



County of Fairfax, Virginia

AMENDMENT

March 23, 2023

AMENDMENT NO. 1

CONTRACT TITLE: Early Intervention Billing Services

CONTRACTOR

Doctor's Choice Medical Services, Inc.
9200 Corp Boulevard #120
Rockville, MD 20850

SUPPLIER CODE

1000026082

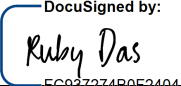
CONTRACT NO.

4400009777

By mutual agreement, Contract 4400009777 is amended to add the Business Associate/Confidentiality Agreement as attached.

All other prices, terms and conditions remain the same.

ACCEPTANCE:

BY: 
FC037374B0F2404...
(Signature)
Ruby Das
(Printed)

VP/CFO

(Title)

2023 March 22 | 08:36:52 PDT

(Date)


E239B762E600465...
Lee Ann Pender, CPPB
Director/County Purchasing Agent

DISTRIBUTION:

Contractor – rdas@doctorshoicemd.com

NCS – Kelly Melendez/e

DPMM – Contract Specialist - Shelley Brent/e

Department of Procurement & Material Management

12000 Government Center Parkway, Suite 427

Fairfax, VA 22035-0013

Website: www.fairfaxcounty.gov/dpmm

Phone 703-324-3201, TTY711, Fax: 703-324-3228

BUSINESS ASSOCIATE/CONFIDENTIALITY AGREEMENT

This Business Associate/Confidentiality Agreement ("Agreement") is entered into this 22, day of March 2023, by and between Fairfax County, doing business as Neighborhood and Community Service's Infant Toddler Connection ("Fairfax County" or "Covered Entity"), and Doctors' Choice Medical Services, LLC ("Doctors' Choice" or "Business Associate"), as defined in Section 1.1 below.

RECITALS

A. Fairfax County is a Hybrid Covered Entity. The County's covered components, including the Fairfax-Falls Church Community Services Board, the Health Department, the Fire and Rescue Department's Emergency Medical Services Division, and the Department of Human Resource's Benefits Division, are subject to the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act ("HIPAA"). Neighborhood and Community Service's Infant Toddler Connection is also a covered entity as defined by HIPAA. The Infant Toddler Connection program's records are subject to protection under additional laws and regulations, including, but not limited to, Part C of the Individuals with Disabilities Education Act ("IDEA") and the Family Educational Rights and Privacy Act ("FERPA").

B. Doctors' Choice and Fairfax County have entered into a Contract for Early Intervention Billing Services. To accomplish the terms of the Contract, Business Associate requires certain Confidential Client Information from Fairfax County. This Agreement is intended to authorize the use and disclosure of such Information pursuant to applicable law, including HIPAA, Part C of the IDEA, and FERPA.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINED TERMS.

1.1. Defined Terms. Capitalized terms used, but not otherwise defined in this Agreement, have the same meaning given to such terms in HIPAA, or the implementing regulations promulgated thereunder. For purposes of this Agreement,

(a) "Covered Entity" means Fairfax County, and shall generally have the same meaning as the term "covered entity" at 45 C.F.R. § 160.103;

(b) "Business Associate" means Doctors' Choice Medical Services, LLC in reference to this Agreement, and shall have the same meaning as the term "business associate" at 45 C.F.R. § 160.103;

(c) "Confidential Information" means all written information, data, reports, and Client records disclosed from Fairfax County to Business Associate and includes Individually Identifiable Health Information (45 C.F.R. § 160.103), Health Records (Va. Code § 32.1-127.1:03), Education Records (34 C.F.R. § 99.3), Personal Information (Va. Code § 18.2-186.6), and Medical Information (Va. Code § 32.1-127.1:05);

Department of Procurement & Material Management

12000 Government Center Parkway, Suite 427

Fairfax, VA 22035-0013

Website: www.fairfaxcounty.gov/dpmm

Phone 703-324-3201, TTY711, Fax: 703-324-3228

(d) "Client" refers to patients and other individuals who receive and have received services from the Fairfax County, including those for whom Fairfax County maintains any Confidential Information.

