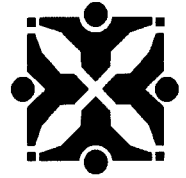


# City of Columbia

701 East Broadway, Columbia, Missouri 65201



**Agenda Item Number:** B 371-15

**Department Source:** Public Health & Human Services

**To:** City Council

**From:** City Manager & Staff

**Council Meeting Date:** 12/7/2015

**Re:** University of Missouri Department of Family and Community Medicine  
Business Associate Agreement

## Documents Included With This Agenda Item

Council Memo, Resolution/Ordinance, Exhibit to the Resolution/Ordinance

**Supporting documentation includes:** None

## Executive Summary

An ordinance authorizing the City Manager to sign the Business Associate Agreement between the City of Columbia and The Curators of the University of Missouri on behalf of its Department of Family and Community Medicine for the provision of physician services.

## Discussion

The City of Columbia and the University of Missouri have had a contractual agreement for physician services for over 20 years. The Business Associate Agreement is necessary to comply with the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

## Fiscal Impact

Short-Term Impact: None

Long-Term Impact: None

## Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Health, Social Services and Affordable Housing

Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Not Applicable

## Suggested Council Action

Should the Council agree with staff recommendations, an affirmative vote is in order.

## Legislative History

The City of Columbia and the University of Missouri have had a contractual agreement for physician services for over 20 years. This is the first year for the Business Associate Agreement.

# City of Columbia

701 East Broadway, Columbia, Missouri 65201



Stephane Browning  
Department Approved

[Signature]  
City Manager Approved

Introduced by \_\_\_\_\_

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Council Bill No. B 371-15

**AN ORDINANCE**

authorizing a business associate agreement with The Curators of the University of Missouri, on behalf of the Department of Family and Community Medicine, for the provision of physician services; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a business associate agreement with The Curators of the University of Missouri, on behalf of the Department of Family and Community Medicine, for the provision of physician services. The form and content of the agreement shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “BAA”), is made as of the date this BAA is executed by both parties (the “Effective Date”), by and between **The Curators of the University of Missouri** and on behalf of its Department of Family and Community Medicine and its affiliates (“Business Associate”) and the City of Columbia, Missouri, a municipal corporation and hybrid covered entity (“Covered Entity”) (collectively the “Parties”) in order to comply with the Federal Health Insurance Portability and Accountability Act of 1996 and its related regulations (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 and related regulations promulgated by the Secretary (the “HITECH”).

### RECITALS:

**WHEREAS**, Business Associate has been engaged to provide physician services as set forth in the Services Agreement for or on behalf of Covered Entity; and

**WHEREAS**, in connection with these services, Business Associate uses or discloses individually identifiable health information, including Protected Health Information (“PHI”), as part of performing said services, or otherwise performs a function that is subject to protection under HIPAA and the HITECH Act; and

**WHEREAS**, HIPAA requires that Covered Entity receive adequate assurances that Business Associate will appropriately safeguard PHI that has been used or disclosed in the course of providing services to or on behalf of Covered Entity; and

**WHEREAS**, the Parties have entered into a Services Agreement (“Agreement”) related to the functions or services it will perform on behalf of Covered Entity or which sets forth the purchase and/or maintenance of equipment in which the exchange of PHI is necessary or likely to occur; and

**WHEREAS**, the purpose of this BAA is to comply with the requirements of HIPAA.

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### a) Definitions.

As may be amended from time to time, the following HIPAA and HITECH Act definitions shall apply to this BAA. Any terms not specifically described in this BAA or the Agreement shall have the meanings ascribed to such in HIPAA and HITECH Act.

1. **ARRA.** “ARRA” refers to the American Recovery and Reinvestment Act of 2009.
2. **Breach.** “Breach” shall have the same meaning as the term “breach” in HIPAA, 45C.F.R. 164.402, and shall *generally* mean the unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of such information.
3. **Breach Rule:** “Breach Rule” shall mean the Notification in the Case of Breach of Unsecured PHI Standards at 45 C.F.R. § 164, subpart D.

