



RE: MSV Business Associate Agreement for Hassle Factor Log Program

The HIPAA Privacy Rule became effective on April 14, 2003. Because MSV receives protected health information (PHI) from members and uses this information to assist with Hassle Factor Log program activities on behalf of members, MSV meets the definition of a business associate under the HIPAA Privacy Rule. Specific activities include billing and coding services, claims resolutions, quality of care assessments, assistance with legal compliance matters, data aggregation and data analysis. A practice that is a covered entity under HIPAA must execute a Business Associate Agreement prior to disclosing PHI to a business associate.

To be compliant with HIPAA privacy regulations, MSV requests your cooperation in reviewing and signing the attached MSV Business Associate Agreement. When submitting the agreement for a group practice, MSV requests that you include an attached listing of all the physicians within your group, since a single Agreement will cover each group member.

MSV's obligations and activities as related to the Hassle Factor Log program are outlined in the Agreement, with emphasis on protecting the privacy of the information MSV receives. We hope that upon review of this Agreement, you, as our physician member, will continue sharing your concerns and hassles with MSV. For your protection and ours, MSV will not accept PHI without an Agreement in effect, nor will we be able to assist you with your hassle factor problem if it requires the use of PHI.

The attached MSV Business Associate Agreement already contains a digital signature from an authorized MSV representative. Please sign the agreement and keep it for your records. Also, please copy the signed agreement and either fax it or mail it to MSV at the following:

MSV Hassle Factor Log Program
2924 Emerywood Parkway, Suite 300
Richmond, Virginia 23294
Fax: 804 | 355-6189

For more information regarding this Business Associate Agreement or the Hassle Factor Log Program, please contact MSV Practice Services at 804 | 377-1060 or 800 | 746-6768 EXT 1060.

2924 Emerywood Parkway
Suite 300
Richmond, VA 23294

T 804 | 353-2721
F 804 | 355-6189

www.msv.org

The Medical Society of Virginia recognizes that our members may be Covered Entities under the Health Insurance Portability and Accountability Act (“HIPAA”) Privacy Standards (the “Privacy Standards”). The Medical Society of Virginia recognizes that we may serve as a business associate to our members in performing duties which use and/or disclose protected health information (PHI). Because the Privacy Standards permit PHI to be disclosed to, and used by, a business associate only pursuant to a Business Associate Agreement, we propose to enter into the following Agreement with our members.

MSV BUSINESS ASSOCIATE AGREEMENT (HIPAA)

This MSV Agreement (“Agreement”) is entered into on this _____ day of _____, 20____, between (_____) (the “Member,” Physician or Organization Name) and the Medical Society of Virginia (“MSV”) (the Member and MSV are collectively referred to hereinafter as the “Parties,” or individually as a “Party”).

WITNESSETH:

WHEREAS, MSV performs, or assists in performing, certain functions or activities on behalf of Member—specifically, billing and coding services, claims resolutions, quality of care assessments and assistance with legal compliance matters (“Designated Functions”); and

WHEREAS, in conjunction with these Designated Functions, MSV may have access to, or be provided by Member, or otherwise receive or create on behalf of Member, individually identifiable health information; and

WHEREAS, such individually identifiable health information is considered Protected Health Information (“PHI”) under the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); and

WHEREAS, Member is a “Covered Entity” and MSV is a “Business Associate,” as those terms are defined in 45 C.F.R. § 160.103 of the Standards for Privacy of Individually Identifiable Health Information (“Privacy Standards”) promulgated by the Secretary of the U.S. Department of Health and Human Services (“HHS”) under HIPAA; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms and conditions under which PHI may be used and disclosed between MSV and Member, including disclosures by MSV to third-parties.

I. EFFECTIVE DATE: The term of this Agreement shall commence on April 14, 2003, or such other date as federal law, or regulations promulgated by HHS shall set as the date upon which compliance with the Privacy Standards is required (the “Effective Date”), and shall continue until terminated as provided hereunder.

II. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

A. Except as otherwise specified herein, MSV may use and disclose PHI, including disclose to third-parties, where necessary to perform Designated Functions on behalf of Member. All other uses or disclosure not authorized by this Agreement are prohibited including, but not limited to, uses or disclosures that would violate the Privacy Standards if done by Member.

B. MSV may aggregate PHI in its possession with the PHI of other covered entities that MSV has in its possession through its capacity as a business associate to said other covered entities provided that the purpose of such aggregation is to provide Member with data analyses relating to its Health Care Operations (as defined under 45 C.F.R. § 164.501) of Member.

C. MSV may use PHI in its possession for its own proper management and administration and to fulfill any present or future legal responsibilities.

D. MSV may disclose PHI in its possession, including disclosures to third-parties, for its own proper management and administration and to fulfill any present or future legal responsibilities if:

1. The disclosure is required by law; or
2. MSV receives reasonable assurance from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person.

