

RESOLUTION AGREEMENT

I. Recitals

1. Parties. The Parties to this Resolution Agreement (“Agreement”) are:

A. The United States Department of Health and Human Services, Office for Civil Rights (“HHS”), which enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”), the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”), and the Federal standards for notification in the case of breach of unsecured protected health information (45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, the “Breach Notification Rule”). HHS has the authority to conduct compliance reviews and investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules (the “HIPAA Rules”) by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews and investigations. *See* 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).

B. Northeast Behavioral Health Corporation, doing business as Beth Israel Lahey Health Behavioral Services (“BILHBS”) f/k/a Lahey Health Behavioral Services, which is a covered entity as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules.

HHS and BILHBS shall together be referred to herein as the “Parties.”

2. Factual Background and Covered Conduct.

On April 26, 2019, HHS received a complaint against BILHBS from an individual who had been appointed as the personal representative of her father’s estate by a court of competent jurisdiction (“Complainant”). The Complainant alleged that she requested protected health information about her father from BILHBS and had not yet received all of the requested information.

HHS’ investigation revealed that, on February 12, 2019, the Complainant made an access request for her father’s protected health information; BILHBS failed to provide access to all the requested documents until October 28, 2019.

HHS’ investigation indicated that the following covered conduct occurred (“Covered Conduct”):

A. BILHBS failed to provide access to protected health information about the individual in a designated record set (*see* 45 C.F.R. § 164.524).

3. No Admission. This Agreement is not an admission of liability by BILHBS.

4. No Concession. This Agreement is not a concession by HHS that BILHBS is not in violation of the HIPAA Rules and not liable for civil money penalties.

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve OCR Transaction Number 01-19-342049 and any violations of the HIPAA Rules related to the Covered Conduct specified in paragraph I.2 of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden, and expense of further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

II. Terms and Conditions

6. Payment. HHS has agreed to accept, and BILHBS has agreed to pay HHS, the amount of \$70,000 ("Resolution Amount"). BILHBS agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 pursuant to written instructions to be provided by HHS.

7. Corrective Action Plan. BILHBS has entered into and agrees to comply with the Corrective Action Plan ("CAP"), attached as Appendix A, which is incorporated into this Agreement by reference. If BILHBS breaches the CAP, and fails to cure the breach as set forth in the CAP, then BILHBS will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph II.8 of this Agreement.

8. Release by HHS. In consideration of and conditioned upon BILHBS's performance of its obligations under this Agreement, HHS releases BILHBS from any actions it may have against BILHBS under the HIPAA Rules arising out of or related to the Covered Conduct identified in paragraph I.2 of this Agreement. HHS does not release BILHBS from, nor waive any rights, obligations, or causes of action other than those arising out of or related to the Covered Conduct and referred to in this paragraph. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.

9. Agreement by Released Parties. BILHBS shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. BILHBS waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a- 7a) and 45 C.F.R. Part 160 Subpart E, and HHS claims collection regulations at 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.

10. Binding on Successors. This Agreement is binding on BILHBS and its successors, heirs, transferees, and assigns.

11. Costs. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. No Additional Releases. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against or by any other person or entity.

13. Effect of Agreement. This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement shall be set forth in writing and signed by all Parties.

14. Execution of Agreement and Effective Date. The Agreement shall become effective (*i.e.*, final and binding) upon the date of signing of this Agreement and the CAP by the last signatory (Effective Date).

15. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty (“CMP”) must be imposed within six years from the date of the occurrence of the violation. To ensure that this six (6) year period does not expire during the term of this Agreement, BILHBS agrees that the time between the Effective Date of this Agreement and the date the Agreement may be terminated by reason of BILHBS’ breach, plus one-year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. BILHBS waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the covered conduct identified in paragraph I.2 that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Agreement.

16. Disclosure. HHS places no restriction on the publication of the Agreement. In addition, HHS may be required to disclose material related to this Agreement to any person upon request consistent with the applicable provisions of the Freedom of Information Act, 5 U.S.C. § 552, and its implementing regulations, 45 C.F.R. Part 5.

17. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.

18. Authorizations. The individual(s) signing this Agreement on behalf of BILHBS represent and warrant that they are authorized by BILHBS to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

For Northeast Behavioral Health Corporation, d/b/a Beth Israel Lahey Health Behavioral Services (BILHBS)

/s/

8/7/2020

Hilary Jacobs
President
Beth Israel Lahey Health Behavioral Services

Date

For Department of Health and Human Services

/s/

8/7/2020

Susan M. Pezzullo Rhodes
Regional Manager
Office for Civil Rights

Date

Appendix A
CORRECTIVE ACTION PLAN
BETWEEN THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
NORTHEAST BEHAVIORAL HEALTH CORPORATION

I. Preamble

Northeast Behavioral Health Corporation, doing business as Beth Israel Lahey Health Behavioral Services, Inc. (“BILHBS”) f/k/a Lahey Health Behavioral Services hereby enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS”). Contemporaneously with this CAP, BILHBS is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. BILHBS enters into this CAP as part of consideration for the release set forth in paragraph II.8 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

BILHBS has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports:

Catherine Pietrzak, Vice President, Finance
Beth Israel Lahey Health Behavioral Services
199 Rosewood Drive, Suite 250
Danvers, MA 01923
Office: 978-968-1715
catherine.j.pietrzak@lahey.org

HHS has identified the following individual as its authorized representative and contact person with whom BILHBS is to report information regarding the implementation of this CAP:

Susan M. Pezzullo Rhodes
Office for Civil Rights, New England Region
U.S. Department of Health and Human Services
JFK Federal Building, Room 1875
Boston, MA 02203
Telephone: 617-565-1347

Facsimile: 617-565-3809

BILHBS and HHS agree to promptly notify each other of any changes in the contact persons or the other information provided above.

B. Proof of Submissions. Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

III. Effective Date and Term of CAP

The Effective Date for this CAP shall be calculated in accordance with paragraph II.14 of the Agreement (“Effective Date”). The period for compliance (“Compliance Term”) with the obligations assumed by BILHBS under this CAP shall begin on the Effective Date of this CAP and end one (1) year from the Effective Date unless HHS has notified BILHBS under section VIII hereof of its determination that BILHBS breached this CAP. In the event of such a notification by HHS under section VIII hereof, the Compliance Term shall not end until HHS notifies BILHBS that it has determined that the breach has been cured. After the Compliance Term ends, BILHBS shall still be obligated to submit the final Annual Report as required by section VI and comply with the document retention requirement in section VII.

IV. Time

In computing any period of time prescribed or allowed by this CAP, all days referred to shall be calendar days. The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

V. Corrective Action Obligations

BILHBS agrees to the following:

A. Policies and Procedures

1. BILHBS shall develop, maintain, and revise, as necessary, its written policies and procedures to comply with the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”). BILHBS’ policies and procedures shall include, but not be limited to, the minimum content set forth in section V.C.

2. BILHBS shall provide such policies and procedures, consistent with paragraph 1 above, to HHS within sixty (60) days of the Effective Date for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, BILHBS shall have thirty (30) days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval.

3. BILHBS shall implement such policies and procedures within thirty (30) days of receipt of HHS' approval.

B. Distribution and Updating of Policies and Procedures

1. BILHBS shall distribute the policies and procedures identified in section V.A. to all members of the workforce within thirty (30) days of HHS approval of such policies and to new members of the workforce within thirty (30) days of their beginning of service.

2. BILHBS shall require, at the time of distribution of such policies and procedures, a signed written or electronic initial compliance certification from all members of the workforce, stating that the workforce members have read, understand, and shall abide by such policies and procedures.

3. BILHBS shall assess, update, and revise, as necessary, the policies and procedures at least annually. BILHBS shall provide such revised policies and procedures to HHS for review and approval. Within thirty (30) of the effective date of any approved substantive revisions, BILHBS shall distribute such revised policies and procedures to all members of its workforce, and shall require new compliance certifications.

C. Minimum Content of the Policies and Procedures

The Policies and Procedures shall include, but not be limited to:

1. Review and update as necessary BILHBS' policies and procedures related to access to protected health information.

2. Review and update as necessary BILHBS' policies and procedures related to safeguarding designated record sets.

3. Protocols for training all BILHBS' workforce members that are involved in receiving or fulfilling access requests as necessary and appropriate to ensure compliance with the policies and procedures provided for in section V.A. above.

4. Protocols for training all BILHBS' workforce members that are involved in the maintaining of designated record sets and other protected health information as necessary and appropriate to ensure compliance with the policies and procedures provided for in section V.A. above.

5. Application of appropriate sanctions against BILHBS workforce members who fail to comply with policies and procedures provided for in subparagraphs (1) and (2) above.

D. Reportable Events.

During the Compliance Term, BILHBS shall, upon receiving information that a workforce member may have failed to comply with the policies and procedures described in Section V.A.1., promptly investigate this matter. If BILHBS determines, after review and investigation, that a member of its workforce has failed to comply with these policies and

procedures, BILHBS shall notify HHS in writing within thirty (30) days and in the Annual Report, as set forth in Section VI.B.4. Such violations shall be known as Reportable Events. The report shall include the following information:

1. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and
2. A description of the actions taken and any further steps BILHBS plans to take to address the matter to mitigate any harm, and to prevent it from recurring, including application of appropriate sanctions against workforce members who failed to comply with its Privacy Rule Policies and Procedures.

E. Training

1. BILHBS shall provide HHS with training materials per section V.C. above for all members of the workforce within sixty (60) days of the approval of its policies and procedures per section V.A.
2. Upon receiving notice from HHS specifying any required changes, BILHBS shall make the required changes and provide revised PHI disposal training materials to HHS within thirty (30) days.
3. Upon receiving approval from HHS of any revised training materials, BILHBS shall provide training on any revised training materials for each workforce member within sixty (60) days of HHS approval and annually thereafter. BILHBS shall also provide such training to each new member of the workforce within thirty (30) days of their beginning of service.
4. Each workforce member who is required to attend the training shall certify, in electronic or written form, that he or she has received the training. The training certification shall specify the date training was received. All course materials shall be retained in compliance with section VII.
5. BILHBS shall review the training at least annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during audits or reviews, and any other relevant developments.

VI. Implementation Report and Annual Reports

A. Implementation Report.

Within 120 days after the receipt of HHS' approval of the policies and procedures required by section V.A.1, BILHBS shall submit a written report to HHS and the Monitor summarizing the status of its implementation of the requirements of this CAP. This report, known as the "Implementation Report," shall include:

1. An attestation signed by an owner or officer of BILHBS attesting that the Policies and Procedures are being implemented, have been distributed to all appropriate members of the

workforce, and that BILHBS has obtained all of the compliance certifications required by sections V.B.2. and V.B.3.;

2. A copy of all training materials used for the training required by this CAP, a description of the training, including a summary of the topics covered, the length of the session(s) and a schedule of when the training session(s) were held;

3. An attestation signed by an owner or officer of BILHBS attesting that all members of the workforce have completed the initial training required by this CAP and have executed the training certifications required by section V.E.4.;

4.. An attestation signed by an owner or officer of BILHBS stating that he or she has reviewed the Implementation Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

B. Annual Report.

The one (1) year period after the Effective Date shall be known as a “Reporting Period.” Within sixty (60) days after the close of the Reporting Period, BILHBS shall submit a report or reports to HHS regarding BILHBS’ compliance with this CAP for the Reporting Period (“Annual Report”). The Annual Report shall include:

1. A schedule, topic outline, and copies of the training materials for the training programs attended in accordance with this CAP during the Reporting Period that is the subject of the report;

2. An attestation signed by an owner or officer of BILHBS attesting that it is obtaining and maintaining written or electronic training certifications from all persons that require training that they received training pursuant to the requirements set forth in this CAP;

3. An attestation signed by an officer or director of BILHBS attesting that any revision(s) to the Policies and Procedures required by section V were finalized and adopted within thirty (30) days of HHS’ approval of the revision(s), which shall include a statement affirming that BILHBS distributed the revised Policies and Procedures to all appropriate members of BILHBS’ workforce within sixty (60) days of HHS’ approval of the revision(s); and

4. A summary of Reportable Events (defined in section V.D.) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events, or an attestation signed by an officer or director of BILHBS stating that no Reportable Events occurred during the Compliance Term;

5. An attestation signed by an owner or officer of BILHBS attesting that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VII. Document Retention

BILHBS shall maintain for inspection and copying, and shall provide to OCR, upon request, all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

VIII. Breach Provisions

BILHBS is expected to fully and timely comply with all provisions contained in this CAP.

A. Timely Written Requests for Extensions. BILHBS may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act required by this CAP. A “timely written request” is defined as a request in writing received by HHS at least five (5) days prior to the date such an act is required or due to be performed.

B. Notice of Breach of this CAP and Intent to Impose Civil Monetary Penalty. The parties agree that a breach of this CAP by BILHBS constitutes a breach of the Agreement. Upon a determination by HHS that BILHBS has breached this CAP, HHS may notify BILHBS of: (1) BILHBS’s breach; and (2) HHS’ intent to impose a civil money penalty (“CMP”) pursuant to 45 C.F.R. Part 160, or other remedies for the Covered Conduct set forth in paragraph I.2 of the Agreement and any other conduct that constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules (“Notice of Breach and Intent to Impose CMP”).

C. BILHBS’ Response. BILHBS shall have 30 days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS’ satisfaction that:

1. BILHBS is in compliance with the obligations of the CAP that HHS cited as the basis for the breach;
2. The alleged breach has been cured; or
3. The alleged breach cannot be cured within the thirty (30) day period, but that:
(a) BILHBS has begun to take action to cure the breach; (b) BILHBS is pursuing such action with due diligence; and (c) BILHBS has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the thirty (30) day period, BILHBS fails to meet the requirements of section VIII.C. of this CAP to HHS’ satisfaction, HHS may proceed with the imposition of a CMP against BILHBS pursuant to 45 C.F.R. Part 160 for any violations of the Covered Conduct set forth in paragraph I.2 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Rules. HHS shall notify BILHBS in writing of its determination to proceed with the imposition of a CMP pursuant to 45 C.F.R. §§ 160.312(a)(3)(i) and (ii).

For Northeast Behavioral Health Corporation, d/b/a Beth Israel Lahey Health Behavioral Services (BILHBS)

_____/s/_____
Hilary Jacobs
President
Beth Israel Lahey Health Behavioral Services

____8/7/2020_____
Date

For Department of Health and Human Services

_____/s/_____
Susan M. Pezzullo Rhodes
Regional Manager, New England Region
Office for Civil Rights

____8/7/2020_____
Date