

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: OCTOBER 13, 2014 AGENDA ITEM NUMBER: 6

**SUBJECT: RESOLUTION RATIFYING AND AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN FORSYTH COUNTY PUBLIC HEALTH DEPARTMENT AND APPALACHIAN DISTRICT HEALTH DEPARTMENT TO FUND THE DEVELOPMENT AND IMPLEMENTATION OF THE NORTHWEST PARTNERSHIP FOR PUBLIC HEALTH
(FORSYTH COUNTY DEPARTMENT OF PUBLIC HEALTH)**

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION:

See attached

ATTACHMENTS: YES NO

SIGNATURE: *J. Kennedy Watts, Jr.* DATE: October 8, 2014
COUNTY MANAGER

**RESOLUTION RATIFYING AND AUTHORIZING EXECUTION OF
AN INTERLOCAL AGREEMENT BETWEEN FORSYTH COUNTY
PUBLIC HEALTH DEPARTMENT AND APPALACHIAN DISTRICT HEALTH
DEPARTMENT TO FUND THE DEVELOPMENT AND IMPLEMENTATION
OF THE NORTHWEST PARTNERSHIP FOR PUBLIC HEALTH
(FORSYTH COUNTY DEPARTMENT OF PUBLIC HEALTH)**

BE IT RESOLVED by the Forsyth County Board of Commissioners that the attached interlocal agreement between Forsyth County Public Health Department and Appalachian District Health Department to fund the development and implementation of the Northwest Partnership for Public Health, is hereby ratified as required by N.C.G.S. 160A-461, and the Chairman or County Manager, Public Health Director and the Clerk to the Board are hereby authorized to execute the attached Memorandum of Understanding, on behalf of Forsyth County, and its Public Health Department, subject to a pre-audit certificate thereon by the Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney. The original contract is incorporated herein by reference. (Contract Control #2015-0206-00)

BE IT FURTHER RESOLVED that the Chairman or County Manager, Public Health Director, and Clerk to the Board are hereby authorized to execute amendments and addenda to the above Agreement, as necessary to continue the services during the current fiscal year, within budgeted appropriations, subject to a pre-audit certificate thereon by the Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

BE IT FURTHER RESOLVED that this resolution ratifying interlocal cooperation between Forsyth County Public Health Department and Appalachian District Health Department is hereby spread upon the minutes of the Forsyth County Board of Commissioners.

Adopted this the 13th day of October 2014.

APPALACHIAN DISTRICT HEALTH DEPARTMENT

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 2 day of July, 2014, to be effective from and after July 1, 2014, until June 30, 2015, or as terminated as set forth herein, by and between Forsyth County Health Department, hereinafter referred to as the Forsyth CHD, and APPALACHIAN DISTRICT HEALTH DEPARTMENT, hereinafter referred to as ADHD.

WITNESSETH:

THAT WHEREAS, the Forsyth CHD and ADHD have agreed to an arrangement to provide services as described below with the intent that ADHD and Forsyth CHD work together in whatever ways are reasonable, appropriate, and possible to facilitate access to improve the public's health in the communities served; and

WHEREAS, both parties desire to reduce the terms of this agreement to writing in the form of this Memorandum of Understanding (hereinafter "MOU");

NOW, THEREFORE, for and in consideration of the mutual promises to each other as hereinafter set forth, the parties hereto do mutually agree as follows:

I. ADHD will provide:

- a) Administrative support for meeting minutes, meeting notices, etc.
- b) Coordination of development and implementation of Northwest Partnership for Public Health business plans, programs, surveys and studies.
- c) Narrative and statistical reports reflecting Northwest Partnership for Public Health activity.
- d) Annual budgets for review, track revenue and expenditures, maintain, financial accountability, in collaboration with the fiscal agency and provide reports.
- e) Participation in local regional events related to core public health functions as directed.
- f) Public relations activities on behalf of the Northwest Partnership for Public Health to raise public awareness and understanding of the Northwest Partnership for Public Health and support for Northwest Partnership for Public Health's initiatives.
- g) Management activities of the Northwest Partnership for Public Health, including project action steps and timelines, media/ public relations plan, etc.
- h) Coordination of the activities of Northwest Partnership for Public Health members, consultants and others in order to achieve Northwest Partnership for Public Health goals and objectives.