4. **Business Associate:** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement as it creates, receives, maintains or transmits PHI for a function, activity or service regulated by HIPAA, and which includes a Subcontractor that creates, receives, maintains or transmits PHI on behalf of a Business Associate. In reference to the party to this agreement, “Business Associate” shall mean The Curators of the University of Missouri.
5. **Covered Entity:** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, “Covered Entity” shall mean the City of Columbia, Missouri.
6. **Designated Record Set:** “Designated Record Set” (“DRS”) shall have the same meaning as the term “Designated Record Set” at 45 CFR 164.501 and shall generally mean a group of records maintained by or for a covered entity that is (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; or (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for a covered entity to make decisions about Individuals.
7. **Electronic Health Record.** “Electronic Health Record” shall have the same meaning as the term “electronic health record” in the HITECH Act, Section 13400(5).
8. **Electronic Protected Health Information.** “Electronic Protected Health Information” (“EPHI”) shall have the same meaning as the term “electronic protected health information” in 45 CFR § 160.103, limited to the information that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity.
9. **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
10. **Individual:** “Individual” shall mean the person who is subject of the protected health information and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
11. **Privacy Rule:** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. §160 and §164, subparts A and E.
12. **Protected Health Information or “PHI”:** “PHI” Shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; provision of health care to an individual; or past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA regulations, including, but not limited to 45 CFR § 164.501.
13. **Required By Law.** “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR § 160.103.
14. **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

15. **Security Incident.** “Security Incident” shall have the same meaning as the term “security incident” at 45 CFR §164.304 and shall generally mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.
16. **Security Rule.** “Security Rule” shall mean the Security Standards at 45 Part 160 and Part 164.
17. **Services Agreement.** “Services Agreement” (or “Agreement”) shall mean any present or future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to Covered Entity which involve the use or disclosure of Protected Health Information. The Services Agreement is amended by and incorporates the terms of this BAA.
18. **Subcontractor.** “Subcontractor” shall have the same meaning as the term “subcontractor” at 45 CFR 164.103 and shall generally mean a person to whom a Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such Business Associate.
19. **Unsecured Protected Health Information.** “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in the HITECH Act, Section 13402(h)(1).

**b) Obligations of Covered Entity:**

(i) Upon request, provide Business Associate with a copy of its Notice of Privacy Practices produced by Covered Entity in accordance with 45 C.F.R. §164.520. Covered Entity will notify Business Associate of any changes to such Notice, and notify Business Associate of any limitation(s) in the Notice of Privacy Practices to the extent that such limitation may affect Business Associate’s use or disclosure of protected health information.

(ii) Provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate’s permitted or required uses and/or disclosures.

(iii) Notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of protected health information.

**c) Obligations and Activities of Business Associate:**

Business Associate agrees to comply with applicable federal and state confidentiality and security laws, including the provisions of HIPAA and the HITECH Act applicable to Business Associates, including but not limited to:

(i) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

(ii) Business Associate agrees to limit its use, disclosure and requests for PHI to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request.

(iii) Business Associate agrees to comply with all applicable federal and state laws, including the Privacy Rule and Security Rule, and to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Agreement. In particular, Business Associate shall comply with 45 C.F.R. §§164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements).

(iv) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate involving a use or disclosure of PHI in violation of the requirements of this BAA (including, without limitation, any Security Incident or Breach of Unsecured PHI). Business Associate agrees to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this BAA and/or any Security Incident or Breach.

(v) Business Associate may not use or disclose PHI for marketing purposes without the prior written consent of the Covered Entity. Marketing includes any communication which would encourage the recipient to use or purchase a product or service. Business Associate shall not sell PHI without the prior written consent of the Covered Entity.

(vi) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate shall require that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate enter into a written Business Associate Agreement with the Business Associate which has the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. Business Associate shall disclose to such Subcontractors only the minimum PHI necessary to perform or fulfill a specific function or service under the underlying Agreement and as permitted by this BAA.

(vii) If Business Associate knows of a pattern of activity or practice of a Subcontractor that constitutes a breach of the Subcontractor's obligations under the agreement referenced in Section (vi) above, Business Associate shall take reasonable steps to require the Subcontractor to cure the breach or terminate the agreement with the Subcontractor.

(viii) Business Associate agrees to notify Covered Entity within five (5) business days of any request by, or on behalf of, an individual to access Protected Health Information, and provide access, at the request of Covered Entity and in a reasonable time and manner designated by Covered Entity, to Protected Health Information to an Individual in order to meet the requirements of 45 CFR §164.524.

(ix) Business Associate agrees to notify Covered Entity within five (5) business days of any request by an individual to amend Protected Health Information. Business Associate further agrees to make any amendment to Protected Health Information that the Covered Entity directs in a reasonable time and manner designated by Covered Entity.

(x) Upon reasonable prior written notice and during normal business hours, Business Associate agrees to make its facilities, internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Covered Entity, or to the Secretary, in a time and manner

designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA and its accompanying regulations. To the extent permitted by law, the Business Associate shall provide Covered Entity with a copy of all information provided to the Secretary.

(xi) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

(xii) Business Associate agrees to notify Covered Entity within five (5) business days of a request by an individual for an accounting of disclosures of Protected Health Information. Business Associate further agrees to provide to Covered Entity, in a reasonable time and manner designated by Covered Entity, information regarding disclosures of Protected Health Information by Business Associate and/or its subcontractors, if applicable, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

**d) Permitted Uses and Disclosures by Business Associate:**

(i) Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the purpose of providing services under the Agreement, if such use or disclosure of Protected Health Information would not violate applicable Federal and/or State laws and regulations, if done by Covered Entity.

(ii) Except as otherwise limited in this Business Associate Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that such disclosures are required by law.

(iii) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

(iv) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under applicable Federal and/or State laws and regulations, if done by Covered Entity.

(v) To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner designated by the Covered Entity, 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 HIPAA Regulations, including but not limited to electronic copies of PHI where such is maintained in an electronic Designated Record Set. If an Individual makes a request for access to Protected Health Information directly to Business Associate, Business Associate shall notify Covered Entity of the request within five (5) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

(vi) To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526, or take other measures as



necessary to satisfy Covered Entity's obligations under 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity. If an Individual makes a request for an amendment to PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within five business (5) days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

(vii) As may be applicable, Business Associate is permitted to use and disclose PHI for data aggregation purposes for or on behalf of Covered Entity, however, only in order to analyze data for permitted health care operations related to the Services set forth in the Agreement, and only to the extent that such use is permitted under HIPAA and the underlying Agreement.

**e) Obligations Upon Discovery of Actual or Suspected Breach of PHI :**

(i) Business Associate agrees to notify Covered Entity upon discovery of any actual or suspected use or disclosure of the Protected Health Information not provided for by the Agreement. With the exception of law enforcement delays pursuant to 45 CFR § 164.412, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than ten (10) calendar days after discovery of a suspected or actual Breach of Unsecured PHI.

(ii) Notice to the Covered Entity must include the following information, to the extent possible:

- The name of each individual whose PHI has been or is believed to have been improperly used, disclosed, accessed or acquired;
- The name(s) of all individuals or entities who improperly used, disclosed, accessed or acquired the PHI;
- A description of the types of PHI that were involved;
- The details of the suspected or actual Breach, including but not limited to the date of the suspected or actual Breach, the date of discovery of the suspected or actual Breach, and how it occurred and was discovered;
- All steps and measures being taken by Business Associate to mitigate harm resulting from such suspected or actual Breach; and
- All actions taken or proposed by Business Associate to prevent future similar Breaches.

(iii) Covered Entity shall be responsible for determining whether there is a low probability that the PHI has been compromised, and for determining the need for and directing the implementation of any notifications of the Breach.

(iv) Business Associate shall, at Covered Entity's reasonable direction, cooperate with or perform any additional investigation or assessment related to the suspected or actual Breach.

**f. Term and Termination:**

(i) The Term of this Business Associate Agreement shall be effective as of the effective date of the Agreement(s), and shall terminate when all of the Protected Health Information 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 not feasible to return or destroy Protected

Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(ii) A breach by Business Associate of any provision of this Business Associate Agreement as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by Covered Entity.

(iii) If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Business Associate Agreement, and does not terminate the Agreement pursuant to paragraph f(ii) above, then Covered Entity shall take reasonable steps to cure the breach or end such violation, as applicable. If Covered Entity's efforts to cure the Business Associate's breach or end such violation are unsuccessful, Covered Entity shall either (1) terminate the Agreement, if feasible or (2) if termination of the Agreement is not feasible, Covered Entity shall report the Business Associate's breach or violation to the Secretary.

(iv) Covered Entity may provide Business Associate with thirty (30) days written notice of the existence of said breach and afford Business Associate an opportunity to cure said breach to Covered Entity reasonable satisfaction within the stated time period. Failure to cure said breach within the stated time period is grounds for immediate termination of this BAA and the underlying Agreement. If Business Associate breaches any provision in this BAA, Covered Entity may access and audit the records of Business Associate related to its use and disclosure of PHI, require Business Associate to submit to monitoring and reporting, and such other conditions as Covered Entity may determine is necessary to ensure compliance with this BAA.

(v) Covered Entity may immediately terminate this Business Associate Agreement and Business Associate's access to PHI if Business Associate is convicted in a criminal proceeding arising from an alleged violation of HIPAA or other security or privacy laws, or a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or judicial proceeding in which the Business Associate is a party.

**g. Effect of Termination:**

(i) Except as provided in paragraph (ii) of this section, upon termination of the Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

(ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible and extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such Protected Health Information.

(iii) Upon termination of the Agreement, Business Associate shall certify to Covered Entity that it has destroyed all PHI received from Covered Entity in accordance with this provision or, if

Business Associate determines that such destruction is not feasible, Business Associate shall provide to Covered Entity a complete written description of all PHI that Business Associate has determined that it is not feasible to destroy.

**h. Miscellaneous:**

(i) Regulatory References. A reference in this Business Associate Agreement to any Federal or State law, rule or regulation means that law, rule or regulation currently in effect or as amended, and for which compliance is required.

(ii) Amendment. The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(iii) Survival. The respective rights and obligations of Business Associate under Section g of this Business Associate Agreement shall survive the termination of the Agreement.

(iv) Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the all applicable state and federal laws and regulations.

(v) Miscellaneous: The terms of this BAA are incorporated by reference in the Agreement. In the event of a conflict between the terms of this BAA and the terms of the Agreement, the terms of this BAA shall prevail. The terms of the Agreement which are not modified by this BAA shall remain in full force and effect in accordance with the terms thereof. This BAA shall be governed by, and construed in accordance with, the laws of the State of Missouri, exclusive of conflict of law rules. Each party to this BAA hereby agrees and consents that any legal action or proceeding with respect to this BAA shall only be brought in the state courts in Boone County, Missouri. The Agreement together with this BAA constitutes the entire agreement between the parties with respect to the subject matter contained herein, and this BAA supersedes and replaces any former business associate agreement or addendum entered into by the Parties. No amendments or modifications to the BAA shall be effected unless executed by both Parties in writing.

[SIGNATURES ON FOLLOWING PAGE]

**CITY OF COLUMBIA, MISSOURI**

By: \_\_\_\_\_  
Mike Matthes, City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor

Date: \_\_\_\_\_

**THE CURATORS OF THE UNIVERSITY OF  
MISSOURI**

By: \_\_\_\_\_

Date: \_\_\_\_\_