(e) "Security Incident" refers to the "unauthorized access, use, disclosure, modification, or destruction of [Confidential Information] or interference with system operations in an information system" (45 C.F.R. § 164.304); or the "acquisition, access, use, or disclosure of protected health information in a manner not permitted under [HIPAA] which compromises the security or privacy of the protected health information" (45 C.F.R. § 164.402); or the "unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of" Confidential Information (Va. Code §§ 18.2-186.6 and 32.1-127.1:05).

2. BUSINESS ASSOCIATE OBLIGATIONS.

2.1. Business Associate's Use or Disclosure of Confidential Information. Business Associate may use or disclose Confidential Information only as necessary to perform the services set forth in the parties' Contract and only to the extent such use or disclosure of Confidential Information (a) would not violate HIPAA and its implementing regulations if done by Fairfax County, (b) is reasonably limited to the minimum necessary information to accomplish the intended purposes of the use or disclosure; (c) is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e); and (d) is in compliance with FERPA. Business Associate shall not use or disclose Confidential Information other than as permitted or required by this Agreement or by applicable law.

2.2. Safeguards for Protection of Confidential Information.

(a) Business Associate will use appropriate safeguards to prevent use and/or disclosure of Confidential Information other than as provided for by this Agreement.

(b) Business Associate will comply with applicable Security Rule provisions set forth at 45 C.F.R. Part 164, Subpart C, including provisions relating to Security Standards General Rules (45 C.F.R. §164.306), Administrative Safeguards (45 C.F.R. § 164.308), Physical Safeguards (45 C.F.R. § 164.310), Technical Safeguards (45 C.F.R. § 164.312), Organizational Requirements (45 C.F.R. §164.314) and Policies and Documentation (45 C.F.R. § 164.316), and implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Confidential Information that Business Associate creates, receives, maintains or transmits on behalf of Fairfax County.

(c) To the extent Business Associate is to carry out an obligation of Fairfax County under the Privacy Rule provisions set forth at 45 C.F.R. Part 164, Subpart E as directed by Fairfax County pursuant to the terms of this Agreement, Business Associate will comply with the requirements of the Privacy Rule that apply to Fairfax County in the performance of such obligation.

(d) Business Associate will retain records in compliance with applicable record retention laws.

2.3. Notification.

Amendment No. 1
4400009777
Page 4

(a) Business Associate will promptly report to Fairfax County's HIPAA Compliance Officer any use or disclosure of Confidential Information not provided for by this Agreement of which Business Associate becomes aware. This includes, but is not limited to, reporting Security Incidents as required by 45 C.F.R. 164.410, Va. Code § 18.2-186.6, and Va. Code § 32.1-127.1:05.

(b) Business Associate will report to Fairfax County's HIPAA Compliance Officer any actual, successful Security Incident of which it becomes aware, in the following time and manner:

i. The Security Incident will be reported in writing within five (5) calendar days of the Business Associate's discovery. A Security Incident is treated as discovered on the first day on which such Incident is known or, by exercising reasonable diligence would have been known.

ii. Any such report shall include the identification of each Client whose Confidential Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed as a result of any such Security Incident, together with such other information as is known to Business Associate at the time such report is made (such as the type of information involved in the event, the nature of the information accessed, acquired or disclosed, etc.) or promptly thereafter as such other information becomes available.

iii. Fairfax County may require Business Associate to provide Notices to Clients affected by a Security Incident caused by Business Associate. If Fairfax County provides Notices to Clients pursuant to applicable law as a result of Business Associate's actions, Fairfax County reserves the right to be reimbursed by Business Associate all direct and indirect costs related to providing such Notice.

2.4. Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Confidential Information by Business Associate in violation of the requirements of this Agreement or as the result of any Security Incident known to Business Associate.

2.5. Cooperation. Business Associate will reasonably cooperate with Fairfax County in connection with Fairfax County's investigation of any Security Incident and in connection with any notices Fairfax County determines are required as a result.