- i) Means to secure external funding and/or grant opportunities for sustainability of Northwest Partnership for Public Health activities and the implementation of program plans as directed.

II. The Forsyth CHD will pay ADHD for services rendered as follows: \$2,500

III. Should either party have questions or concerns, or require a change to this MOU, written request should be given to the other party.

IV. Both parties to this MOU agree:

1. To abide by all laws and regulations governing the confidentiality of patient information, and further agree to safeguard privileged information, and comply with HIPAA (HealthCare Insurance Portability and Accountability Act). Contemporaneously with the signing of this MOA, the parties will execute a "Business Associate Agreement" in which ADHD is the "Covered Entity" and Forsyth CHD is the "Business Associate." Said Business Associate Agreement is made a part of this MOA and is incorporated herein by reference.
2. To assure that no person, solely on the grounds of race, color, age, religion, handicap, sex, or national origin, is excluded from participation in, is denied the benefits of, or is subjected to discrimination under any program or activity covered by this MOU.
3. To abide by all laws and regulations governing all other activities contemplated by this MOA specifically including those statutes listed on the "State Certification" form executed by Forsyth CHD as "Contractor" which is made a part of this MOA and is incorporated herein by reference.

VI. It is understood and agreed between the Forsyth CHD and ADHD that the payment and/or services specified in this MOU, its continuation, or any renewal or extension thereof is dependent upon and subject to the allocation or appropriation of funds for the purposes set forth in this MOU and/or availability of appropriate staff to provide designated services.

VII. Both parties to this MOU agree to abide by the standards, rules, and regulations of ADHD, or to provide such information to allow the Contract Administrator to comply with these standards, rules, and regulations.

VIII. Beth G. Lovette, Health Director of ADHD, is designated as the Contract Administrator under this MOU.

IX. Either party may terminate this MOU, with or without cause, by giving 30 days written notice to the other party. If this MOU is terminated, ADHD shall be reimbursed for all services rendered pursuant to this MOU prior to the termination date.

X. Neither party may subcontract nor assign any portion of this MOU without the prior written consent of the other party.

XI. It is understood and agreed by all parties that the Forsyth CHD shall operate as an independent contractor and not as an employee of ADHD, and that ADHD shall not be responsible for any of the Forsyth CHD's acts or omissions. The Forsyth CHD agrees to indemnify and hold ADHD harmless from and against any and all claims made for acts or omissions of the Forsyth CHD. The Forsyth CHD further agrees to carry adequate malpractice and liability insurance in Forsyth CHD's name and at Forsyth CHD's expense.

XII. This MOU and any documents attached or incorporated specifically by reference sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written agreement, and all other communications between the parties relating to such subject matter. This MOU may not be amended, changed, modified, altered, or terminated except in writing and with the same formality as this MOU is executed.

IN WITNESS WHEREOF, the Forsyth CHD and ADHD have executed this MOU, in duplicate originals, one of which is retained by each of the parties.

Health Department: Forsyth County Health Department

By: *Marlon Hunter*
Marlon Hunter
Health Director
Forsyth County Health Department

Date: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: _____

Date: _____

By: *Beth L... ..*

State Certification

Contractor Certifications Required by North Carolina Law

Instructions

The person who signs this document should read the text of the statutes listed below and consult with counsel and other knowledgeable persons before signing.

- The text of Article 2 of Chapter 64 of the North Carolina General Statutes can be found online at: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article_2.pdf
- The text of G.S. 105-164.8(b) can be found online at: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.8.pdf
- The text of G.S. 143-48.5 (S.L. 2013-418, s. 2.(d)) can be found online at: <http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H786v6.pdf>
- The text of G.S. 143-59.1 can be found online at: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.1.pdf
- The text of G.S. 143-59.2 can be found online at: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.2.pdf
- The text of G.S. 147-33.95(g) (S.L. 2013-418, s. 2.(e)) can be found online at: <http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H786v6.pdf>

Certifications

- (1) Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: www.uscis.gov
- (2) Pursuant to G.S. 143-59.1(b), the undersigned hereby certifies that the Contractor named below is not an "Ineligible Contractor" as set forth in G.S. 143-59.1(a) because:
 - (a) Neither the Contractor nor any of its affiliates has refused to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina when the sales met one or more of the conditions of G.S. 105-164.8(b); and
 - (b) [check one of the following boxes]
 - Neither the Contractor nor any of its affiliates has incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001; or
 - The Contractor or one of its affiliates has incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001 but the United States is not the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.
- (3) Pursuant to G.S. 143-59.2(b), the undersigned hereby certifies that none of the Contractor's officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to the date of the bid solicitation.
- (4) The undersigned hereby certifies further that:
 - (a) He or she is a duly authorized representative of the Contractor named below;

- (b) He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Contractor; and
- (c) He or she understands that any person who knowingly submits a false certification in response to the requirements of G.S. 143-59.1 and -59.2 shall be guilty of a Class I felony.

Forsyth County Dept. of Public Health

Contractor's Name	
Signature of Contractor's Authorized Agent	Date
Printed Name of Contractor's Authorized Agent	Title
Signature of Witness	Title
Printed Name of Witness	Date

The witness should be present when the Contractor's Authorized Agent signs this certification and should sign and date this document immediately thereafter.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between Appalachian District Health Department. (the "Covered Entity") and Forsyth County Health Department (the "Business Associate" or "BA") (collectively referred to herein the "Parties" or individually as a "Party") to be effective as of the 1st day of July, 2013. ("Effective Date").

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement(s) (the "Underlying Agreement") pursuant to which Business Associate may be considered a "Business Associate" of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including all pertinent regulations (45 CFR Parts 160 and 64) issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology of Economic and Clinical Health Act (the "HITECH Act"), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921, 17931-17932 & 17934; and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the disclosure of Protected Health Information ("PHI") as that term is defined under HIPAA; and

For good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA, its implementing regulations, the HITECH Act and the laws of the State of North Carolina.

NOW THEREFORE, In consideration of the mutual covenants contained herein which are made a contractual part hereof and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the Parties hereby agree as follows:

Section 1. Definitions.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

- (A) "Breach" shall have the same meaning as the term "breach" in the HITECH Act, 42 U.S.C. § 17921, which states that, in general, "the term 'breach' means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information."
- (B) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR § 164.501.
- (C) "Electronic Health Record" shall have the meaning given to such term in the HITECH Act, which is an electronic record of health-related information on an individual that is created, gathered, managed, and consulted, by authorized health care clinicians and staff.
- (D) "Electronic Protected Health Information" or "ePHI" shall mean Protected Health Information that is maintained in or transmitted by electronic media.
- (E) "Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (F) "Privacy Rule" shall mean the Standards of Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act and as may otherwise be amended from time to time.

- (G) "Protected Health Information" or "PHI" shall have the same meaning as the term "PHI" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity. In general, "health information" means information in any form that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care of an individual; or the past, present, or future payment for the provision of health care to an individual. "Protected health information," for purposes of this Agreement, is health information that identifies the individual or can reasonably be used to identify the individual.
- (H) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- (I) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- (J) "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of HHS in guidance or as otherwise defined in § 13402(h) of the HITECH Act.
- (K) "Unsuccessful Security Incidents" shall mean activity such as pings and other broadcast attacks on firewalls, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI.

Section 2. Permitted Uses and Disclosures by Business Associate.

Except as otherwise limited in the Underlying Agreement and/or this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity, as follows:

- (A) Permitted 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. Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by the Covered Entity.
- (B) Data Aggregation. Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B) to the extent specifically required under the Agreement.
- (C) Permitted Disclosures. Business Associate shall not disclose PHI except for the purpose of performing the Business Associate's obligations under the Underlying Agreement or this Agreement. If Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to notify Business Associate within 24 hours of the discovery of any breaches, as defined in Section (D)(1), or suspected breaches of confidentiality of the PHI.
- (D) Reporting Violations. Business Associate may use Protected Health Information to report violations of the law to appropriate Federal and State authorities, consistent with 164.502(j)(1).

Section 3. Prohibited Uses and Disclosures.

- (A) Fundraising & Marketing. Business Associate shall not use or disclose PHI for fundraising or marketing purposes or any other purpose not permitted by this Agreement, the Underlying Agreement or the Privacy Rule or HITECH Act.
- (B) Restrictions. Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, as required by 42 U.S.C. § 17935(a).
- (C) Remuneration. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, unless Covered Entity obtains a valid Authorization from the Individual including specifications of whether the PHI can be further exchanged for remuneration by the receiving entity or as permitted by the HITECH Act, described in 42 U.S.C. § 17935(d)(2). Business Associate shall not directly or indirectly receive payment in exchange for making certain communications to individuals about a non-healthcare related or third party product or service that encourages the recipient to purchase or use the product or service unless (i) the communication describes only a drug or biologic that is currently being prescribed for the recipient of the communication; or (ii) Covered entity obtained a valid Authorization from the Individual. However, Business Associate can make such a communication on behalf of the Covered Entity, within the scope of the Business Associate contract, and received. This prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Underlying Agreement.
- (D) Re-creation of Information. Business Associate may not use PHI received or created pursuant to the Agreement to create information that is not individually identifiable health information (De-identified Information), unless specifically provided in the Agreement or unless Covered Entity gives its written permission to do so, in writing and in advance. Such permission may be withheld in the sole ownership of any De-identified Information, unless Covered Entity specifically agrees otherwise in writing, in advance of its creation by Business Associate.

Section 4. Obligations and Activities of Business Associate.

- (A) Compliance. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule and the HITECH Act to the same extent as Covered Entity.
- (B) Appropriate Safeguards. Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI and electronic PHI, otherwise than as permitted by the Underlying Agreement or this Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI and electronic PHI, in accordance with 45 CFR §§ 164.308, 164.310, and 164.312. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including but not limited to, 45 CFR § 164.316 and the HITECH Act, 42 U.S.C. § 17931.
- (C) Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such Information. This provision shall not, however, be deemed to provide Business Associate with a right to assign or subcontract its responsibilities, except as specifically provided in the Underlying Agreement. In the event Business Associate creates, maintains, receives or transmits electronic PHI on behalf of the Covered Entity, Business Associate shall implement the safeguards required by the Section 4(B) above with respect to electronic PHI.

(D) Duties of Business Associate Involving Breach or Unauthorized Access, Use or Disclosure of PHI.

- (1) Discovery of Breaches. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to the Business Associate, or by exercising reasonable diligence would have been known to the Business Associate.
- (2) Reporting of Improper Access, Use or Disclosure. Business Associate shall report to Covered Entity in writing of any access, use or disclosure of PHI not permitted by this Agreement or the Underlying Agreement, and any Breach of Unsecured PHI of which it becomes aware within 10 days of discovery. Written notice shall contain: (a) the date of discovery of the Breach; (b) a listing of the identification of individuals and/or classes of individuals who are subject to the Breach; and (c) a general description of the nature of the Breach. Business Associate shall provide Covered entity with updates of information concerning the details of such Breach and the final results of its Risk Assessment as required in Section 4(D)(4) as needed to ensure that such Information remains current.
- (3) Notification of Breach. Business Associate shall notify Covered Entity within 72 hours after discovery of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- (4) Risk Assessment and Investigation. Business Associate shall perform an appropriate risk assessment immediately following the discovery of any unauthorized access, use or disclosure of PHI to determine whether use, access, or disclosure is one that "poses a significant risk of financial, reputational, or other harm to the individual." In performing the Risk Assessment, business Associate should consider a combination of factors such as: (a) who impermissibly used the PHI or to whom the PHI was impermissibly disclosed; (b) was the impermissibly disclosed PHI returned prior to it being accessed for improper purpose; and (c) the type and amount of PHI involved in the impermissible use or disclosure. The results of such Risk Assessment shall be provided to Covered Entity in writing without unreasonable delay and in no case later than 30 days from the date of discovery of the unauthorized access, use or disclosure, unless the Parties mutually agree to extend such 30 day deadline or if a law enforcement official determines that a notification would impede investigation or cause damage to national security. In addition to the Risk Assessment conducted by Business Associate, Covered Entity reserves the right to conduct its own investigation of any unauthorized access, use or disclosure of PHI occurring at any facility, site or location of the Business Associate, its agents or subcontractors or through any systems under the control of the Business Associate, its agents or subcontractors. Business Associate shall cooperate with Covered Entity to conduct such investigation. Covered Entity agrees to provide advance notice of such investigation and to protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such investigation.
- (5) Mitigation of Harm. In the event of a Breach of Unsecured PHI, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or the Underlying Agreement, such as promptly obtaining assurance from the recipient that the information will not be further used or disclosed in a confidentiality agreement or will be destroyed.
- (6) Notification to the Individual. It is the sole responsibility of the Covered Entity to notify its patients of any breach of PHI. At no time, is the Business Associate to contact or speak directly to any of Covered Entity's patients/individuals who are the subject of any Breach. Any such inquiries should be directed to the Covered Entity's Compliance and/or Privacy

Officer. Business Associates shall cooperate with Covered Entity as necessary to provide such notification and any details pertaining to any Breach of PHI. The Business Associate agrees to pay actual costs for notification and of any associated mitigation incurred by Covered Entity, such as credit monitoring, if Covered Entity determines that the breach is significant enough to warrant such measures.

- (7) Cooperation of Law Enforcement. Business Associate shall cooperate with Covered Entity in the event law enforcement officials institute an investigation that involves a Breach of PHI under this Agreement.
- (8) Notification to Media. For a Breach of Unsecured PHI involving more than 500 individuals, it is solely the responsibility of Covered Entity to notify the media and appropriate law enforcement and federal and state agencies as required by the HITECH Act, 45 CFR § 164.406. At no time is the Business Associate to contact or speak directly to the media without the prior authorization of Covered Entity. Business Associate shall cooperate with Covered Entity as necessary to provide such notification to the media.
- (9) Unsuccessful Security Incidents. The parties agree that this section satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted, but Unsuccessful Security Incidents (as defined in Section 1.)
- (E) Access to PHI. Business Associate agrees to provide access, at the request of Covered Entity, and in a time and manner mutually agreed upon by both parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- (F) Governmental Access to Records. Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or credit or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (G) Minimum Necessary. Business Associate agrees to use, disclose, and request (i) to the extent practicable, only the limited data set of Protected Health Information excluding direct identifiers, as defined in sec. 164.514(e)(2) of the HIPAA privacy rule; or, if needed by the entity, (ii) the minimum necessary Protected Health Information to accomplish the intended purpose of the use, disclosure, or request based on the Underlying Agreement. Business Associate agrees that prior to a disclosure; Business Associate shall determine what constitutes minimum necessary PHI to accomplish the intended purpose.
- (H) Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- (I) Amendments of PHI. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, in a time and manner mutually agreed upon by both parties.
- (J) Accounting of Disclosures. Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the privacy Rule and the HITECH Act as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date

of disclosure; (ii) the name of the entity or person who received the PHI and if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization or a copy of the written request for disclosure.

Section 5. Terms and Termination.

- (A) Term. The Obligations of Business Associate set forth herein shall commence on the Effective Date and shall terminate when the Agreement terminates and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, the terms of this Agreement are extended to cover such information and survive termination of this Agreement.
- (B) Termination With Cause. Upon Covered Entity's knowledge of a material breach by Business Associate to the terms of this Agreement, Covered Entity may terminate this Agreement, and sever all business relationship with Business Associate, including, the termination of the Underlying Agreement and any and all Agreements with Business Associate if the Breach remains uncured for more than 15 days after Covered Entity gives written notice to Business Associate of the Breach. The effective date of such termination will be the 16th day from the date of the written notice of Breach. If Business Associate has successive breaches within a one year period, then Covered Entity may terminate this Agreement immediately upon written notice to the Business Associate of the Breach.
- (C) Immediate Termination. In the event Business Associate has breached a material term of this Agreement and cure is not possible, Covered Entity may immediately terminate this Agreement, and sever all business relationships with Business Associate, including, the termination of Underlying Agreement and any and all Agreements with Business Associate. Covered Entity may report such violation to the Secretary.
- (D) Effect of Termination.
- (1) Except as provided in Section 5(D)(2) of this Agreement, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
 - (3) The provisions of this Section 5(D) shall survive termination of this Agreement.
- (E) Remedies In Event of Breach. Business Associate expressly acknowledges and agrees that the breach, or threatened breach, by it of any provision of this Agreement may cause Covered Entity to be irreparably harmed and that Covered Entity may not have an adequate remedy at law. Therefore, Business Associate agrees that upon such breach, or threatened breach, Covered Entity will be entitled to seek Injunctive relief to prevent Business Associate from commencing or continuing any action constituting such breach without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this Section 5(E) will be deemed to limit or abridge any other remedy available to Covered Entity at law or in equity. The provisions of this Section 5(E) shall survive termination of this Agreement.

Section 6. Obligations of Covered Entity to Inform Business Associate of Privacy Practices and Individual Restrictions.

- (A) Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- (B) Changes in Permitted Use. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (C) Restrictions of Use. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.
- (D) Permissible Requests. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule or HITECH Act if done by Covered Entity, unless the Underlying Agreement includes provisions for, data aggregation or management and administrative activities of Business Associate.

Section 7. Insurance and Indemnification.

- (A) Insurance. Commercial General Liability. Business Associate shall maintain occurrence based Commercial General Liability Insurance or equivalent form with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This policy shall include Bodily Injury, Property Damage, Personal Injury, Advertising Injury and Products/Completed Operations.
- (B) Indemnity. Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its parent corporation and subsidiaries, their directors, officers, agents, servants, and employees (collectively "the Indemnitees") to the extent any claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses of any kind or nature whatsoever, including, without limitation, reasonable attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution to which the Indemnitees may become subject or the result of any: (i) breach of this Agreement by Business Associate; (ii) failure of Business Associate to perform its obligations hereunder; or (iii) negligence or legal fault of Business Associate, its directors, officers, agents, or employees.

Section 8. General Provisions.

- (A) Regulatory References. A reference in this Agreement to a section in the Privacy Rule and HITECH Act means the section as in effect or as amended.
- (B) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with all federal, state and local laws and regulations, including, but not limited to, the requirements of the Privacy Rule, the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 and the HITECH Act. This Agreement shall be changed, modified or amended only by an instrument in writing signed by a duly authorized representative of each of the Parties, effective as of the date stipulated therein and attached hereto.
- (C) Survival. The respective rights and obligations of Business Associate with respect to PHI shall survive the termination of this Agreement.
- (D) Interpretation. Should there be any conflict between the language of this Agreement and any other Agreement entered into between the Parties, the language of an provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement. Any ambiguity in this Agreement shall

be solved to permit Covered Entity to comply with the Privacy Rule and HITECH Act.

- (E) Governing Law. This Agreement shall be construed in accordance with, interpreted and governed by the laws of the State of North Carolina without regard to any other state's conflicts of law provisions. Any action or proceeding regarding this Agreement shall be instituted and conducted in the parish where the Hospital is located. The provisions of this Section 8(E) shall survive the termination of this Agreement.
- (F) Notices. Any notices required or permitted hereunder shall be sufficiently given if sent by registered or certificated mail, postage prepaid, or personally delivered, addressed or delivered to the addresses set forth below in the signatures of this Agreement or to such other addresses as shall be furnished in writing by either party to the other party; and any such notice shall be deemed to have been given, if mailed, as of the date mailed, and, if personally delivered, as of the date delivered. Notices pertaining to unauthorized use or access of PHI or Breaches of PHI shall be submitted to the Covered Entity's Compliance and/or Privacy Officer with contact information of Business Associate's designated representative responsible for investigating such incidents.
- (G) Entire Agreement. With regard to the subject matter herein, this Agreement supersedes prior discussions, agreements, understandings, and representations between the Covered Entity and Business Associate.

Except as set forth specifically above, the terms of the Underlying Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed as by law provided.

APPALACHIAN DISTRICT HEALTH DEPARTMENT

By: _____
Title: Health Director
Printed Name: Beth Lovette
Address: P.O. Box 309
Sparta, NC 28675
Date: _____

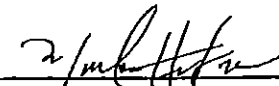
By: 
Title: Health Director
Printed Name: Marlon Hunter
Address: P.O. Box 686
Winston. Salem, NC 27102-0686
Date: 8/26/14

EXHIBIT A

NOTIFICATION TO _____ (Covered Entity)
BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This notification is made pursuant to Section 4(D) of the Business Associate between:

- _____ (Covered Entity), and
- _____ (Business Associate).

Business Associate hereby notifies _____ that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under terms of the Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____

Date of discovery of the breach: _____

Number of individuals affected by the breach: _____

The types of unsecured PHI that were involved in the breach (Example: full name, social security number, date of birth, home address, account number, or disability code): _____

Description of what Business Associate is doing to investigate the breach, to mitigate loss, and to protect against any further breaches: _____

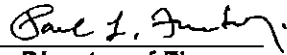
Contact information to ask questions or learn additional information:

Name: _____
Title: _____
Address: _____
Email Address: _____
Phone Number: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

9/23/2014

Date


Director of Finance