III. RESPONSIBILITIES OF BUSINESS ASSOCIATE WITH RESPECT TO PROTECTED HEALTH INFORMATION

- A. MSV may use or disclose PHI only as permitted or required by this Agreement or as otherwise required by law.
- B. MSV will use appropriate safeguards to maintain the security of, and prevent unauthorized use or disclosure of PHI.
- C. As soon as practicably possible after discovery of any unauthorized use or disclosure of PHI, MSV will report any such use or disclosure to the Member in writing.
- D. MSV will require all of its subcontractors and agents that receive or use, or have access to, PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use or disclosure of PHI that apply to MSV under this Agreement.
- E. MSV will require its subcontractors and agents to report any disclosures of PHI made by such subcontractors or agents in order that the Member can comply with the accounting requirement set forth at 45 C.F.R. § 164.528.
- F. Upon written request, MSV agrees to make available to Member any PHI needed by Member to satisfy Member's obligations to individuals to provide access to records in a "designated record set," as that term is defined in 45 C.F.R. §164.501 and as required by 45 C.F.R. § 164.524.
- G. Upon written request MSV will make available PHI to Member for amendment and incorporate any amendments to PHI where necessary to allow Member to address a request for amendment of a "designated record set," as that term is defined in 45 C.F.R. § 164.501 and as required by 45 C.F.R. § 164.526.
- H. Upon written request, MSV will provide to Member information requested by Member to permit Member to respond to a request by an individual for an accounting of the disclosures of the individual's PHI for purposes other than treatment, payment or health care operations, as required by 45 C.F.R. § 164.528. Under this provision, MSV must report both its own disclosures of PHI and disclosures of PHI made by its agents or subcontractors.
- I. MSV will make available, subject to attorney-client and other applicable legal privileges, all records, books, agreements, policies and procedures relating to the use or disclosure of PHI to the Secretary of HHS, or his designee, for purposes of determining Member's compliance with the Privacy Standards.
- J. MSV will, if feasible, upon the termination of this Agreement, return to Member or destroy any PHI in its possession that was obtained from, or otherwise received or created on behalf of, Member; provided, if it is not feasible for MSV to return or destroy remaining PHI, MSV agrees to extend any and all protections, limitations and restrictions contained in this Agreement to MSV's use or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the PHI infeasible.

IV. RESPONSIBILITIES OF COVERED ENTITY

- A. Member will notify MSV, in writing and in a timely manner, of any arrangements permitted or required of Member under the Privacy Standards that may affect the use or disclosure of PHI by MSV under this Agreement, including, but not limited to, restrictions on use or disclosure of PHI requested by an individual and agreed to by Member, as allowed by 45 C.F.R. § 164.522.
- B. Member will inform MSV of any changes in, or withdrawal of, an Authorization, as defined under 45 C.F.R. §164.508, provided to Member by individuals pursuant to the aforementioned regulations when such withdrawal is known to affect the use or disclosure of PHI in the possession of MSV.

V. TERMINATION BY COVERED ENTITY: Member may immediately terminate this Agreement if Member determines that MSV has breached a material term of this Agreement. Alternatively, Member may choose to allow MSV to cure the breach upon mutually agreeable terms.

VI. REPORTING IN LIEU OF CURE OR TERMINATION: If neither cure of a material breach nor termination of the Agreement is feasible, Member will report the problem to the Secretary of HHS, or his or her designee.

VII. TERMINATION BY BUSINESS ASSOCIATE: If MSV determines that a material condition of performance has changed under this Agreement, MSV may provide thirty (30) days notice of its intention to terminate this Agreement.

VIII. MODIFICATIONS OR WAIVER: This Agreement may not be modified, nor shall any provision be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.


IX. NO THIRD-PARTY BENEFICIARIES: This Agreement is solely between and for the benefit of the Parties hereto. This Agreement is in no way intended to confer any rights, benefits or obligations to or on any third party.

X. CHANGE OF PRIVACY STANDARDS: In the event of any amendment or modification to the Privacy Standards, or other laws or regulations applicable to the use or disclosure of PHI, or in the event any court or governmental agency issues any interpretation which invalidates or otherwise is inconsistent with the terms of this Agreement, or that would cause any of the parties to be in violation of the law, the Parties shall exercise their good faith efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with such law, regulation or interpretation. If, after the exercise of such good faith efforts for a period of at least thirty days, the Parties have not agreed upon amendment(s) to this Agreement sufficient to resolve the inconsistency, either Party may terminate this Agreement upon notice to the other Party.

XI. GOVERNING LAW: VENUE: This relationship shall be governed by the federal law and the laws of the Commonwealth of Virginia. Exclusive venue for any dispute arising hereunder shall be resolved in the courts of Richmond, Virginia.

XII. SEVERABILITY: If any clause or provision herein shall be judged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, the validity of any other clause or provision shall not be affected and the remainder of this document between the parties shall remain in full force and effect. Each of the provisions shall be enforceable independent of any other provision and independent of any other claim or cause of action.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above:

Medical Society of Virginia

Signature

Michael Jurgensen

Print Name
Senior Vice President, Health Policy and Planning

Title

Physician or Authorized Representative

Signature

Print Name

Title