2.6. Subcontractors. Business Associate will ensure that any subcontractor that creates, receives, maintains, or transmits Confidential Information on behalf of Business Associate agrees to substantially the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such Confidential Information.

2.7. Client Rights. The Privacy Rule grants Clients certain rights with regard to the Confidential Information maintained in a "Designated Record Set" (45 C.F.R. § 164.501) about them. Fairfax County agrees that the Confidential Information provided to Business Associate shall not constitute a Designated Record Set or shall be limited to duplicates of information

maintained in a Designated Record Set by Fairfax County. However, to the extent Business Associate maintains Confidential Information for a Client in a Designated Record Set, Business Associate shall provide access to such Confidential Information to Fairfax County or, as directed by Fairfax County, to a Client in order to meet the requirements under 45 C.F.R. § 164.524. Business Associate shall document disclosures of Confidential Information and such information related to such disclosures as would be required for Fairfax County to respond to a request by a Client for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 and shall provide such information to Fairfax County promptly upon written request by Fairfax County. Business Associate shall notify Fairfax County promptly if Business Associate receives a request from a Client to access, amend or receive an accounting of disclosures of Client's Confidential Information.

2.8. Books and Records.

(a) If Business Associate receives a request from the Secretary of Health and Human Services (the "Secretary") that Business Associate make available its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Fairfax County, to the Secretary for purposes of determining Fairfax County's compliance with the Privacy Rule, Business Associate shall promptly notify Fairfax County that it has received such a request. Upon Business Associate's receipt of a written directive to do so from Fairfax County, Business Associate will make the relevant internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary.

(b) Nothing in this section shall be construed to require Business Associate to disclose or produce to the Secretary communications that are subject to attorney-client privilege held by Business Associate with respect to legal advice it seeks from other legal counsel. Although Business Associate and Fairfax County are making a good faith effort to achieve conformance of these terms and conditions with the requirements of applicable law, Fairfax County acknowledges that Business Associate has not represented or warranted to Fairfax County, that these terms and conditions, including the procedures outlined in this paragraph, will be deemed by the Secretary or a court to satisfy the requirements of the Privacy and Security Rules or the HITECH Act.

(c) Fairfax County's HIPAA Compliance Officer may make a written request that Business Associate make available its internal security policies and procedures, risk assessments, training records, electronic systems, and other practices, books, and records, in whatever form, relating to the use and disclosure of Confidential Information received from, or created or received by Business Associate on behalf of Fairfax County, for purposes of determining Business Associate's compliance with applicable law. Upon Business Associate's receipt of the written request, Business Associate will make the relevant internal records available to Fairfax County's HIPAA Compliance Officer.

2.9. Use or Disclosure for Business Associate Administration.

Except as otherwise limited by the terms of this Agreement:

(a) Business Associate may use Confidential Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate; and

(b) Business Associate may disclose Confidential Information for the proper management and administration of Business Associate, provided that disclosures are required by applicable law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.10. Reporting of Violations of Law. Business Associate may use Confidential Information to report violations of law to appropriate Federal and State authorities, consistent with applicable law.

3. OBLIGATIONS OF COVERED ENTITY.

3.1. Notice of Privacy Practices. As applicable, Fairfax County shall notify Business Associate in writing of any and all limitations in its notice of privacy practices or its policies or procedures to the extent that any such limitation may affect Business Associate's use or disclosure of Confidential Information.

3.2. Notice of Modifications. Fairfax County shall notify Business Associate in writing of any changes in, or revocation of, an authorization or other permission by a Client to use or disclose Confidential Information to the extent that such change or revocation may affect the use or disclosure of Confidential Information by Business Associate or its subcontractors.

3.3. Special Restrictions. Fairfax County shall notify Business Associate in writing of any restriction to the use or disclosure of Confidential Information that Fairfax County has agreed to, to the extent that such restriction may affect Business Associate's use or disclosure of Confidential Information.

