health will apply the minimum necessary standards to all uses, disclosures, and requests for PHI, except for:

1. Disclosures to, or requests, by, a healthcare provider for the purpose of treatment;
2. Disclosures to the client;
3. Disclosures pursuant to the client's authorization;
4. Disclosures required to comply with the Privacy Rule; and
5. Uses and disclosures required by law to the extent that such disclosure complies with and is limited to the relevant requirements of the law.

Any request made for entire medical records, other than for treatment purposes, must be justified in writing and made part of the medical record as documentation of that justification. Non-routine, non-recurring disclosures of PHI will be reviewed, prior to release of PHI, by an authorized clinical person as identified in current procedures below. This person will make a determination that the minimum necessary PHI is being used or disclosed in accordance with our criteria for non-routine, non-recurring disclosures.

When we receive requests for PHI from external sources, we will generally rely upon the written representation of the requestor that it is requesting the minimum PHI necessary for its purpose. We will rely on the representation of the following person(s), only when reliance is reasonable:

1. Public officials for a disclosure not requiring any legal permission;
2. Other covered entities;
3. A professional who is either a member of our workforce or a business associate and the request is for the purpose of providing professional services on our behalf and the professional has asserted that the PHI requested is the minimum necessary for their stated purpose; and
4. Researchers as long as we have received documentation from an IRB or privacy board and we have determined the PHI that minimally necessary to achieve the scope of the use or disclosure.

However, if reliance on the representation of the requestor is not reasonable, we may disregard the representation and make our own determination of the minimum amount of PHI that is necessary for the purpose.

Policy 9 De-identification and Limited Data Sets

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out in this policy, the process for creating and using de-identified health information and limited data sets.

Policy

Davis Behavioral Health will create de-identified health information for use or disclosure in any circumstance where that information can be used, effectively and efficiently, in place of PHI.

Davis Behavioral Health will consider PHI to be de-identified health information if it meets one of the two following criteria:

1. A qualified statistician (a person with appropriate knowledge and experience with generally accepted statistical and scientific principles and methods), applying such principles and methods has determined that the risk is very small that the information could be used alone, or in combination with other reasonably available information, by an anticipated recipient to identify an individual and documents the methods and results of the analysis that justify such determination.
2. All of the following identifiers have been removed, and Davis Behavioral Health does not have actual knowledge that the remaining information could be used, alone or with other information, to identify an individual who is the subject of the information:
 - a. Names of individual, relatives, or household members
 - b. Geographic subdivisions smaller than a state, except for the initial three digits of a zip code for geographic area with more than 20,000 people;
 - c. All elements of dates (including birth, admission and discharge dates, and dates of death), except for the year, for all individuals under 89, and all elements of dates for those over 89 except for presentation as a single over-90 category;
 - d. Telephone or fax numbers or e-mail addresses, URLs, or IP addresses;
 - e. Social security numbers;
 - f. Medical record numbers;
 - g. Health plan beneficiary numbers;
 - h. Account numbers;
 - i. Certificate or license numbers;

- j. Vehicle identifiers and serial numbers;
- k. Device identifiers and serial numbers;
- l. Biometric identifiers such as finger or voice prints;
- m. Full face photographic images and the like; or
- n. Any other unique identifying number, code, or characteristic except for a re-identification code.

The re-identification code may not be derived from or related to information about the individual and may not be otherwise translatable to identify the individual. We will not use or disclose the code for any purpose, nor the means of re-identification.

Davis Behavioral Health will create limited data sets for use or disclosure in any circumstance where that information can be used, effectively and efficiently for research, public health or health care operations.

Davis Behavioral Health will consider PHI to be in the form of a limited data set if it excludes the following direct identifiers of our clients, their relatives, employers, or household members:

- 1. Names;
- 2. Postal address information, other than town or city, state, and zip code;
- 3. Telephone numbers;
- 4. Fax numbers;
- 5. Electronic mail addresses;
- 6. Social security numbers;
- 7. Medical record numbers;
- 8. Health plan beneficiary numbers;
- 9. Account numbers;
- 10. Certificate/license numbers;
- 11. Vehicle identifiers and serial numbers, including license plate numbers;
- 12. Device identifiers and serial numbers;
- 13. Web Universal Resource Locators (URLs);
- 14. Internet Protocol address numbers;
- 15. Biometric identifiers, including finger and voice prints; and
- 16. Full face photographic images and any comparable images.

Any use or disclosure that we make of a limited data set must take place pursuant to a data use agreement. This data use agreement must include the following requirements:

1. That the limited data set recipient(s) will use or disclose information for the limited purposes described in the agreement and not further disclose the information in a way that would be inconsistent with the privacy regulation as it would apply to our Agency itself;
2. That only the recipient(s) specified in the agreement may use or receive the limited data set;
3. That the recipient(s) will not use or further disclose the information in a manner that violates the data use agreement or the law and will use appropriate safeguards to prevent any uses or disclosures other than the permitted uses or disclosures;
4. That the recipient(s) will report to Davis Behavioral Health any use or disclosure of PHI in the limited data set, which is not included in the data use agreement, of which it becomes aware;
5. That the recipient(s) will assure that any subcontractor who is provided with a limited data set agrees to the same restrictions and conditions as apply to the recipient(s); and
6. That the recipient(s) will not identify the information or contact the individuals.

Should Davis Behavioral Health become aware of a pattern of activity or practice by a recipient that constitutes a material breach of the data use agreement, we will discontinue disclosure to that recipient and report the problem to the Secretary of Health and Human Services.

Policy 10 Individual's Right to Access

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out in this policy, the processes for requesting, granting, denial of, and review of denial, of client requests for access to PHI.

Policy

Davis Behavioral Health will consider all requests from our clients, or previous clients, for access to their PHI that is maintained in their designated record set and that is dated after April 14, 2003. (See policy on Designated Record Set.) Davis Behavioral Health will consider client requests to either inspect or obtain a copy of their PHI for as long as we maintain their PHI in the designated record set.

Davis Behavioral Health will require that clients make their request in writing using the form that has been designed for that purpose (i.e., the Access Request Form). At a minimum, the form will contain:

1. Identification of the specific PHI that the client wishes to access;
2. The reason for their request (this is optional for the client);
3. Whether they wish to inspect or obtain copies of the PHI;
4. Notification of the cost we will charge for copying and postage; and
5. Notification of their right to obtain a summary or explanation of their information, along with the cost of that service.

Davis Behavioral Health will deny a client access to PHI, and that denial will not be subject to review if:

1. The PHI requested is contained in:
 - a. Psychotherapy notes;
 - b. Records or documents compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; or
 - c. Records or documents from clinical laboratories subject to or exempt from the Clinical Laboratory Improvement Act.
2. The PHI is subject to the Federal Privacy Act;

3. The information was obtained under the promise of confidentiality from another person (not a healthcare provider), and the access requested would be reasonably likely to reveal the source of that information;
4. The information was created or obtained in the course of research that involves treatment when the individual agreed to the denial of access for the duration of the research (that includes treatment) when consenting to participate in the research and the client has been informed that access will be reinstated upon completion of the research; or
5. An inmate requests a copy of PHI, and it is determined that such a copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or other inmates or the safety of an officer or other person responsible for transporting the inmate. Davis Behavioral Health will provide an inmate with the right to inspect his PHI unless other grounds for denial exist.

