




Interoffice Memorandum

AGENDA ITEM

December 16, 2022

TO: Mayor Jerry L. Demings  
-AND-  
County Commissioners

THRU: Raul Pino, MD, MPH, Director  
Health Services Department 

FROM: John Goodrich, Deputy Director  
Health Services Department  
**(407) 836-7689**

SUBJECT: Memorandum of Understanding Pursuant to HIPAA with Orange  
County Comptroller's Office  
**Consent Agenda – January 10, 2023**

The Health Insurance Portability and Accountability Act (HIPAA) requires covered entities, like Orange County, to enter into a business associate agreement (BAA) with any entity it shares protected health information. A BAA delineates how protected health information is transmitted, safeguarded, and used by the business associate. Because the County may transmit protected health information to the Orange County Comptroller's Office in course of normal business, it has been recommended we enter into a BAA with them. This BAA will formalize the relationship we currently have with the Orange County Comptroller's Office. This agreement has been reviewed by County Attorney's Office, Orange County HIPAA Privacy Officer, and relevant county departments. We are also requesting authorization for the Mayor or designee to sign any future amendments.

**ACTION REQUESTED:** Approval and execution of Memorandum of Understanding Pursuant to HIPAA by and between Orange County, Florida and Orange County Comptroller and authorization for the Mayor or designee to sign any future amendments.  
**(Health Services Department)**

Attachment

C: Chelsea Garthwaite, HIPAA Privacy Officer, Health Services Department  
Sawsan Mohiuddin, Assistant County Attorney, County Attorney's Office

**MEMORANDUM OF UNDERSTANDING  
PURSUANT TO HIPAA**

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is entered into by and between the following governmental entities: **ORANGE COUNTY, FLORIDA** (the "County" or "Covered Entity"), a charter county and political subdivision of the State of Florida, located at 201 South Rosalind Avenue, Orlando, Florida 32801 and **ORANGE COUNTY COMPTROLLER** (the "Comptroller" or "Business Associate"), a Constitutional Officer located at 201 South Rosalind Avenue, Orlando, Florida 32801 (with the County and the Comptroller individually referred to as a "Party" and collectively referred to as "Parties").

**WITNESSETH**

**WHEREAS**, the County is a Covered Entity that constitutes a Hybrid Entity (as defined in 45 C.F.R. §164.103) under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as further defined below, because the County's business activities include both covered and non-covered functions under HIPAA; and

**WHEREAS**, the covered functions of the County consist of one or more Health Care Components (as defined in 45 C.F.R. §164.103), which are subject to the requirements of HIPAA that apply to Covered Entities; and

**WHEREAS**, this MOU applies to the Health Care Components of the County and is not intended to apply to the non-covered functions of the County; and

**WHEREAS**, the Comptroller is a Business Associate under HIPAA because the Comptroller may create, receive, maintain, transmit, access, use and/or disclose Protected Health Information on behalf of the County in carrying out the Comptroller's powers, functions and obligations that require services to the County (the "Services"); and

**WHEREAS**, HIPAA provides that if a Covered Entity and the Business Associate are both governmental entities, the parties may enter into a memorandum of understanding that accomplish the objectives of a business associate contract; and

**WHEREAS**, the Parties agree that this MOU is both required by and intended to comply with all the requirements pertaining to the privacy and security of health information under HIPAA.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, agreements and obligations set forth in this MOU, and incorporating the above recitals as part of this MOU, the Parties agree as follows.

**1. DEFINITIONS.**

a. The terms used in parentheses above shall have the meanings ascribed to them above.

b. **"Breach"** shall mean a "breach" of "Unsecured PHI" as those terms are defined in the Breach Notification Rules.

c. **"Breach Notification Rules"** shall mean the regulations set forth in Subpart D, Notification in the Case of Breach of Unsecured PHI, 45 C.F.R. §§164.400 - 164.414.

d. **"Business Associate"** shall have the same meaning given to such term under 45 C.F.R. §160.103, and the Comptroller is a business associate with respect to the Protected Health Information that the Comptroller creates, receives, maintains, transmits, accesses, uses and/or discloses on behalf of the County for purposes of this MOU.

e. **"Covered Entity"** shall have the same meaning given to such term under 45 C.F.R. §160.103, and the County is a covered entity with respect to the Health Care Components of the County for purposes of this MOU.

f. **"Data Aggregation"** shall have the meaning given to such term under 45 C.F.R. §164.501.

g. **"Designated Record Set"** shall have the meaning given to such term under 45 C.F.R. §164.501. Unless otherwise required by law, for purposes of this MOU, any information in the possession of Business Associate that is the same as information in the possession of Covered Entity (even if held in a different format, medium or presentation or it has been standardized) shall not be considered part of the Designated Record Set.

h. **"Electronic Protected Health Information" or "Electronic PHI"** shall have the same meaning given to "electronic protected health information" under 45 C.F.R. §160.103, except that Electronic PHI shall be limited to the Electronic PHI Business Associate creates, accesses, maintains, transmits, receives, modifies, records, stores, destroys, or otherwise holds or uses, from or on behalf of Covered Entity under this MOU.

i. **"Health Care Component"** shall have the meaning given to such term under 45 C.F.R. §164.103.

j. **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, both: (i) as it is amended from time to time, including without limitation, by the Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of the American Recovery and Reinvestment Act of 2009; and (ii) as it is implemented through regulations, including without limitation, 45 C.F.R. Parts 160, 162 and 164.

k. **"Individual"** shall have the meaning given to such term under 45 C.F.R. §160.103. It also shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

l. **"Privacy Rules"** shall mean the regulations set forth in Subpart E, Privacy of Individually Identifiable Health Information, 45 C.F.R. §§164.500 - 164.534.

m. **"Protected Health Information"** or **"PHI"** shall have the same meaning given to "protected health information" under 45 C.F.R. §160.103, which includes Electronic PHI, except that PHI shall be limited to the PHI Business Associate creates, accesses, maintains, transmits, receives, modifies, records, stores, destroys, or otherwise holds or uses, from or on behalf of Covered Entity under this MOU.

n. **"Required by Law"** shall have the same meaning given to such term under 45 C.F.R. §§164.103.

o. **"Secretary"** shall mean the Secretary of the United States Department of Health and Human Services or the Secretary's designee.

p. **"Secure Electronic Means"** - electronic methods of communications, secure e-mail or secure transmission, containing applicable authorization codes, passwords and/or authentication keys issued by the sender; that ensure integrity and confidentiality of information are maintained during transmission.

q. **"Security Incident"** means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with Business Associate's system operations in its information system, whether suspected or known.

r. **"Security Rules"** shall mean the regulations set forth in Subpart C, Security Standards for the Protection of Electronic PHI, 45 C.F.R. §§164.302 - 164.318.

s. **"Subcontractor"** shall have the same meaning given to such term under 45 C.F.R. §160.103, and shall be a subcontractor of Business Associate for purposes of this MOU.

t. **"Unsecured PHI"** shall have the meaning given to such term under 45 C.F.R. §164.402.

u. All terms used but not defined in this MOU shall have the same meaning as those terms have under HIPAA, unless the context clearly defines them otherwise.

## 2. **SCOPE OF MOU**

a. **Independent Status of Parties.** The parties agree that they are, and shall be independently responsible for complying and shall independently comply, with the HIPAA Privacy and Security rules, 45 CFR Parts 160, 162 and 164I 42 CFR Part 2, the HITECH Act Breach Notification rules, Pub. L. No 111-5, Title XIII, 123 Stat. 226 (2009), and the Florida Information Protection Act, §501.171, Florida Statutes; all where applicable and as amended.

b. The parties further agree that they are, and shall be, responsible for their own actions and conduct and shall not assume responsibility for the actions and conduct of one another.

### **3. OBLIGATIONS OF BUSINESS ASSOCIATE.**

a. **Permitted or Required Uses.** Business Associate will not use or disclose PHI other than as permitted or required by this MOU or Required by Law.

b. **Appropriate Safeguards.** Business Associate will use appropriate safeguards, and comply with the Security Rules with respect to Electronic PHI, as applicable, to prevent use or disclosure of PHI other than as provided for in this MOU.

c. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effects of which Business Associate becomes aware that have resulted from any unauthorized acquisition, access, use or disclosure of Protected Health Information by the Business Associate, its subcontractors or agents.

d. **Reporting.** Business Associate shall make a good faith effort to identify any use or disclosure of protected information not provided for in this MOU. Business Associate will report to the Covered Entity within seven (7) business days of any suspected or confirmed access, use or disclosure of PHI regardless of form, not permitted or required by this MOU of which Business Associate becomes aware, unless a delay in notification is required by 45 CFR §164.412.

e. **Reporting Security Incidents.** Business Associate will report to the Covered Entity any Security Incident of which the Business Associate becomes aware that is:

1. A successful unauthorized access, use or disclosure of Electronic PHI; or
2. A modification or destruction of Electronic PHI ; or
3. Interference with systems operations in an information system containing electronic PHI.

Business Associate will report to the Covered Entity within seven (7) business days of discovery any security incident, as described above, of which the Business associate is aware. Such report shall include the identification of each individual whose unsecure PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach. Reports of security incidents shall include a detailed description of each Security Incident, at a minimum, to include: (a) the date of the Security Incident; (b) the nature of the Security Incident; (c) the information involved, whether the information was accessed, disclosed, used, modified, destroyed, etc.; (d) the identities of the individual(s) and their relationship to the Business Associate; (e) a description of the Business Associate's

response to each security incident; (f) and the name and title of the individual the Covered Entity should contact for additional information.

Business Associate will conduct such further investigation as is reasonably required by the Covered Entity and promptly advise the Covered Entity of additional information pertinent to the security incident. Business Associate will cooperate with the Covered Entity in conducting any required risk analysis related to such Security Incident(s).

Business Associate will cooperate with the County in complying with any applicable notification requirements pursuant to the HITECH Act Breach Notification rules and/or pursuant to HITECH Act Breach notification rules and/or pursuant to Florida law (including, but not limited to §§ 501.171 and 817.5681, Florida Statutes), and in taking steps determined by the Covered Entity to be necessary to mitigate any potential harm caused by a Security Incident.

Business Associate is hereby notifying Covered Entity that throughout the term of this MOU there is the existence and ongoing occurrence of attempted but Unsuccessful Security Incidents (as hereinafter defined). The Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the same, and no additional notice to Covered Entity shall be required. For purposes of this MOU, "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scan, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized acquisition, access, use or disclosure of Protected Health Information.

f. **Subcontractors**. In the event the Business Associate subcontracts with a subcontractor to create, receive, maintain or transmit PHI on behalf of the Business Associate in connection with the Services or this MOU, Business Associate will obtain satisfactory assurances that such subcontractor will appropriately safeguard the PHI by entering into a written agreement with such subcontractor that requires such subcontractor to agree to the same restrictions and conditions that apply to the Business Associate under this MOU with respect to such PHI.

g. **Access by Individual**. If Business Associate maintains a Designated Record Set and to the extent Covered Entity does not have access to the Designated Record Set, Business Associate will make available to Covered Entity such PHI contained in a Designated Record Set in order to allow Covered Entity to respond to a request by an Individual for access to inspect and obtain a copy of PHI about the Individual pursuant to 45 C.F.R. §164.524.

h. **Amendment to PHI**. If Business Associate maintains a Designated Record Set and to the extent Covered Entity does not have access to the Designated Record Set, Business Associate will make available to Covered Entity such PHI in a

Designated Record Set in order to allow Covered Entity to respond to a request by an Individual for an amendment pursuant to 45 C.F.R. §164.526.

i. **Request for an Accounting.** Business Associate will maintain and make available to Covered Entity information required for Covered Entity to respond to a request by an Individual for an accounting pursuant to 45 C.F.R. §164.528 if Covered Entity is not already in possession of such information.

j. **Carrying out Covered Entity Obligations.** Business Associate will comply with the requirements of the Privacy Rules that apply to the Covered Entity in the performance of any obligations the Business Associate is to carry out on behalf of the Covered Entity.

k. **Access to Determine Compliance.** Business Associate will make its internal practices, books and records pertaining to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Covered Entity available to the Secretary of HHS for purposes of determining the Covered Entity's compliance with the HIPAA Privacy and Security Rules, the HITECH Act Breach Notification rules, and also, with the State of Florida's Department of Legal Affairs to determine the Covered Entity's compliance with FIPA.

#### **4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.**

a. **Use and Disclosure for Performance.** Business Associate agrees to use or disclose PHI only to provide the Services and as provided for in this MOU. Business Associate also may use or disclose PHI as Required by Law.

b. **Minimum Necessary Use and Disclosure.** Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures, a copy of which shall be provided to Business Associate by the Covered Entity.

c. **Use and Disclosure for Other Purposes.** Business Associate will not use or further disclose PHI in a manner that would violate the requirements of the Privacy Rules if done by the Covered Entity, except for the following specific uses and disclosures:

i Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate (collectively, the "Business Associate Purposes");

ii Business Associate may disclose PHI for the Business Associate Purposes, provided: (A) the disclosures are Required by Law; or (B) Business Associate: (1) obtains reasonable assurances from the person (the "Disclosed Person") to whom the PHI is disclosed that such PHI will remain confidential and will be used or further disclosed only: (a) as Required by Law or (b) for the Business Associate Purposes,

and (2) is notified by the Disclosed Person of any instances of which it is aware in which the confidentiality of such PHI has been breached; and

iii Business Associate may: (A) provide Data Aggregation services relating to the health care operations of the Covered Entity; (B) use, analyze and disclose PHI in its possession for public health activities and purposes set forth at 45 C.F.R. §164.512(b), as requested by Covered Entity or authorized governmental agents; and (C) de-identify PHI in accordance with 45 C.F.R. §164.514(b) and use and disclose de-identified information.

## **5. OBLIGATIONS OF COVERED ENTITY.**

a. **Reporting.** Covered Entity will identify and inform Business Associate when physically providing or transmitting PHI. Covered Entity is not required to notify Business Associate when PHI is transmitted or provided through secure electronic means.

b. **Compliance.** Covered Entity will comply with HIPAA in its use or disclosure of PHI to Business Associate. Covered Entity will not use or disclose PHI in any manner that violates applicable federal and state laws. Covered Entity will not request Business Associate to use or disclose PHI in any manner that violates applicable federal and state laws.

c. **Notice of Privacy Practices.** Covered Entity will provide Business Associate with the notice of any privacy practices that Covered Entity produces in accordance with 45 C.F.R. §164.520, as well as any changes to such notice.

d. **Notification of Change.** Covered Entity will provide Business Associate with notice of any changes to, revocation of, or permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted uses or disclosures.

e. **Notification of Restriction.** Covered Entity will notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 C.F.R. §164.522 if such restriction affects Business Associate's permitted uses or disclosures.

## **6. TERM AND TERMINATION.**

a. **Term.** This MOU shall be effective as of the date the Comptroller first created, received, maintained, transmitted, accessed, used and/or disclosed Protected Health Information in connection with the Services (the "Effective Date") and shall continue in full force and effect thereafter until: (i) terminated as hereinafter provided; (ii) another agreement supersedes this MOU; or (iii) a change in applicable law that results in the elimination of the requirement for this MOU, whichever occurs first (the "Term").



b. **TERMINATION FOR CAUSE/RIGHT TO CURE.** Either Party may terminate this MOU at any time, due to a material breach of this MOU by the other Party or if either Party has knowledge of a pattern of activity or practice that constitutes a material breach by the other Party, upon giving the other Party thirty (30) days prior written notice, provided the breaching party does not cure the breach within thirty (30) days following written notice specifying the breach. If cure is not possible, then this MOU shall terminate immediately upon written notice to the other Party of the material breach and that cure is not possible.

c. **OBLIGATIONS OF BUSINESS ASSOCIATE UPON TERMINATION.** Upon termination of this MOU for any reason, Business Associate shall return to Covered Entity or destroy all PHI received from, or created or received by the Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form (including any copies); provided, however: (i) Business Associate may retain PHI which is necessary for the Business Associate Purposes or for which return or destruction is not feasible; and (ii) any PHI, which has been de-identified, will no longer be considered PHI. If such return or destruction is not feasible, this MOU shall be extended to protect such PHI, and any further uses or disclosures that make the return or destruction of such PHI infeasible shall be limited. The terms of this Section shall survive the termination of this MOU for any reason.

## 7. **MISCELLANEOUS:**

a. **Amendment.** This MOU may be revoked, amended, changed or modified only by a written instrument executed by authorized representatives of both Parties. The previous sentence notwithstanding, if HIPAA is amended or interpreted in a manner that renders any term or condition in this MOU inconsistent with HIPAA, the Parties agree to take such necessary action to amend this MOU to comply with HIPAA.

b. **No Agency Status.** Unless required by applicable law, it is the understanding and intention of the Parties that the Business Associate is not acting as an agent of the Covered Entity.

c. **Interpretation.** This MOU shall be interpreted as broadly as necessary to implement and comply with HIPAA, and applicable Florida laws. If an ambiguity or question of intent or interpretation arises, this MOU will be construed: (i) as a jointly drafted document without any presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any wording of this MOU; and (ii) in favor of a meaning that complies and is consistent with HIPAA.

d. **No Third Party Beneficiaries.** Nothing express or implied in this MOU is intended to confer, nor shall anything in this MOU confer, upon any person or entity, other than the Parties and their successors or permissible assigns, any rights, remedies, obligations or liabilities whatsoever.

e. **Severability.** If any provision of this MOU or its application to any person or circumstance conflicts with governing law, or is held to be invalid, unenforceable or otherwise ineffective by a court or administrative body of competent jurisdiction, the remaining provisions shall remain valid and shall be enforced to the fullest extent permitted by law.

f. **Entire MOU.** This MOU shall constitute the entire understanding between the Parties as to the rights, obligations, duties and services to be performed with respect to the subject matter set forth in this MOU. This MOU shall supersede any and all agreements that may have been entered into prior to the date of this MOU between the Parties pursuant to HIPAA. This MOU shall be binding on the Parties and their respective successors and permissible assigns.

g. **Governing Law and Venue.** This MOU shall be governed by and construed in accordance with HIPAA and laws of the State of Florida (if applicable). Venue for any action to enforce or defend the terms of this MOU shall lie exclusively within Orange County, Florida, and the Parties expressly waive any other jurisdiction and venue.

h. **Notice.** Notices or communications herein required or permitted shall be given to the respective Party by registered or certified mail, return receipt requested (said notice being deemed given as of the date of such mailing); or by hand delivery, at the following addresses, unless either Party shall otherwise designate its new address by written notice as provided herein. Notice of new address shall be deemed given only upon the other Party's receipt thereof.

If to Business Associate: Orange County Comptroller's Office  
PO Box 38  
Orlando, FL 32802  
Attention: HIPAA Security Officer

If to Covered Entity: Orange County Board of County Commissioners  
Attention: Orange County HIPAA Privacy Officer  
2002-A East Michigan Street  
Orlando, FL 32806

**AND**

Orange County Administrator  
Administration Building, 5th Floor  
201 S Rosalind Avenue  
Orlando, FL 32801

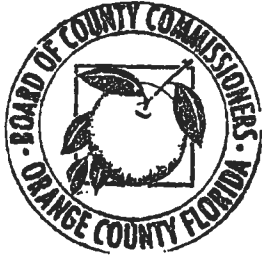
i. **Captions.** Headings contained in this MOU have been inserted for reference purposes only and shall not be considered part of this MOU in construing the terms of this agreement.

j. **Counterparts.** This MOU may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A signed copy of this MOU delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this MOU.

*[Remainder of page intentionally left blank.]*

WHEREOF, the parties have caused this MOU to be executed by their duly authorized representatives.

**"COVERED ENTITY"**



**ORANGE COUNTY, FLORIDA**

By: Orange County Board of County Commissioners

By: Raymond B. Brown  
for Jerry L. Demings

Date: January 10, 2023

ATTEST: Phil Diamond, CPA,  
County Comptroller  
As Clerk of the Board of County  
Commissioners

By: Katelinich  
Deputy Clerk

**"BUSINESS ASSOCIATE"**  
**ORANGE COUNTY COMPTROLLER**

By: Phil Diamond  
Name: Phil Diamond  
Title: Orange County Comptroller  
Date: 12-6-2022