

**DEWITT REHABILITATION AND NURSING CENTER, INC.
HIPAA BUSINESS ASSOCIATE AGREEMENT**

This is an Agreement between DeWitt Rehabilitation and Nursing Center, Inc. ("Facility"), and _____ ("Business Associate") and is effective as of April 1, 2003.

I. UNDERLYING FACTS/RECITALS

1.1 Pursuant to the business relationship, Business Associate provides certain services for or on behalf of Facility, and, in connection with its provision of such services, Facility discloses to Business Associate or Business Associate creates or receives on behalf of Facility certain Protected Health Information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C.A. Sections 1320d-1320d-7, 45 C.F.R., Parts 142 and 160 through 164, as amended ("HIPAA").

1.2 Facility is a "Covered Entity," as that term is defined by HIPAA. Business Associate, as recipient of PHI from Facility, is a "business associate" of Facility, as that term is defined in HIPAA.

1.3 Pursuant to HIPAA, all business associates of Facility, as a condition of doing business with Facility, must agree to certain mandatory provisions regarding, among other things, the use and disclosure of PHI.

1.4 The purpose of this Agreement is to satisfy the requirements of the HIPAA Privacy Rule located at 45 C.F.R. Part 164 and the proposed HIPAA Security Rule which was published at 63 Federal Register 43241 (August 12, 1998).

2. DEFINITIONS

Unless otherwise defined in this Agreement, capitalized terms shall have the meanings set forth in HIPAA, as amended.

3. APPLICABILITY

As used in this Agreement, PHI means and includes (i) Individually Identifiable Health Information created or received by Business Associate for or on behalf of Facility; (ii) Individually Identifiable Health Information disclosed to Business Associate by Facility; and (iii) Individually Identifiable Health information disclosed to Business Associate to enable Business Associate to perform services for Facility pursuant to the Business relationship. PHI does not include and this Agreement is not applicable to Individually Identifiable Health Information created or received by or disclosed to Business Associate in connection with services rendered by Business Associate outside the scope of the business relationship.

4. USE AND DISCLOSURE OF PHI BY BUSINESS ASSOCIATE

Business Associate shall not use or disclose PHI for any purpose other than:

- (i) As permitted or required by the business relationship;
- (ii) For the proper management and administration of Business Associate;
- (iii) As required or allowed under HIPAA; or
- (iv) As otherwise permitted or required by law.

In no event shall Business Associate use or disclose PHI in a manner that violates or would violate-HIPAA if such activity were engaged in by Facility.

5. SAFEGUARDS FOR THE PROTECTION OF PHI

Business Associate shall use reasonable efforts to implement and maintain such operational and technological safeguards as are necessary to ensure that PHI disclosed to or created or received by Business Associate is not used or disclosed by Business Associate, or by any subcontractors, affiliates, or business associates of Business Associate, except as provided in the Agreement.

6. REPORTING OF UNAUTHORIZED USES OR DISCLOSURES

Business Associate shall promptly report to Facility any use or disclosure of PHI of which Business Associate becomes aware that is not provided for or permitted by the business relationship, or HIPAA. Business Associate shall permit Facility to investigate any such report in accordance with the provisions of paragraph 12 of this Agreement.

7. MITIGATION

Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement that is known to Business Associate.

8. USE OF SUBCONTRACTORS

To the extent Business Associate uses one or more subcontractors or agents to perform its obligations under the business relationship, and such subcontractors or agents receive or have access to PHI, Business Associate shall cause each such subcontractor to sign an Agreement with Business Associate containing substantially the same provisions and conditions related to the protection and confidentiality of PHI as those that apply to Business Associate under this Agreement.

9. AUTHORIZED ACCESS TO PHI

To the extent Business Associate maintains PHI in a Designated Record Set and to the extent required by 45 C.F.R. §164.524, Business Associate shall provide access, at the request of Facility and in the time and manner reasonably designated by Facility, to PHI contained in a Designated Record Set, to Facility (or to an individual who is the subject of the PHI as directed by Facility and as required by applicable law).

10. AMENDMENT OF PHI

To the extent Business Associate maintains PHI in a Designated Record Set and to the extent required by 45 C F R §164.526, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Facility directs or agrees to in the time and manner reasonably designated by Facility.

11. ACCOUNTING OF DISCLOSURES OF PHI

Business Associate shall document in writing all disclosures of PHI made by Business Associate (“Disclosure Accounting”) and shall maintain such Disclosure Accounting for a period of at least 6 years from the date of the last disclosure, except for disclosures:

- (i) To carry out Treatment, Payment, or Health Care Operations, as provided in 45 CFR § 164.502;
- (ii) To individuals who are the subject of the PHI, as provided in 45 CFR §164.502;
- (iii) That occurred prior to April 14, 2003.

At a minimum, the Disclosure Accounting shall contain:

- (i) The date of the disclosure;
- (ii) The name of the entity or person to whom or which the PHI was provided and, if known, the address of such entity or person;
- (iii) A brief description of the PHI disclosed; and

- (iv) A brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure or, in lieu of such statement, a copy of the Individual's written authorization or request for disclosure pursuant to the HIPAA Privacy Rule.

Business Associate shall provide the Disclosure Accounting to Facility (or to the individual who is the subject of the PHI, if so directed by Facility and as required by applicable law) within 60 days after Business Associate receives a written request for the Disclosure Accounting from Facility.

12. RIGHT TO AUDIT

Business Associate shall make its practices, books and records related to PHI available to the Secretary of the Department of Health and Human Services and to Facility for the purpose of determining Business Associate's compliance with this Agreement and HIPAA. If it is determined that Business Associate's conduct would result in violation of HIPAA by Facility or is in violation of this Agreement, Business Associate shall promptly remedy any such violation and shall certify the same in writing to Facility.

13. TERM AND TERMINATION

13.1 Term. The term of this Agreement shall commence as of the date first set forth above and shall terminate when all of the PHI provided by Facility to Business Associate or created or received by Business Associate on behalf of Facility is destroyed or returned to Facility pursuant to paragraph 13.3.

13.2 Termination Upon Breach. Upon Facility's knowledge of Business Associate's breach of a material provision of this Agreement, Facility shall:

- (i) If cure of the breach is possible, provide Business Associate written notice of such breach and provide Business Associate a reasonable opportunity to cure such breach. If Business Associate does not cure the breach within a reasonable period of time designated by Facility, Facility may terminate the business relationship immediately, with termination effective as of the date Facility gives notice of termination to Business Associate;

- (ii) If cure of the breach is not possible in the reasonable determination of Facility, Facility may terminate the business relationship immediately, with termination effective as of the date Facility gives written notice of termination to Business Associate; and

- (iii) If cure of the breach and termination of the business relationship are not possible in the reasonable determination of Facility, Facility shall report the breach to the Secretary and the business relationship shall not be terminated.

13.3 Protection of PHI After Expiration or Termination. Upon the expiration or earlier termination of the business relationship for any reason, Business Associate shall, at Facility's expense, return to Facility, or, at Facility's direction, delete, purge and destroy, all PHI in any form, recorded on any medium, or stored in any storage system. Facility may, in its discretion, determine that the return or destruction of the PHI is infeasible, in which event Business Associate shall extend the protections of this Agreement to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. Business Associate shall remain bound by the provisions of this Agreement even after expiration or termination of the Agreement until such time as all PHI has been returned or otherwise destroyed as provided in this paragraph.

14. OBLIGATIONS OF FACILITY

Facility shall notify Business Associate of:

(i) Any limitation(s) in its notice of privacy practices, to the extent such limitation may affect Business Associate's use or disclosure of PHI;

(ii) Any changes in, or revocation of, permission by the individual who is the subject of the PHI, to the extent such changes may affect Business Associate's use or disclosure of PHI; and

(iii) Any restriction to the use or disclosure of PHI Facility has agreed to in accordance with 45 C.F.R. § 164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI.

15. SECURITY

15.1 Preliminary Security Measures. Facility and Business Associate acknowledge that the HIPAA Security Rule has not been issued in final form as of the date of this Agreement, but the parties nevertheless desire to begin implementation of reasonable and appropriate security measures designed to safeguard the PHI. Upon the issuance of a final HIPAA Security Rule by the Department of Health and Human Services, this Agreement automatically shall be amended to include any and all provisions necessary to bring the parties into compliance with the final HIPAA Security Rule.

15.2 Data Transfer Security. Business Associate shall take reasonable and appropriate security measures to protect the security and integrity of PHI when electronically transferring such information. Business Associate shall not transmit PHI over any non-secure or open communication channel (such as the Internet) unless such information is encrypted or otherwise reasonably safeguarded.

15.3 Access Security. Business Associate shall take reasonable and appropriate security measures to protect the PHI from unauthorized access. Access to any PHI maintained on Business Associate's computer systems shall be controlled, at a minimum, via a user identification code and password system. Such user identification codes and passwords shall be issued by Business Associate only to properly validated individual users.

16. GENERAL PROVISIONS

16.1 Amendment. Facility may amend this Agreement to maintain compliance with HIPAA by providing written notice of such amendment to Business Associate. Such amendment shall be binding upon Business Associate upon Business Associate's receipt of such amendment and shall not require the consent of Business Associate.

16.2 Effect of Headings. The subject headings of the paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

16.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, beneficiaries, legal representatives, successors and assigns.

16.4 Severability. Each provision of this Agreement is independent, separate and divisible, and in the event any provision shall be held to be invalid or unenforceable, the remaining provisions shall continue to be in full force and effect.

16.5 Construction. This Agreement shall be construed to implement and comply with HIPAA, as applicable to Facility and Business Associate. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with HIPAA.

**DeWitt Rehabilitation and
Nursing Center, Inc.**

("Business Associate")