Davis Behavioral Health will deny access to any PHI that a licensed healthcare professional determines:

1. Exercising professional judgment, is reasonably likely to endanger the life or physical safety of the client or another person;
2. Exercising professional judgment, makes reference to another person (not a health care provider) and access is reasonably likely to cause substantial harm to that other person; or
3. Has been requested by a personal representative and access by that person is reasonably likely to cause substantial harm to the client or another person.

When denying a client access for any of these three reasons, these denials will be subject to review as described below. In addition, if access to the entire record is denied and the client requests a review of the decision, we will make the entire record available to the client's attorney, with the consent of the client, or to a psychotherapist designated by the individual.

It is the policy of Davis Behavioral Health to deny clients access to their PHI only infrequently and in unusual circumstances and, when access is denied, it must be for one of the specific reasons listed above. Furthermore, Davis Behavioral Health will provide access, to the extent possible, to any other requested PHI that is not part of the PHI to which access has been denied. Davis Behavioral Health will make an effort to redact the denied PHI from the designated record set and allow inspection or copying of any remaining information.

When a client has been denied access for one of the reasons that is subject to review, Davis Behavioral Health will respond in writing giving the basis for denial in plain language within the time period set forth below. Davis Behavioral Health will also inform the client of their right to request a review of the denial of access and provide a description of how the client may file a complaint with us or with the Secretary of Health and Human Services.

In any case where the client requests a review, Davis Behavioral Health will promptly refer the denial to another licensed healthcare professional, who has not been directly involved in the denial, for their review. Davis Behavioral Health will also promptly inform the client, in writing, if the reviewer upholds the denial. In those cases where the reviewer permits access, the client will be informed.

When Davis Behavioral Health agrees to grant access to PHI, Davis Behavioral Health will notify the client and arrange for access within 30 days from the date of the request. Should the PHI requested be maintained off-site, Davis Behavioral Health can take longer to respond, but no more than 60 days from the date of the request. In either case, Davis Behavioral Health can obtain a single, 30-day extension of time in those rare cases where we are unable to respond in the initial time period. Davis Behavioral Health will notify the client of the reasons for delay and the date of completion by means of a written statement.

When Davis Behavioral Health has agreed to inspection of the designated record set, a mutually agreeable time and place will be arranged for the inspection.

When Davis Behavioral Health has agreed to provide copies of the requested PHI, we will confer with the client and determine their preference for the media in which to receive it (i.e., paper or electronic, where available). If we cannot agree on how the PHI will be produced then we will produce the PHI in readable hard copy. We will charge a fee for copying the material and for postage, if the copies are to be mailed, and the client will be notified of that charge in the Access Request Form. However, if the individual is requesting the PHI for the purpose of supporting a claim or appeal under the Social Security Act or any Federal or state financial need-based benefit program, we will furnish the PHI within 30 days of the request at no charge to the individual.

It will be the policy of Davis Behavioral Health to charge for the cost of making the copies (i.e., the labor, machine, and paper cost) but we will not include in our charges the cost of the retrieval and handling of information nor will the client be charged for the costs of processing the request.

Davis Behavioral Health will provide summaries of PHI in those cases where the individual has requested them. Davis Behavioral Health will charge for the costs associated with producing the summary, and the client will be notified of that charge in the Access Request Form.

In those cases where Davis Behavioral Health receives a request for PHI that we do not maintain, but we know where it is maintained, we will inform the client of the location of the PHI.

CLIENT REQUEST FOR HIS/HER OWN RECORDS

HIPAA regulations allow our clients the right to view, inspect, amend, and request a copy of their health information. Although we have the right, under certain circumstances to deny such requests, our general practice, at Davis Behavioral Health, will be to comply with and grant such requests. A client must show picture identification before his/her records will be released.

DBH charges \$.50 per page for requested records.

If your household income is 100% or below the federal poverty level, you may receive, at no cost, a copy of your medical records.

Client Name: _____ Date of Request: _____

Full Address: _____

Phone Number: _____ Date of Birth: _____

Social Security Number: _____

Person Requesting the Records: _____

Reason for Requesting records (optional): _____

- Please mail the records**
- Please email the records to** _____

I will pick up the records

Information that you would like released:

- | | |
|--|--|
| <input type="checkbox"/> Complete Record | <input type="checkbox"/> Progress Notes |
| <input type="checkbox"/> Psychiatric Evaluation | <input type="checkbox"/> Treatment Summary |
| <input type="checkbox"/> Initial Assessment | <input type="checkbox"/> Substance Use Treatment Notes |
| <input type="checkbox"/> Treatment Plan | <input type="checkbox"/> Discharge Summary |
| <input type="checkbox"/> Diagnosis | <input type="checkbox"/> Dates of Service |
| <input type="checkbox"/> Other – please specify: _____ | |

Signature: _____ Date: _____

Print Name: _____

Relationship to Client: _____

Witness: _____ Date: _____

- Photo ID copied

**By signing this document, I agree to the following conditions as outlined by the HIPAA regulations:
 (Please see reverse side for details)**

Prior to release of records, your chart will be reviewed by a licensed mental health professional at Davis Behavioral Health.

DBH shall respond to all written requests for PHI within thirty (30) days, unless the information is not stored on a DBH site, then DBH shall respond to the request within sixty (60) days. If DBH is unable to respond within the time frames stated, then DBH shall respond within an additional 30 days, provided that the Privacy Officer gives you a statement in writing of the reasons that DBH is unable to respond within these time frames.

If your request for information is denied, the Privacy Officer shall give written notice to the requester of its denial for the request for PHI.

DBH shall arrange to allow the client to inspect or obtain a copy of the PHI at a convenient time and place. DBH may discuss the scope, format, and other aspects of the request for access with the client to facilitate timely provision of the information.

If you request copies of your record, or you agree to pay for a summary of your record, you will be charged reasonable, cost-based fees as follows:

- **\$.50 per page copied;**
- **postage**, when the client asks for the PHI to be mailed; and

If DBH denies access, in whole or in part, to your record, DBH shall:

Provide a written denial, which states: the basis of the denial; the client's rights to have a review of the denial; and how the client may appeal the deal (where applicable) or appeal to the Secretary of Health and Human Services.

Upon receipt of request for review of denial, DBH shall appoint an individual who was not involved in the initial denial to review the request. The reviewing professional shall promptly give a written response to the client's request to review.

Total number of pages copied: _____

Cost of the paper record (number of pages copies X .50): _____

Total Cost: _____

Records will be provided in paper format unless you would prefer that you receive your records in another manner.

I would like my information in another manner. Please explain:

Policy 11 Individual's Right to Amendment of PHI

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out in this policy, the process for providing clients with an opportunity to amend their PHI that is maintained in a designated record set.

Policy

Davis Behavioral Health will consider all requests from clients, or former clients, to amend their PHI that is maintained in a designated record set for as long as it is maintained. Davis Behavioral Health will require that all requests for amendment be in writing and be prepared using the Request for Amendment form. In any case where that form cannot be obtained, Davis Behavioral Health will provide the client or former client with the information needed to submit in lieu of the form. Davis Behavioral Health will require that the individual inform us, in writing, as to the reason for the amendment. Davis Behavioral Health will notify our clients of our policies for requesting amendments in our Privacy Notice.

Davis Behavioral Health will respond to requests for amendment within 60 days from the date of the request. Should, in rare circumstances, Davis Behavioral Health be unable to respond within 60 days, the individual will be notified prior to the expiration of the 60-day period, in writing, and he/she will be provided with the reason additional time is needed. At that time, a date will be set (no more than 30 days beyond the original 60 days) by which Davis Behavioral Health expects to complete action on the request.

In those instances where the request for amendment is granted, Davis Behavioral Health will do the following:

1. Inform the client in writing;
2. Obtain the client's agreement about the list of people or organizations that the client and Davis Behavioral Health believe should be informed of the amendment; and
3. Notify the agreed-upon list (identified above in number 2. of the amendment).

(Note: it is the policy of Davis Behavioral Health to identify anyone who we know may have relied upon the subject PHI in the past, or who might reasonably be expected to rely upon it in the future and attempt to obtain agreement from the client regarding their notification.)

In those instances where the request for amendment is denied, Davis Behavioral Health will do the following:

1. Provide the client with a written denial that is in plain language and that:
 - a. Contains the basis for the denial; and
 - b. Notifies the individual that he/she has the right to provide a written statement disagreeing with the denial and how he/she might file such a statement.
2. Describe to the client the procedure for filing a complaint either with:
 - a. The Department of Health and Human Services or
 - b. With the person or office in Davis Behavioral Health who is responsible for receiving complaints, including the name, title, and telephone number.
3. Inform the individual that he/she may file a statement of disagreement with the denial that does not exceed 250 words.
4. Inform the individual that he/she may request, should he/she not file a statement of disagreement, that the request for amendment and the related denial be attached to all future disclosures of the subject PHI.

Davis Behavioral Health will prepare rebuttals in those instances, where a licensed healthcare professional determines that a rebuttal is necessary, to add clarity to the other material created around this request for amendment.

Designated Record Set

It is the policy of Davis Behavioral Health to take the following actions with respect to the designated record set in amendment situations:

1. When the amendment request has been granted:
 - a. Identify the subject PHI in the designated record set; and
 - b. Append the amendment to the PHI or
 - c. Provide a link to the location in the file of the amendment.
2. When the amendment request has been denied and the client requests it:
 - a. Identify the subject PHI in the designated record set; and
 - b. Append the request for amendment and the denial to the PHI or
 - c. Provide a link to the location in the file of the request and the denial.
3. When the amendment request has been denied, and the client has filed a statement of disagreement, and Davis Behavioral Health has or has not prepared a rebuttal:

- a. Identify the subject PHI in the designated record set; and
- b. Append the request for amendment, the denial, the statement of disagreement, and, if prepared, our rebuttal to the PHI or
- c. Provide a link to the location in the file of all of the items listed in b.

CLIENT'S REQUEST FOR AMENDMENT TO RECORD

HIPAA regulations allow our clients the right to view, inspect, amend, and request a copy of their health information. At Davis Behavioral Health, our standard is accurate documentation; therefore requests to amend records will be given serious consideration. Under certain circumstances, these requests may be denied. A client must show picture identification before his/her records will be released and/or amended.

Date of Request:
Date Received by Privacy Officer:

Name:
Address:
Birth date:
Social Security Number:
Information to be amended:
Reason for amending records (not optional):

Treatment Coordinator:

Signature:	Date:
Witness:	Date:

By signing this document, I agree to the following conditions as outlined by the HIPAA regulations: (Please see reverse side for details).

Policy 12 Individual's Right to an Accounting of Disclosures of PHI

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out in this policy, the process for providing clients with an opportunity to receive an accounting of the disclosures made of their PHI.

Policy

Davis Behavioral Health will consider all requests from clients, or former clients, to receive an accounting of certain disclosures of their PHI that have occurred in the six year period prior to their request, or from the effective date of the Privacy Rule, whichever is shorter. Davis Behavioral Health will require that all requests for an accounting be in writing using the Request for Accounting form. Should a client need assistance in completing the form, Davis Behavioral Health will provide that assistance. Davis Behavioral Health will notify our clients of the policies for requesting an accounting in our Privacy Notice.

Davis Behavioral Health will respond to requests for an accounting within 60 days from the date of the request. Should, in rare circumstances, Davis Behavioral Health be unable to respond within 60 days, the individual will be notified, in writing during the initial 60-day period and he/she will be provided with the reason(s) that Davis Behavioral Health needs additional time. Additionally, Davis Behavioral Health will identify a date (no more than 30 days beyond the original 60 days) by which we expect to complete action on the request.

Davis Behavioral Health will account for all uses and disclosures of our clients' PHI except for those in the following categories:

1. Disclosures made to carry out treatment, payment, or operations (this includes disclosures made by business associates for these purposes as well);
2. Disclosures made to the individual;
3. Disclosures made incident to a use or disclosure that is otherwise permitted or required;
4. Disclosures made pursuant to an authorization;
5. For disclosures made to the Secretary of Health and Human Services for compliance purposes and for any other disclosures allowed to be made without the individual's permission;

6. Disclosures for national security or intelligence purposes; and
7. Disclosures to correctional institutions or law enforcement officials when individual is an inmate;
8. Disclosures made as part of a limited data set. See Policy 9, De-identification;
9. Those disclosures that occurred prior to April 14, 2003.
10. Disclosures to persons involved in the individual's care or other permitted notification purposes. See Policy 4, No Permission.

In those situations where Davis Behavioral Health has made disclosures to a health oversight or law enforcement agency (as permitted by the No Permission Policy) and the particular agency has provided Davis Behavioral Health with a written statement that inclusion of such disclosures would be reasonably likely to impede with their activities (within a specific time period provided by the agency), our policy will be to exclude those disclosures from any accounting requested by the client. At the end of that period, Davis Behavioral Health will include, in any future accountings, any disclosures made to the agency during that period in any future accountings.

Should the health oversight or law enforcement agency provide Davis Behavioral Health with an oral statement that a disclosure would be reasonably likely to impede their activities, Davis Behavioral Health will withhold disclosures for a 30 day period. After the 30 day period, Davis Behavioral Health will include the disclosures in requested accountings unless a written statement requesting a longer time period has been provided during the 30 day period.

Davis Behavioral Health will include the following items in every accounting:

1. The date of the disclosure;
2. The name and address of the person or organization receiving the PHI;
3. A brief description of the PHI disclosed; and
4. A brief statement that reasonably informs the client of the purpose for the disclosure.

Davis Behavioral Health's policy with respect to multiple disclosures of a client's PHI to the same person or entity (for the same purpose) will be to present all of the information listed above for the first disclosure in the accounting period. In addition, we will present the frequency, periodicity, or number of disclosures made during the accounting period and the date of the most recent disclosure.

Davis Behavioral Health's policy, with respect to disclosures of PHI for a particular research purpose with 50 or more individuals participating, is that the accounting will provide:

1. The name of the protocol or other research activity;
2. A description, in plain language, of the research protocol or other research activity, including the purpose and criteria for selection of particular records;
3. A description of the type of PHI that was disclosed;
4. The date or period of time during which such disclosure occurred, or may have occurred, including the date of the last disclosure during the accounting period;
5. The name, address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and
6. A statement that the PHI may or may not have been disclosed.

In the event that it is reasonably likely that the PHI of a particular client has been disclosed for such a protocol or research activity, Davis Behavioral Health will, if requested by the client, assist him/her in contacting the entity that sponsored the research and the researcher.

Davis Behavioral Health will provide the first accounting in each 12 month period, beginning with the client's first request for an accounting, at no charge. Any additional request for accounting from the same client during that 12 month period will be made subject to the client's agreement to pay a reasonable, cost-based fee for the additional accounting. Davis Behavioral Health will inform the client of the fee on the Request for Accounting form and obtain their written agreement to pay the fee prior to preparing the accounting. Davis Behavioral Health will offer the client an opportunity to withdraw or modify their request in order to avoid or reduce the fee.

Request for Accounting of PHI Disclosed by Davis Behavioral Health

I request an accounting of all PHI disclosed by Davis Behavioral Health pursuant to the requirements of the Privacy Rule. I understand that this accounting will not include disclosures that were:

1. Made to me or my health care representatives.
2. Made to carry out the treatment, payment or operational activities of the organization.
3. For facility directory purposes or to discuss my healthcare with a family member or other individuals involved in my care or for other permitted notification purposes
4. Made for national security and intelligence purposes
5. Made to a correctional institution or to law enforcement and I am currently an inmate
6. Made incident to a use or disclosure that is otherwise permitted by the Agency
7. Made pursuant to an authorization
8. Made as part of a limited data set
9. Occurred prior to April 14, 2003

The period of time I am requesting the accounting for is from:

_____ to _____

I understand that this period of time can be for no longer than six years and cannot include any time period before April 14, 2003, the date the Privacy Rule became effective. I also understand that the first accounting I request in any 12 month period will be given to me for no charge.

Signed: _____

Date: _____

Print Name Below

For a client requesting more than one accounting in a 12 month period the following additional signature should be obtained:

I understand that because I have requested more than one accounting in a 12 month period that I will be charged the cost to Davis Behavioral Health for completing this accounting. I understand that this cost will be *\$.05 per page copied; *\$10.00 per hour to process, copy, or scan the information, which is the approximate cost of the staff who will take the time to copy or scan the chart; and *postage, when the client asks for the PHI to be mailed. Payment must be made at the time I receive the accounting or prior to the accounting being mailed to me.

Agreed and accepted: _____ Date: _____

Print Name Below

PHI Disclosure to be Included in Client's Accounting

If this disclosure was made:

1. To the client or their personal representative;
2. To carry out our treatment, payment or operational activities;
3. For facility directory purposes, to discuss their healthcare with a family member or other individual involved in their care, or for other permitted notification purposes;
4. For national security or intelligence purposes; or
5. To a correctional institution or to law enforcement and the client is currently an inmate;
6. Incident to a use or disclosure that is otherwise permitted;
7. Pursuant to an authorization;
8. As part of a limited data set;
9. Prior to April 14, 2003

STOP – DO NOT COMPLETE THIS FORM!

For all other disclosures:

Date of disclosure: _____

Staff ID Number: _____

Name of person and organization receiving disclosure:

Address of person/organization receiving this disclosure:

Description of what information was disclosed:

Brief statement of purpose of disclosure:

Signature of staff person making disclosure: _____

Date of Disclosure: _____

Uses and Disclosures

Policy 13 Other Individual Rights – Right to Restrict Uses and Disclosures of PHI

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the conditions for agreeing to client-requested restrictions on the use and disclosure of PHI for treatment, payment, and operations.

Policy

Davis Behavioral Health will consider a client's request for restriction of the uses and disclosures of PHI that are made for purposes of treatment, payment, and operations. Davis Behavioral Health will discuss with the client the potential difficulties that are inherent in the restrictions that the client requests, such as those that might interfere with the client's ability to obtain appropriate treatment.

Davis Behavioral Health will use the Request for Restrictions form to document the request and, ultimately, the restriction that has been granted to the client. While Davis Behavioral Health is not required by the Privacy Rule to agree to client-requested restrictions, it will be our policy to grant those restrictions that we believe, in our judgment, to be in the best interests of our clients. Davis Behavioral Health will abide by all of the restrictions that are granted, except as described below.

When the individual is in need of emergency treatment and the restricted PHI is needed to provide the emergency treatment, the policy will be to make disclosure of the PHI that is required for treatment and to send along with the PHI the requirement that there be no further uses or disclosures of the restricted PHI.

In non-emergency situations, when Davis Behavioral Health receives a request for PHI that is restricted but required for appropriate treatment, Davis Behavioral Health will discuss with the client the need to send the PHI and attempt to obtain their agreement. Should the client agree to the request, this agreement will be documented by a note in the medical record.

In any case where Davis Behavioral Health believes that the client's restriction can no longer be honored, the restriction will be terminated. Davis Behavioral Health will discuss the change of

circumstance with the client, will ask for their agreement, and will document that agreement on the Request for Restrictions form that is in the medical record.

Should the client refuse to agree to the termination of the restriction, Davis Behavioral Health will implement a unilateral termination. This will also be documented on the Request for Restrictions form. The PHI that was created or received during the term of the restriction will be flagged to assure that future uses and disclosures of it are made in accordance with the restrictions in place for that period.

Uses and Disclosures

Policy 14 Other Individual Rights – Confidential Communications

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the conditions for accommodating a client's request for confidential communications.

Policy

Davis Behavioral Health will consider a client's request for confidential communications upon request, for example, at intake.

Davis Behavioral Health will document the alternative information and the approval on the intake/demographic form or equivalent electronic field. It will be our policy to grant reasonable requests. Reasonableness will be judged by the administrative difficulty of complying with the request.

Davis Behavioral Health will not ask the client to explain why he/she wishes to have us communicate with them by alternative means or to alternative locations.

Davis Behavioral Health will not comply with the client's request unless he/she has provided us with complete information to enable us to communicate with them (i.e., a complete address or other method of contact).

Davis Behavioral Health will provide adequate notice of the request to those employees who may need to contact the client by flagging the medical record and, where possible, other client databases.

Policy 15 Administrative Requirements -- Documentation

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the standards it will maintain to fulfill the documentation retention requirements.

Policy

Davis Behavioral Health will retain all documentation as described in the Privacy Rules for a period of six years from its creation or from the date it was last in effect, whichever is later. The six-year period does not apply to the retention of the medical record itself.

The Privacy Officer will assure that all documentation is preserved for the appropriate retention period in whatever medium is considered appropriate for each required item.

The material subject to documentation retention requirements is set out in each individual Privacy Policy. The list that follows summarizes these requirements:

1. The notice of privacy practices, with copies of the notices maintained by implementation dates by version;
2. All policies and procedures, with copies of each policy and procedure maintained through each of its iterations;
3. Workforce training efforts;
4. Restrictions to uses and disclosures of PHI that were granted;
5. The designated record set;
6. Personnel roles related to Privacy Rules (i.e., the Privacy Officer, the person or office designated to receive complaints, the titles of person(s) or office(s) who are responsible for receiving and processing requests for access by individuals, the titles of person(s) or office(s) responsible for receiving and processing requests for amendments and accountings of PHI);
7. For each accounting provided to an individual – the date of disclosure, the name and address of entity or person who received the PHI, a description of the PHI disclosed, a briefly stated purpose for the disclosure, and the written accounting that was provided;

8. All signed, written acknowledgements of receipt of the Privacy Notice or documentation of good faith efforts made to obtain such acknowledgement in those cases where a signed, written acknowledgement could not be obtained;
9. Any signed authorization;
10. All complaints received and their disposition;
11. Any sanctions against members of the workforce that have been applied as a result of non-compliance; and
12. Any of PHI for research made without the individual's authorization and any approval or alteration or waiver of PHI for research in accordance with the requirements of §164.512(i)(2).

Policy 16 Administrative Requirements – Complaint Process

See DBH Grievance Policies

Policy 17 Administrative Requirements – Training of the Workforce

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the requirements for workforce training in our privacy practices.

Policy

Davis Behavioral Health will train all of our workforce members (full time employees, part time employees, interns, and volunteers) in our privacy practices. Davis Behavioral Health will train employees in accordance with his/her role in the Agency and his/her functions with regard to PHI. All workforcemembers who join the Agency will receive privacy training as part of their orientation to the Agency.

Whenever there are material changes to the privacy practices, the Privacy Officer will determine the workforce groups affected by the changes and coordinate the training of those groups.

All trainings presented will be documented as to content and attendance. Workforce members who fail to attend their assigned trainings will be subject to sanction for breach of privacy practices.

Policy 18 Administrative Safeguards – Personnel

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the requirements for safeguarding PHI in all media.

Policy

Davis Behavioral Health will assign responsibility for all safeguarding matters to a Security Officer. This position will be responsible for assuring that all PHI, whether in oral, written, or electronic form, is reasonably secure from accidental or intentional uses and disclosures that violate the Privacy Rules and from inadvertent disclosures to other than the intended recipient.

The Security Officer will maintain the Policies and Procedures, for all media, around security measures to protect PHI. The Security Officer will also be responsible for monitoring the appropriate and consistent implementation of the policies and procedures that control the conduct of the workforce, subcontractors, and business associates with regard to the protection of data. The Security Officer will assure that breaches of security are investigated and that members of the workforce who are responsible for those breaches will be subject to the appropriate sanctions. In addition, the Security Officer will assure that any system weakness uncovered during such investigations will be corrected

Policy 19 Administrative Safeguards – Chain of Trust Agreements

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rules of HIPAA's Administrative Simplification provisions, sets out, in this policy, the requirements for safeguarding PHI in electronic media.

Policy

Chain of Trust Agreements

Davis Behavioral Health will obtain agreements, commonly referred to as "Chain of Trust Agreements" with any third party through whom it processes electronic data. This agreement will assure that at least the same level of security present within our Agency will be maintained at all points in the movement of PHI to ensure its security, accuracy, and authentication.

The Chain of Trust Agreement is a form of Business Associate Agreement and will be in the form attached to this policy. Note: Chain of Trust provisions are incorporated in Section 3.3 of the model Business Associates Addendum and Section 2.3 of our Model Business Associates Agreements that are attached to the Business Associates Policy.

Davis Behavioral Health will identify the specific attributes that we will require from our electronic data vendors and the steps that will be taken in performing due diligence with these vendors. The process in the Business Associates Policy and Procedure is the guidance for minimum procedures around electronic data vendors.

Policy 20 Administrative Safeguards – Contingency Planning

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, sets out, in this policy, the requirements for safeguarding PHI through contingency planning.

Policy

Davis Behavioral Health will maintain contingency plans in accordance with the five required plans set forth in the proposed Security Rule.

It will be our policy to maintain, in a timely manner, documentation of our applications and data criticality that includes:

1. Network architecture diagrams and systems flowcharts showing current structure, equipment addresses, communication providers and system interdependencies;
2. Critical business processes surrounding PHI;
3. Key applications and systems used to support critical business processes;
4. Key applications and systems and their recovery time objectives;
5. Internal and external interfaces with key applications and systems;
6. The adequacy of redundancies within the network infrastructure; and
7. Mitigating controls, in place and tested, for any single points of failure for which redundancies cannot be established.

Davis Behavioral Health will assure, by means of a Data Backup Plan that we have adequate (regular and periodic) backup of critical information as prioritized in the data criticality analysis. Backup and restore procedures will be updated regularly to reflect changes within the organization for the documentation listed above. In addition, Davis Behavioral Health will assure that the backup data can be accessed quickly. We will maintain offsite storage of critical documentation and assure access to those materials.

Davis Behavioral Health will maintain a Disaster Recovery Plan that documents all elements of the Plan and that is updated on a regular basis. The Plan will cover the full range of information and activities needed to assure that the Plan will function smoothly in situations where it is needed.

Davis Behavioral Health will maintain an Emergency Mode Operation Plan that will enable us to operate effectively in emergency conditions. The Plan will include any information, activities, and assignments that are needed such as: identification of crisis management team members, a command center for emergency purposes, a process for acquiring additional personnel with needed skill sets, alternate processing and work space, and health and safety issues.

Davis Behavioral Health will test and revise procedures as necessary to assure that they function as planned and that they are effective.

Policy 21 Administrative Safeguards – Audit Controls and Internal Audit

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, sets out, in this policy, the requirements for safeguarding PHI through audit controls and internal auditing.

Policy

Davis Behavioral Health will establish and maintain ongoing processes to review records of systems activity, such as log-ins, file accesses, and security incidents, for PHI in all media. We will establish documented procedures for auditing this information for the purpose of identifying security breaches and for assuring that users comply with access controls. We will assign specific individuals or job functions that will be responsible for such internal audit activity.

Davis Behavioral Health will also establish audit controls that will define users, data sources, data accessed, the client, the date and time of the access, and other information we consider appropriate.

Davis Behavioral Health will also establish procedures to audit configuration management practices that have been established to assure that changes to hardware and software systems do not contribute to, or create, security weaknesses.

Access to audit logs will be limited to those assigned to the internal audit and control function as described above.

Policy 22 Administrative Safeguards – Workforce-related Security Measures

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, sets out, in this policy, the requirements for safeguarding PHI. This Policy recognizes that our workforce is the foundation for our security environment.

Policy

Davis Behavioral Health will create and maintain procedures directed toward the behavior of our workforce that promote an environment for PHI that is reasonably secure from accidental, intentional, or inadvertent disclosures that violate the Privacy Rule.

Davis Behavioral Health will create and maintain guidelines on workstation use that are documented. These guidelines will address:

1. The proper functions to be performed;
2. The manner in which those functions are to be performed (i.e., the documentation of the actual function and how it is to be performed); and
3. The attributes of the physical environment in which the workstations, including laptops and other portable devices, are to be located – the attributes will vary based on the sensitivity of information that typically is accessed from that environment. Attributes include such things as physical access to the workstation itself and to the area in which the workstation is located, the removable media, such as diskettes, CD-ROMs, etc., and the practices around writing down passwords where others can find/use them.

The Security Officer will oversee this process and assure that the workforce is trained on these guidelines prior to being given access to the system.

It will be our policy to provide security awareness training to all members of the workforce and to any independent contractors who have access to our workplace and systems. Awareness training will be directed at all of these individuals, regardless of their roles or access to PHI – its purpose will be to provide education around such things as: password maintenance, security incident

reporting, virus and other forms of destructive software. Awareness training will also be accomplished by periodic environmental reminders such as: screen savers, posters, etc. The Security Officer will oversee the development of awareness training in conjunction with Human Resources.

It will also be our policy to provide training to all users of electronic systems. User training will be required prior to any user receiving access to the system. User training will focus specifically on the actual usage of security features such as: virus protection practices, addition of unauthorized hardware or software to the system, password management, login practices, automatic logoffs, etc. The Security Officer will oversee the development of awareness training in conjunction with Human Resources.

We will establish procedures in conjunction with Human Resources for terminated workforce members and for members of the workforce whose positions and work assignments have changed. These procedures will cover security for PHI in all media. We will address:

1. Physical access combinations – for locks and alarm systems;
2. Removal of access privileges – both general access and user levels of access; and
3. The collection of keys, tokens, or other objects that allow access.

Policy 23 Administrative Safeguards – Access Control

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, sets out, in this policy, the requirements for safeguarding PHI by controlling access to our facilities and electronic systems.

Policy

Davis Behavioral Health will create and maintain procedures to safeguard all of our locations from unauthorized physical access and to safeguard hardware and other equipment from unauthorized physical access, theft, and interference.

Davis Behavioral Health will limit and control physical access to any and all parts of the designated record set. Our paper medical record files will be placed in limited access spaces and access to those records will be controlled by medical records or other appropriate staff.

Electronic files will be subject to access controls that will limit user access to that PHI for which they have clearance. See Minimum Necessary Policy and Procedures. Controls for access to non-PHI data will be established and maintained in accordance with either context, role, or user-based criteria. These controls will include a process for setting criteria for granting access and for modification of the criteria.

Our systems will maintain an access authorization record to document and review the level of access granted to a user, program, or procedure.

Davis Behavioral Health will assure that systems maintenance personnel have proper access authorization.

Davis Behavioral Health will not transmit PHI over the Internet (open network) without some form of encryption intended to limit access to information.

Policy 24 Administrative Safeguards – Data and Entity Authentication

Purpose

Davis Behavioral Health, in an effort to be compliant with the Privacy Rule of HIPAA's Administrative Simplification provisions, sets out, in this policy, the requirements for safeguarding PHI by assuring that PHI is going to, or coming from, the appropriate person or entity and that the data being processed or transmitted has not been modified intentionally or inadvertently.

Policy

Davis Behavioral Health will establish and maintain procedures for assuring that recipients of PHI via electronic or other means are the intended recipients.

Davis Behavioral Health will also establish and maintain procedures for data authentication. These procedures will assure that PHI contained in messages or files has not been altered or modified.

Your Information. Your Rights. Our Responsibilities.

This notice describes how medical information about you may be used and disclosed and how you can get access to this information. **Please review it carefully.**

Your Rights

You have the right to:

- Get a copy of your paper or electronic medical record
- Correct your paper or electronic medical record
- Request confidential communication
- Ask us to limit the information we share
- Get a list of those with whom we've shared your information
- Get a copy of this privacy notice
- Choose someone to act for you
- File a complaint if you believe your privacy rights have been violated

▶ **See page 2** for more information on these rights and how to exercise them

Your Choices

You have some choices in the way that we use and share information as we:

- Tell family and friends about your condition
- Provide disaster relief
- Include you in a hospital directory
- Provide mental health care
- Market our services and sell your information
- Raise funds

▶ **See page 3** for more information on these choices and how to exercise them

We may use and share your information as we:

- Treat you
- Run our organization
- Bill for your services
- Help with public health and safety issues
- Do research
- Comply with the law
- Respond to organ and tissue donation requests
- Work with a medical examiner or funeral director

- Address workers' compensation law enforcement, and other government requests
- Respond to lawsuits and legal actions

▶ **See**
pages 3
and 4 for
more
information
on these
uses and
disclosures

Your Rights

When it comes to your health information, you have certain rights.

This section explains your rights and some of our responsibilities to help you.

Get an electronic or paper copy of your medical record

- You can ask to see or get an electronic or paper copy of your medical record and other health information we have about you. Ask us how to do this.
- We will provide a copy or a summary of your health information, usually within 30 days of your request. We may charge a reasonable, cost-based fee.

Ask us to correct your medical record

- You can ask us to correct health information about you that you think is incorrect or incomplete. Ask us how to do this.
- We may say "no" to your request, but we'll tell you why in writing within 60 days.

Request confidential communications

- You can ask us to contact you in a specific way (for example, home or office phone) or to send mail to a different address.
- We will say "yes" to all reasonable requests.

Ask us to limit what we use or share

- You can ask us **not** to use or share certain health information for treatment, payment, or our operations. We are not required to agree to your request, and we may say "no" if it would affect your care.
- If you pay for a service or health care item out-of-pocket in full, you can ask us not to share that information for the purpose of payment or our operations with your health insurer. We will say "yes" unless a law requires us to share that information.

Get a list of those with whom we've shared information

- You can ask for a list (accounting) of the times we've shared your health information for six years prior to the date you ask, who we shared it with, and why.
- We will include all the disclosures except for those about treatment, payment, and health care operations, and certain other disclosures (such as any you asked us to make). We'll provide one accounting a year for free but will charge a reasonable, cost-based fee if you ask for another one within 12 months.

Get a copy of this privacy notice

- You can ask for a paper copy of this notice at any time, even if you have agreed to receive the notice electronically. We will provide you with a paper copy promptly.

Choose someone to act for you

- If you have given someone medical power of attorney or if someone is your legal guardian, that person can exercise your rights and make choices about your health information.
- We will make sure the person has this authority and can act for you before we take any action.

File a complaint if you feel your rights are violated

- You can complain if you feel we have violated your rights by contacting us using the information on page 1.
- You can file a complaint with the U.S. Department of Health and Human Services Office for Civil Rights by sending a letter to 200 Independence Avenue, S.W., Washington, D.C. 20201, calling 1-877-696-6775, or visiting www.hhs.gov/ocr/privacy/hipaa/complaints/.
- We will not retaliate against you for filing a complaint.



Your Choices

For certain health information, you can tell us your choices about what we share. If you have a clear preference for how we share your information in the situations described below, talk to us. Tell us what you want us to do, and we will follow your instructions.

In these cases, you have both the right and choice to tell us to:

- Share information with your family, close friends, or others involved in your care
- Share information in a disaster relief situation
- Include your information in a hospital directory

If you are not able to tell us your preference, for example if you are unconscious, we may go ahead and share your information if we believe it is in your best interest. We may also share your information when needed to lessen a serious and imminent threat to health or safety

In these cases we never share your information unless you give us written permission:

- Marketing purposes
- Sale of your information
- Most sharing of psychotherapy notes

In the case of fundraising:

- We may contact you for fundraising efforts, but you can tell us not to contact you again.

Our Uses and Disclosures

How do we typically use or share your health information?

We typically use or share your health information in the following ways.

Treat you

- We can use your health information and share it with other professionals who are treating you.

Example : A doctor treating you for an injury asks another doctor about your overall health condition.

Run our organization

- We can use and share your health information to run our practice, improve your care, and contact you when necessary.

Example : We use health information about you to manage your treatment and services.

Bill for your services

- We can use and share your health information to bill and get payment from health plans or other entities.

Example: We give information about you to your health insurance plan so it will pay for your services.

How else can we use or share your health information? We are allowed or required to share your information in other ways - usually in ways that contribute to the public good, such as public health and research. We have to meet many conditions in the law before we can share your information for these purposes. For more information see: www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/index.html.

Help with public health and safety issues

- We can share health information about you for certain situations such as:
 - Preventing disease
 - Helping with product recalls
 - Reporting adverse reactions to medications
 - Reporting suspected abuse, neglect, or domestic violence
 - Preventing or reducing a serious threat to anyone's health or safety

Do research

- We can use or share your information for health research.

Comply with the law

- We will share information about you if state or federal laws require it, including with the Department of Health and Human Services if it wants to see that we're complying with federal privacy law.

Respond to organ and tissue donation requests

- We can share health information about you with organ procurement organizations.

Work with a medical examiner or funeral director

- We can share health information with a coroner, medical examiner, or funeral director when an individual dies.

Address workers' compensation, law enforcement, and other government requests

- We can use or share health information about you:
 - For workers' compensation claims
 - For law enforcement purposes or with a law enforcement official
 - With health oversight agencies for activities authorized by law
 - For special government functions such as military, national security, and presidential protective services

Respond to lawsuits and legal actions

- We can share health information about you in response to a court or administrative order, or in response to a subpoena.

Other Information:

If you seek or receive treatment for substance abuse at Davis Behavioral Health, we do not share your information without your written permission unless otherwise permitted or required by state or federal law.

Our Responsibilities

- We are required by law to maintain the privacy and security of your protected health information.
- We will let you know promptly if a breach occurs that may have compromised the privacy or security of your information.
- We must follow the duties and privacy practices described in this notice and give you a copy of it.
- We will not use or share your information other than as described here unless you tell us we can in writing. If you tell us we can, you may change your mind at any time. Let us know in writing if you change your mind.

For more information see: www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/noticepp.html.

Changes to the Terms of this Notice

We can change the terms of this notice, and the changes will apply to all information we have about you. The new notice will be available upon request, in our office, and on our web site.

Effective Date: September 23, 2013

This Notice of Privacy Practices applies to the following organizations.

*Davis Behavioral Health, Privacy Office
934 S Main Street, Layton, UT 84041
(801) 773-7060 or shellyt@dbh.utah.gov*

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into and made effective as of the 23rd day of September, 2013, by and between Davis Behavioral Health (“Covered Entity”) and (“Business Associate”). The Business Associate has contracted with Covered Entity to perform **the following business associate functions:**

RECITALS

WHEREAS, Covered Entity is a licensed, comprehensive behavioral health center in the state of Utah;

WHEREAS, Business Associate provides services to or on behalf of Covered Entity that may require Covered Entity to disclose the individually identifiable health information of some or all of its clients to Business Associate or may require Business Associate to create health information on behalf of Covered Entity;

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and security of certain Protected Health Information (“PHI” as defined hereafter) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule (“Privacy Rule”), 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule (“Security Rule”), 45 C.F.R. Parts 160, 162 and 164,), as amended, 42 U.S.C. § 602(a)(1)(A)(iv), 42 U.S.C. § 1396a(a)(7), 42 C.F.R. §§ 431.301-431.302, 42 C.F.R. Part 2, 45 C.F.R. § 205.50, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, specifically including PHI, and applicable agency guidance.

WHEREAS, it is Covered Entity's policy to protect the confidentiality of PHI, and to disclose PHI only under circumstances and in a manner that is permissible by law, and to require the same of any and all business associates with whom it contracts;

WHEREAS, Business Associate may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI may be used or disclosed, and must be handled, only in accordance with this Agreement and the standards established by applicable laws and agency guidance.

WHEREAS, this Agreement addresses the conditions under which Covered Entity will disclose and Business Associate will obtain and use PHI;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I: DEFINITIONS

- 1.1 The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, and Subcontractor.
- 1.2 “Business Associate” shall be used to identify Business Associate and shall have the meaning given to such term under HIPAA, the HITECH Act, applicable regulations and agency guidance.

- 1.3 “Covered Entity” shall be used to identify Davis Behavioral Health and shall have the meaning given to such term under HIPAA, the HITECH Act and applicable regulations and agency guidance.
- 1.4 “Disclose” shall mean the release, transfer or provision of access to PHI, whether oral or recorded in any form.
- 1.5 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.
- 1.6 “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009).
- 1.7 “Identifying Characteristic” includes all of the following, as well as any other unique information: name; address; names of relatives; name of employers; all elements of dates, including birth date, admission date, discharge date, etc.; telephone numbers; fax numbers; electronic mail address; social security number; Medicaid record number; health plan beneficiary number; account number; certificate/license number; serial number of a vehicle or other device; internet URL; internet protocol (IP) address number; biometric identifiers, including finger and voice prints; and photographic images.
- 1.8 “Individually Identifiable” means information that contains any Identifying Characteristic.
- 1.9 “Privacy Rule” shall mean the standards for privacy of individually identifiable health information in 45 C.F.R. Parts 160 and 164, as amended, and related agency guidance.
- 1.10 “Protected Health Information” or “PHI” means any information, transmitted or recorded in any form or medium; (i) that relates to the past, present or future physical or mental 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 (ii) 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, and shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations and agency guidance. PHI also includes any and all information that can be used to identify a current or former applicant or recipient of benefits or services of Covered Entity (or Covered Entity’s contractors/business associates).
- 1.11 “Security Rule” shall mean the security standards in 45 C.F.R. Parts 160, 162 and 164, as amended, and related agency guidance.
- 1.12 “Unsecured PHI” shall mean PHI that is not secured through the use of a technology or methodology as specified in HITECH regulations and agency guidance or as otherwise defined in the HITECH Act.
- 1.13 “Use” means the sharing, employment, application, utilization, examination, or analysis, in any form or medium, of information within the Business Associate organization.

ARTICLE II: OBLIGATIONS OF BUSINESS ASSOCIATE

- 2.1 **Limits on Use and Further Disclosure.** Business Associate hereby agrees that the PHI provided by, or created or obtained on behalf of Covered Entity is only to be used or disclosed as necessary to provide goods or perform contracted services for the Covered Entity, and shall not be further used or disclosed other than as permitted or required by any written Agreement or as required by law and agency guidance.
- 2.2 **Appropriate Safeguards.** Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary requirements as set forth in applicable federal and state statutory and regulatory requirements and agency guidance .

- 2.3 Reports of Improper Use or Disclosure.** Business Associate hereby agrees that it shall report to the Executive Director and/or designated compliance officer of Covered Entity, within two (2) days of discovery any use or disclosure of PHI not provided for or allowed by this Agreement. Such report shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach.
- 2.4 Reports of Security Incidents.** In addition to following the breach notification requirements in section 13402 of the HITECH Act and related regulations, agency guidance and other applicable federal and state laws, Business Associate shall report to the Executive Director and/or designated compliance officer of Covered Entity, within two (2) days of discovery any security incident of which it becomes aware. At the sole expense of Business Associate, Business Associate shall comply with all applicable federal and state breach notification requirements. Business Associate shall indemnify the Covered Entity for costs associated with any incident involving the acquisition, access, use or disclosure of Unsecured PHI in a manner not permitted under this Agreement, federal or state law or agency guidance.
- 2.5 Subcontractors and Agents.** Business Associate hereby agrees that any time PHI is provided or made available to any subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and shall first enter into a subcontract or contract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Agreement.
- 2.6 Right of Access to PHI.** Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within five (5) business days of receiving a written request from the Covered Entity. Business Associate shall provide PHI to the extent and in the manner required by 45 C.F.R. § 164.524 and other applicable federal and state law and agency guidance. If Business Associate maintains an electronic health record, Business Associate must provide the PHI in electronic format if requested. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity of same within five (5) business days. Business associate shall further conform with and meet all of the requirements of 45 C.F.R. §164.524 and other applicable laws, including the HITECH Act and related regulations, and agency guidance.
- 2.7 Amendment and Incorporation of Amendments.** Within five (5) business days of receiving a request from Covered Entity for an amendment of PHI held or maintained by Business Associate, Business Associate shall make the PHI available and incorporate the amendment to enable Covered Entity to comply with 45 C.F.R. §164.526, applicable federal and state law, including the HITECH Act and related regulations, and agency guidance. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity within five (5) business days.
- 2.8 Provide Accounting of Disclosures.** Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 C.F.R. §164.528 and other applicable laws and agency guidance, including the HITECH Act and related regulations. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, and the purpose of the disclosure. Business Associate shall make such record available to the individual or the Covered Entity within five (5) business days of a request for an accounting of disclosures.
- 2.9 Requests for Restriction.** Business Associate shall comply with requests for restrictions on disclosures of PHI about an individual if the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for treatment purposes), and the PHI pertains solely to a health care item or service for which the service involved was paid in full out-of-pocket. For other requests for restriction, Business associate shall otherwise comply with the Privacy Rule, as amended, and other applicable statutory and regulatory requirements and agency guidance.

- 2.10 Access to Books and Records.** Business Associate shall make any and all internal practices, books and records related to this Agreement available to Covered Entity for inspection and/or audit upon request of Covered Entity. Business Associate further agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary of the United States Department of Health and Human Services or designee for purposes of determining compliance with applicable laws and agency guidance. Business Associate shall concurrently provide to Covered Entity a copy of all information provided to the Secretary.
- 2.11 Retention and Maintenance of PHI.** Except as otherwise provided herein in the event of termination of this Agreement, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to retain and maintain the information required under the various documentation requirements of this Agreement for the longer of (a) a period of not less than ten (10) years after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise, (b) a period of not less than two years following the death of an individual for whom Business Associate possesses PHI and/or (c) in the event that the individual for whom Business Associate possesses PHI is a minor, then until the individual reaches the age of twenty three (23).
- 2.12 Mitigation Procedures.** Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Agreement or the Privacy Rule, as amended. Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement or applicable laws and agency guidance.
- 2.13 Sanction Procedures.** Business Associate agrees that it shall develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement, applicable laws or agency guidance.
- 2.14 Failure to Perform Obligations.** In the event Business Associate fails to perform its obligations under this Agreement, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Agreement and applicable laws and agency guidance.
- 2.15 Privacy Practices.** Covered Entity may provide and Business Associate shall immediately begin using any applicable form, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date designated by Covered Entity, if any. Covered Entity retains the right to change the applicable privacy practices, documents and forms. Business Associate shall implement changes as soon as practicable, but not later than 45 days from the date of notice of the change.
- 2.16 Representations of Business Associate.** Business Associate represents and warrants that Information will be used and disclosed solely as necessary to perform the agreed to services to or on behalf of Covered Entity, and Covered Entity relies upon such representation and warranty in providing the Information.
- 2.17 Release and Identifying Characteristics.** Business Associate agrees that no finding, listing or information derived from PHI, with or without identifiers, may be released if such finding, listing or information contains any combination of data elements that might allow the deduction of an individual's identification without first obtaining written authorization from Covered Entity. Business Associate agrees that Covered Entity shall be the sole judge as to whether any finding, listing, information or any combination of PHI identifies or would, with reasonable effort, permit one to identify an individual or to deduce the identity of an individual to a reasonable degree of certainty.
- 2.18 Ownership of PHI.** Business Associate agrees that Covered Entity and the applicable individual retain all ownership rights to the PHI, and that Business Associate does not obtain any right, title or interest to

PHI furnished by Covered Entity or generated by Business Associate in the course of providing services hereunder.

- 2.19 Requests of Covered Entity.** Business Associate agrees that, within five (5) days of a request for information from Covered Entity, Business Associate will provide Covered Entity with such requested information.
- 2.20 Creation of Information.** Business Associate agrees that if for any reason it creates information, including PHI, in any form that contains an identifying characteristic of one or more of Covered Entity's clients, that such information will be treated as if it were disclosed from Covered Entity to Business Associate, and will be subject to all the protections afforded by this Agreement with respect to PHI.
- 2.21 Compliance with Obligations.** To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate will comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

ARTICLE III: OBLIGATIONS OF COVERED ENTITY

- 3.1 Disclosure of PHI.** Covered Entity agrees to disclose PHI that may identify an individual to Business Associate upon its own volition, upon Business Associate's request, or upon the request of a third party if such disclosure is permissible by law, so that Business Associate may provide the agreed upon services to or on behalf of Covered Entity, unless Covered Entity otherwise objects to the disclosure, or Business Associate is no longer providing the services to Covered Entity.
- 3.2 Provision of Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with applicable law and agency guidance, as well as changes to such notice.
- 3.3 Permissions.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individuals to use or disclose PHI of which Covered Entity is aware, if such changes affect Business Associate's permitted or required uses and disclosures.
- 3.4 Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 C.F.R. §164.522 and other applicable laws and applicable agency guidance, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

ARTICLE IV: TERM & TERMINATION

- 4.1 Term.** This Agreement shall commence as of the Commencement Date, and shall continue for so long as Business Associate provides agreed upon services to or on behalf of Covered Entity.
- 4.2 Grounds for Breach.** Non-compliance by Business Associate with this Agreement or the Privacy or Security Rules, as amended, is a breach of the Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.
- 4.3 Termination.** Covered Entity may terminate this Agreement in the following circumstances:

- 4.3.1** Covered Entity determines, in its sole discretion, that the Business Associate has breached or violated a material term of this Agreement;
- 4.3.2** Business Associate no longer provides any services for Covered Entity;
- 4.3.3** termination of this Agreement shall have no effect on the obligations of Business Associate to safeguard and to not use or disclose PHI.
- 4.4** **Return or Destruction of PHI.** Business Associate agrees that upon termination of this Agreement, Business Associate shall contact Covered Entity with regard to any PHI currently in its possession that was received from or created on behalf of Covered Entity, and determine whether Covered Entity wishes to have the PHI returned to it or destroyed. If feasible, Business Associate agrees to proceed in accordance with the Covered Entity's instruction to return or destroy PHI within thirty (30) days of receiving such instruction. If Covered Entity elects to have the PHI destroyed, Business Associate agrees to destroy the PHI in a manner and by a method acceptable to Covered Entity. Business Associate further agrees that no PHI, copies of PHI, or parts thereof, shall be retained when the aforementioned PHI is returned or destroyed. If timely return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Agreement to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If PHI is to be destroyed, Business Associate shall certify to Covered Entity that the PHI has been destroyed.

ARTICLE V: MISCELLANEOUS

- 5.1** **Indemnification.** Business Associate will indemnify and hold Covered Entity (including Covered Entity's Authority Board, individually and collectively, and its officers, owners, members, employees, agents, and other representatives, individually and collectively) harmless from and against all claims, demands, costs, expenses, liabilities and losses, including reasonable attorney's fees and punitive damages which may arise against Covered Entity as a result of any breach or violation of this Agreement by Business Associate. Business Associate will be required to carry insurance to insure against breaches, violations, harm or damages caused to Covered Entity by any breach or violation of this Agreement by Business Associate.
- 5.2** **Notices.** Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered or mailed by prepaid certified mail to the Covered Entity or Business Associate at the address for each party set forth in this Agreement or as changed by written notice. Business Associate shall have the burden of demonstrating that all notifications of breach or violation of this Agreement were made without unreasonable delay and in no case later than sixty (60) calendar days after the discovery of a breach or violation, including evidence demonstrating the necessity of any delay. Business Associate shall follow the Methods of Notice Guidelines in the HITECH Act Section 13402 and communicate progress with the Covered Entity.
- 5.3** **Assignment.** No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto, provided, however, that this Agreement may be assigned by Covered Entity to any successor entity assuming Covered Entity's operations, and such assignment shall forever release Covered Entity hereunder.
- 5.4** **Severability.** In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

5.5 Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof, and all prior and contemporaneous understandings, agreements and representations, whether oral or written, with respect to such matters are superseded.

5.6 Amendments. This Agreement may only be amended by the written consent of both parties. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with changes in law. The parties agree to take such action as is necessary to amend this Agreement and to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws and regulations relating to the security or confidentiality of PHI. Refusal by either party to so amend this Agreement shall constitute a material violation and shall be grounds for termination.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

COVERED ENTITY:

BUSINESS ASSOCIATE:

Signature

Signature

Print Name

Print Name

Title

Title

Address:

Address:

