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DANIEL E. WALL
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June 16, 2003

Michael Stocker, MD
Chief Executive Officer
Empire HealthChoice Assurance, Inc.
d/b/a Empire BlueCross BlueShield
11 West 42nd Street
New York, New York 10036

Re: Empire Plan Hospital Program – HIPAA Business Associate Agreement

Dear Dr. ^{Mike}Stocker:

In order to comply with the requirements of the health information privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the New York State Department of Civil Service (NYSDCS) must establish Business Associate agreements with those Empire Plan insurers that provide services and insurance to or on behalf of the New York State Health Insurance Program (NYSHIP) and that use or disclose protected health information of NYSHIP participants for purposes beyond the Empire Plan organized health care arrangement. To the extent that Empire HealthChoice Assurance, Inc. ("EHCA") currently provides or may provide such services in the future, EHCA may be a HIPAA business associate of NYSHIP. The remainder of this Letter of Agreement outlines EHCA's obligations as a HIPAA business associate of NYSHIP as a consequence of these limited services EHCA may provide on behalf of NYSHIP over the course of its tenure as the Empire Plan Hospital Program insurer.

For purposes of this Letter of Agreement, the term "Protected Health Information" ("PHI") means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, 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.

Permitted Uses and Disclosures of PHI. EHCA may use and/or disclose PHI solely in accordance with the terms of the Parties' underlying agreement for EHCA's provision of insurance and services. [45 CFR 164.504(e)(2)(i)]. In addition, EHCA may use PHI to provide data aggregation services relating to the health care operations of NYSDCS. [45 CFR 164.504(e)(2)(i)(B)]. Further, EHCA may use and disclose PHI for the EHCA's proper management and administration if such use is necessary for EHCA's proper management and administration or to carry out EHCA's legal responsibilities, or if such disclosure is required by law or EHCA obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially 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 EHCA of any instances of which it is aware in which the confidentiality of the information has been breached. [45 CFR 164.504(e)(2)(i)(A) and 164.504(e)(4)(i) and (ii)].

Nondisclosure of PHI. EHCA agrees that it will not use or further disclose PHI otherwise than as permitted or required by this Letter of Agreement or as otherwise permitted or required by law. [45 CFR §164.504(e)(2)(ii)(A)].

Safeguards. EHCA agrees that it shall use appropriate, documented safeguards to prevent the use or disclosure of PHI otherwise than as provided for by this Letter of Agreement. [45 CFR §164.504(e)(2)(ii)(B)]. EHCA shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of its office operations and the nature and scope of its activities.

Reporting of Disclosures. EHCA agrees that it shall report to the NYSDCS any use or disclosure of PHI otherwise than as provided for by this Letter of Agreement of which it becomes aware. [45 CFR §164.504(e)(2)(ii)(C)].

Associate's Agents. EHCA agrees that it shall ensure that any agents or subcontractors to whom it provides PHI, whether received from NYSHIP participants or created or received by EHCA on behalf of NYSHIP, agree to the same restrictions and conditions that apply to EHCA with respect to PHI under this Letter of Agreement. [45 CFR §164.504(e)(2)(ii)(D)].

Availability of Information to NYSHIP. EHCA agrees that it shall make available to NYSDCS such information as the NYSDCS may require to fulfill NYSHIP's obligations to provide access to, to provide a copy of, and to account for disclosures with respect to PHI in accordance with HIPAA and its implementing regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR §164.504(e)(2)(ii)(E) and (G)].

Amendment of PHI. EHCA agrees that it shall make PHI available to NYSDCS as NYSDCS may require to fulfill NYSHIP's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations, including, but not limited to, 45 CFR Section 164.526. In addition, EHCA shall, as directed by NYSDCS, incorporate any amendments to PHI into any copies of such PHI maintained by EHCA. [45 CFR §164.504(e)(2)(ii)(F)].

Internal Practices. EHCA agrees that it shall make its office's practices, books, and records relating to the use and disclosure of PHI, whether received from NYSHIP participants or created or received by EHCA on behalf of NYSHIP, available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining NYSHIP's compliance with HIPAA and its implementing regulations. [45 CFR §164.504(e)(2)(ii)(H)].

Disposition of PHI. At the time the Parties' underlying agreement for EHCA's provision of insurance and services is terminated, EHCA shall, if feasible, return or destroy all PHI subject to the Letter of Agreement, whether received from NYSHIP participants or created or received by EHCA on behalf of NYSHIP, that EHCA still maintains in any form and retain no copies of such information. Alternatively, if such return or destruction is not feasible, EHCA shall extend indefinitely the protections of this Letter of Agreement to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible. [45 CFR §164.504(e)(2)(ii)(I)].

Termination under HIPAA. The Parties' underlying agreement for EHCA's provision of insurance and services may be terminated by NYSDCS at its discretion if NYSDCS determines that EHCA has violated a material term of this Letter of Agreement with respect to its obligations under these provisions. [45 CFR §164.504(e)(2)(iii)].

This Letter of Agreement will be deemed effective April 14, 2003, and will continue to be effective until terminated by either party. This Letter of Agreement may be amended by the parties in writing by mutual agreement.

I have enclosed one additional copy of this Letter of Agreement. Please sign both copies of this Letter of Agreement and return one to my attention as soon as possible.

Please contact Nancy Schroeder at (518) 457-5134 if you need to discuss this matter. Thank you.

Sincerely,



Robert W. DuBois, CEBS
Director
Employee Benefits Division

EMPIRE HEALTHCHOICE ASSURANCE, INC.
d/b/a Empire BlueCross BlueShield

by:

Date: 6/23/03