3.4. Scope of Requests for Use or Disclosure. Except for the uses and disclosures of Confidential Information contemplated by Sections 2.2 and 2.10 above, Fairfax County shall not request Business Associate to use or disclose Confidential Information in any manner that would not be permissible under applicable law if done by Fairfax County.

4. TERM AND TERMINATION.

4.1. Term. This Agreement shall be effective on the date first written above and shall expire upon termination of the parties' underlying Contract.

4.2. Termination by Covered Entity. Upon Fairfax County's becoming aware of a breach of this Agreement by Business Associate, Fairfax County shall provide written notice of and an opportunity for Business Associate to cure the breach or end the violation of the Agreement. If the breach is not cured or the violation is not terminated within forty-five (45) days of the date of such notice Fairfax County may terminate this Agreement. Multiple breaches of this Agreement or violations by the Business Associate may result in termination of this Agreement with thirty (30) days' notice to Business Associate and without an opportunity to cure any further breach or violation.

4.3. Return of Confidential Information. Upon any termination, expiration or non-renewal of this Agreement, Business Associate will return or destroy any Confidential

Amendment No. 1
4400009777
Page 7

Information that Business Associate, its agents, or subcontractors then maintains in any form. If, however, Business Associate or the Fairfax County determine that such return or destruction is not feasible, the Confidential Information will not be returned or destroyed and Business Associate will remain bound by the provisions of this Agreement as to such retained Confidential Information until it is returned or destroyed.

5. MISCELLANEOUS

5.1. Notices. Any notice required or permitted under this Agreement will be given in writing to –

the Covered Entity at:

Tanya Bullock, HIPAA Compliance Officer
12000 Government Center Parkway, Suite 553
Fairfax, VA 22035
hipaacomplianceofficer@fairfaxcounty.gov

to Business Associate at:
Doctor's choic Medical Services, Inc.
9200 Corp Boulevard #120
Rockville, MD 20850

Notices will be deemed to have been received upon actual receipt, one business day after being sent by overnight courier service, or five (5) business days after mailing by certified or priority mail, whichever occurs first.

5.2. Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without regard to its conflicts of laws principles.

5.3. No Third-Party Beneficiaries. This Agreement shall not in any manner whatsoever confer any rights upon or increase the rights of any third party.

5.4. Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement will be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

5.5. Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement will continue in effect.

5.6. Amendments. This Agreement may not be modified in any respect other than by a written instrument signed by both parties.

5.7. Assignment. This Agreement is not assignable by either party without the other party's written consent.

5.8. Renegotiation. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable federal and state laws and regulations.

Amendment No. 1
4400009777
Page 8

5.9. Regulatory and Statutory References. Any reference in this Agreement to HIPAA, the HITECH Act, the Privacy Rule the Security Rule, other regulations implementing HIPAA or the HITECH Act, the IDEA, or FERPA shall mean such statute or regulation as in effect at the time of execution of this Agreement or, if and to the extent applicable, as subsequently updated, amended or revised.

5.10. Interpretation. Any ambiguity in the Agreement shall be resolved in favor of a meaning that permits the parties to comply with applicable law.

5.11. Counterparts. This Agreement 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.

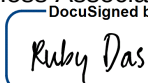
5.12. Scope and Effect of Agreement. This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes and replaces, from the date of this agreement, all other prior discussions, representations, agreements and understandings of every kind or nature, whether oral or written, with respect to the subject matter here of, including without limitation each previously existing business associate agreement, if any, between Business Associate and the Covered Entity.

5.13. Survival. The provisions of Section 4.3 and Section 5 shall survive the termination of this Agreement.

IN WITNESS THEREOF, the parties have executed this Agreement as of the dates written below.

Doctors' Choice Medical Services, LLC

(Business Associate)

By: 
FC937274B0F2404...

Ruby Das, Contractor

2023 March 22 | 08:36:52 PDT

Date:

Fairfax County Government

By: 
E239B762E600465...

Lee Ann Pender, CPPB
Purchasing Agent/Director

Date: