

# Duluth JPE Trust Board

## AGENDA

**July 20, 2011**

**10:30 a.m.**

**DECC**

Temporary  
Offices Conference  
Room

- Call to Order
- Approval of Minutes from June 8, 2011, Meeting
- Old Business
  - Status of Vendor Contracts
- Treasurer's Report
- New Business
  - Business Associate Agreement for Data Analysis with Zywave, Inc.
- Other Business
- Next meeting: September 14, 2011, 10:30 a.m.,  
City Hall Room 303



Duluth JPE Trust Board  
Vendor Contracts

07/14/2011

Contract	Term and Expiration	Notice Requirement for Contract Termination w/	Notice Requirement for Termination w/o Cause	Automatic Renewal Upon End of Term
Delta Dental of Minnesota HealthPartners Administrators, Inc.	1 year, expires on 12/31/2011	at least 90 days	at least 90 days	Yes, if no notice given at least 15 days prior to 12/31 of each
ClearScript, a Division of Fairview Health Services	5 years, expires on 12/31/2015	at least 30 days if not cured within that 30 days	none in first year, then at least 30 days	No
CBIZ Employee Benefits & Insurance, Inc.	1 year, expires on 7/19/2012	at least 30 days if not cured within that 30 days	at least 75 days	Yes, if no notice given at least 75 days prior to 7/19 of each
ClearScript Medication Therapy Management	5 years, expires on 10/01/2014	at least 30 days	at least 30 days	No
National Pharmaceutical Services, a Division of Pharmaceutical Technologies,	1 year, expires on 3/11/2012	at least 75 days	at least 75 days	Yes, if no notice given at least 75 days prior to 3/11 of each
Zywave, Inc.	1 year, expires on 12/31/2011 Expired; was originally included through CBIZ	None	None	No
		at least 30 days	at least 90 days	Yes

# Summary Income Statement

Through Date: 6/30/2011

Fund Category:	1	Proprietary Funds	Annual	M-T-D	Y-T-D	Budget Less	% of	Prior Year	
Fund Type:	2	Internal Service Funds	Budget Amount	Actual Amount	Actual Amount	Y-T-D Actual	Budget	Total Actual	
Fund:	630	Medical Health							
			<b>REVENUE</b>						
Department:	036	Insurance Accounts	\$0.00	\$0.00	\$0.00	\$0.00	+++	\$565,866.00	
Division:	1650	Insurance - Administration							
Division totals:		Insurance - Administration	\$7,692,036.00	\$679,457.68	\$3,989,487.43	\$3,702,548.57	52%	\$7,851,945.86	
Division totals:	1651	Insurance - General City							
Division totals:	1655	Insurance - General City	\$658,146.00	\$102,111.69	\$361,687.78	\$296,458.22	55%	\$632,457.87	
Division totals:	1657	Insurance - HRA							
Division totals:	1659	Insurance - DECC	\$392,600.00	\$23,006.56	\$184,653.23	\$207,946.77	47%	\$367,578.04	
Division totals:	1659	Insurance - Airport	\$267,100.00	\$39,805.84	\$166,134.20	\$100,965.80	62%	\$264,246.59	
Division totals:	1660	Insurance - Airport							
Division totals:	1660	Insurance - City Retirees	\$7,952,334.00	\$779,738.23	\$4,152,310.82	\$3,800,023.18	52%	\$8,302,834.29	
Division totals:	1663	Insurance - City Retirees							
Division totals:	1663	Insurance - COBRA							
Division totals:	1663	Insurance - COBRA	\$11,337.00	\$538.74	\$5,872.43	\$5,464.57	52%	\$12,359.71	
Division totals:	1663	Insurance - COBRA	\$16,973,553.00	\$1,624,658.74	\$8,860,145.89	\$8,113,407.11	52%	\$17,997,288.36	
Department totals:		Insurance Accounts	\$16,973,553.00	\$1,624,658.74	\$8,860,145.89	\$8,113,407.11	52%	\$17,997,288.36	
			<b>EXPENSE</b>						
Department:	036	Insurance Accounts	\$265,000.00	\$5,274.36	\$263,952.87	\$1,047.13	100%	\$351,302.71	
Division:	1650	Insurance - Administration							
Division totals:		Insurance - Administration	\$7,034,915.00	\$679,086.60	\$3,935,650.30	\$3,099,264.70	56%	\$8,438,087.27	
Division totals:	1651	Insurance - General City							
Division totals:	1655	Insurance - General City	\$766,652.00	\$67,140.33	\$318,205.12	\$448,446.88	42%	\$957,565.45	
Division totals:	1657	Insurance - HRA							
Division totals:	1659	Insurance - DECC	\$459,176.00	\$43,039.75	\$159,182.68	\$299,993.32	35%	\$1,039,310.62	
Division totals:	1659	Insurance - DECC							
Division totals:	1659	Insurance - Airport	\$333,577.00	\$16,682.70	\$102,447.51	\$231,129.49	31%	\$271,090.90	
Division totals:	1660	Insurance - Airport							
Division totals:	1660	Insurance - City Retirees	\$11,247,586.00	\$852,825.71	\$4,547,937.21	\$6,699,648.79	40%	\$7,804,827.39	
Division totals:	1663	Insurance - City Retirees							
Division totals:	1663	Insurance - COBRA							

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# Summary Income Statement

Through Date: 6/30/2011

Fund:	630	Medical Health	Annual Budget Amount	M-T-D Actual Amount	Y-T-D Actual Amount	Budget Less Y-T-D Actual	% of Budget	Prior Year Total Actual
Department:	036	Insurance Accounts	\$12,000.00	\$5,654.42	\$23,276.71	(\$11,276.71)	194%	\$62,066.85
Division totals:		Insurance - COBRA	\$20,118,906.00	\$1,669,703.87	\$9,350,652.40	\$10,768,253.60	46%	\$18,924,241.19
Department totals:		Insurance Accounts	\$16,973,553.00	\$1,624,658.74	\$8,860,145.89	\$8,113,407.11	52%	\$17,997,288.36
REVENUE Totals:			\$20,118,906.00	\$1,669,703.87	\$9,350,652.40	\$10,768,253.60	46%	\$18,924,241.19
EXPENDITURE Totals:			(\$3,145,353.00)	(\$45,045.13)	(\$490,506.51)	(\$2,654,846.49)		(\$926,952.83)
Fund	Medical Health	NET GAIN<LOSS>:						

EXPENSE





**CITY OF DULUTH**  
**COMPARISON OF HEALTH INSURANCE CLAIMS**  
 Last 5 Years

MONTH	MEDICAL CLAIMS					DRUG CLAIMS					CURRENT YEAR TOTAL
	2007 CLAIMS	2008 CLAIMS	2009 CLAIMS	2010 CLAIMS	2011 CLAIMS	2007 DRUGS	2008 DRUGS	2009 DRUGS	2010 DRUGS	2011 DRUGS	
JANUARY	1,021,540.38	888,408.55	827,666.65	801,436.77	1,234,669.69	309,874.18	355,697.16	389,124.56	335,446.06	331,655.32	1,566,325.01
FEBRUARY	1,112,664.27	863,222.32	1,067,061.73	977,792.41	678,161.83	326,651.66	358,927.20	340,880.69	303,838.61	330,489.79	1,008,651.62
MARCH	823,666.29	793,219.61	1,290,192.70	1,148,186.40	949,937.52	416,486.28	364,444.39	380,512.46	357,544.97	365,427.67	1,315,365.19
APRIL	856,001.44	1,048,479.37	915,593.34	1,215,446.70	1,327,399.31	323,262.07	358,099.80	392,631.97	346,143.11	342,566.68	1,669,965.99
MAY	884,318.75	1,161,418.71	1,019,277.90	702,635.26	1,134,964.13	330,172.50	353,874.37	373,346.72	327,234.36	381,380.26	1,516,344.39
JUNE	912,604.22	1,059,711.97	1,205,329.29	1,304,337.72	1,265,561.60	384,001.43	358,405.78	368,877.95	340,637.60	351,733.92	1,617,295.52
JULY	761,749.69	1,033,839.80	955,152.92	1,010,845.69	0.00	331,576.24	351,703.29	392,202.73	364,114.39	0.00	0.00
AUGUST	764,239.98	956,377.80	915,279.37	1,042,775.55	0.00	393,675.79	347,815.20	375,615.25	335,099.46	0.00	0.00
SEPTEMBER	850,986.52	873,659.98	860,647.02	910,166.98	0.00	330,306.26	368,738.02	388,341.38	313,318.44	0.00	0.00
OCTOBER	1,058,546.42	863,499.09	1,166,014.52	1,348,344.90	0.00	483,609.98	372,829.47	384,519.32	330,875.83	0.00	0.00
NOVEMBER	998,747.98	1,253,679.96	1,291,212.94	1,313,610.84	0.00	324,864.21	333,680.21	368,163.32	355,540.72	0.00	0.00
DECEMBER	1,023,696.99	963,969.48	1,585,589.06	1,469,666.01	0.00	382,605.05	391,372.36	448,743.95	345,656.11	0.00	0.00
<b>YTD Subtotal*</b>	<b>5,610,795.35</b>	<b>5,814,460.53</b>	<b>6,325,121.61</b>	<b>6,149,835.26</b>	<b>6,590,694.08</b>	<b>2,090,428.12</b>	<b>2,149,448.70</b>	<b>2,245,374.35</b>	<b>2,010,844.71</b>	<b>2,103,253.64</b>	<b>8,693,947.72</b>
Annual Total	11,068,762.93	11,759,486.64	13,099,027.44	13,245,245.23	6,590,694.08	4,337,065.65	4,315,587.25	4,602,960.30	4,055,449.66	2,103,253.64	
STOP-LOSS	-1,009,314.15	-377,010.00	-115,382.00	-80,417.00	0.00						
YTD Average*	935,132.56	969,076.76	1,054,186.94	1,024,372.54	1,098,449.01	348,404.69	358,241.45	374,229.06	335,140.79	350,542.27	
Annual AVG w/SL	838,287.40	948,539.72	1,081,970.45	1,097,069.02	N/A	361,422.14	359,632.27	383,580.03	337,954.14	N/A	
<b>MEDICAL CLAIMS YTD</b>											
2011	6,590,694.08										
2010	6,149,835.26										
	440,858.82										
			7.17% INCREASE								
<b>DRUG CLAIMS YTD</b>											
2011	2,103,253.64										
2010	2,010,844.71										
	92,408.93										
			4.60% INCREASE								

\* YTD for previous years is based on number of months of current year.



# CITY OF DULUTH

## YTD TOTAL MEDICAL CLAIMS COMPARED TO PROJECTED MEDICAL CLAIMS

MONTH	BCBS	HEALTH PARTNERS	YTD PERCENT	
			PROJECTED	ACTUAL
JANUARY	1,024,443.33	210,226.36	7.7%	8.5%
FEBRUARY	80,870.77	597,291.06	15.4%	13.1%
MARCH	23,986.88	925,950.64	25.0%	19.6%
APRIL	0.00	1,327,399.31	33.3%	28.7%
MAY	0.00	1,134,964.13	41.7%	36.5%
JUNE	23,805.16	1,241,756.44	50.0%	45.1%
JULY	0.00	0.00	58.3%	45.1%
AUGUST	0.00	0.00	66.7%	45.1%
SEPTEMBER	0.00	0.00	75.0%	45.1%
OCTOBER	0.00	0.00	83.3%	45.1%
NOVEMBER	0.00	0.00	91.7%	45.1%
DECEMBER	0.00	0.00	100.0%	45.1%
<b>YTD SUBTOTAL</b>	<b>1,153,106.14</b>	<b>5,437,567.94</b>		
<b>2011 PROJECTED MEDICAL CLAIMS</b>		<b>14,603,463.00</b>		

## YTD TOTAL DRUG CLAIMS COMPARED TO PROJECTED DRUG CLAIMS

MONTH	PROJECTED	ACTUAL	YTD PERCENT	
			PROJECTED	ACTUAL
JANUARY	331,655.32	7.8%	8.3%	7.8%
FEBRUARY	330,489.79	15.6%	16.7%	15.6%
MARCH	365,427.67	24.1%	25.0%	24.1%
APRIL	342,566.68	32.2%	33.3%	32.2%
MAY	381,380.26	41.2%	41.7%	41.2%
JUNE	351,733.92	49.4%	50.0%	49.4%
JULY	0.00	49.4%	58.3%	49.4%
AUGUST	0.00	49.4%	66.7%	49.4%
SEPTEMBER	0.00	49.4%	75.0%	49.4%
OCTOBER	0.00	49.4%	83.3%	49.4%
NOVEMBER	0.00	49.4%	91.7%	49.4%
DECEMBER	0.00	49.4%	100.0%	49.4%
<b>YTD SUBTOTAL</b>	<b>2,103,253.64</b>			
<b>2011 PROJECTED DRUG CLAIMS</b>	<b>4,255,548.00</b>			



# Summary Income Statement

Through Date: 6/30/2011

		Annual	M-T-D	Y-T-D	Budget Less	% of	Prior Year	
		Budget Amount	Actual Amount	Actual Amount	Y-T-D Actual	Budget	Total Actual	
Fund Category:	1							
Fund Type:	2							
Fund:	633							
		<b>REVENUE</b>						
Department:	036							
Division:	1651							
Division totals:		\$532,500.00	\$46,297.50	\$278,499.50	\$254,000.50	52%	\$533,558.30	
Division totals:	1655	\$32,900.00	\$5,894.00	\$20,821.00	\$12,079.00	63%	\$35,384.21	
Division totals:	1657	\$13,700.00	\$1,295.00	\$7,591.00	\$6,109.00	55%	\$15,278.00	
Division totals:	1659	\$13,400.00	\$1,412.00	\$8,399.00	\$5,001.00	63%	\$13,995.00	
Division totals:	1663	\$128,900.00	\$10,311.00	\$51,750.68	\$77,149.32	40%	\$115,385.01	
Department totals:		\$721,400.00	\$65,209.50	\$367,061.18	\$354,338.82	51%	\$713,600.52	
<b>REVENUE Totals</b>		<b>\$721,400.00</b>	<b>\$65,209.50</b>	<b>\$367,061.18</b>	<b>\$354,338.82</b>	<b>51%</b>	<b>\$713,600.52</b>	
		<b>EXPENSE</b>						
Department:	036							
Division:	1651							
Division totals:		\$530,600.00	\$41,274.33	\$244,943.33	\$285,656.67	46%	\$465,254.06	
Division totals:	1655	\$32,100.00	\$642.43	\$14,547.85	\$17,552.15	45%	\$29,119.83	
Division totals:	1657	\$16,000.00	\$644.26	\$4,911.88	\$11,088.12	31%	\$12,415.65	
Division totals:	1659	\$15,000.00	\$1,820.41	\$8,405.26	\$6,594.74	56%	\$13,232.37	
Division totals:	1663	\$138,300.00	\$13,601.44	\$77,484.91	\$60,815.09	56%	\$139,900.00	
Department totals:		\$732,000.00	\$57,982.87	\$350,293.23	\$381,706.77	48%	\$659,921.91	
Department totals:		\$721,400.00	\$65,209.50	\$367,061.18	\$354,338.82	51%	\$713,600.52	
<b>EXPENDITURE Totals:</b>		<b>\$732,000.00</b>	<b>\$57,982.87</b>	<b>\$350,293.23</b>	<b>\$381,706.77</b>	<b>48%</b>	<b>\$659,921.91</b>	
<b>FundDental Health NET GAIN/LOSS:</b>		<b>(\$10,600.00)</b>	<b>\$7,226.63</b>	<b>\$16,767.95</b>	<b>(\$27,367.95)</b>		<b>\$53,678.61</b>	





# CITY OF DULUTH

## COMPARISON OF DENTAL INSURANCE CLAIMS

Last 5 Years

MONTH	DENTAL CLAIMS					CURRENT YEAR CLAIMS
	2007 CLAIMS	2008 CLAIMS	2009 CLAIMS	2010 CLAIMS		
JANUARY	31,193.00	63,578.00	59,098.00	58,555.00	61,953.90	
FEBRUARY	80,705.00	46,865.00	47,669.00	55,493.00	49,237.24	
MARCH	50,547.00	48,572.00	56,603.00	59,118.00	56,718.91	
APRIL	44,539.00	52,817.00	55,764.00	46,256.00	52,869.97	
MAY	53,833.00	46,807.00	45,503.00	51,920.00	51,555.64	
JUNE	36,196.00	44,546.00	54,448.00	43,861.00	57,982.87	
JULY	33,941.00	47,476.00	50,427.00	44,587.00	0.00	
AUGUST	45,645.00	46,332.00	37,553.00	54,546.00	0.00	
SEPTEMBER	40,200.00	40,515.00	48,419.00	45,831.00	0.00	
OCTOBER	44,813.00	35,072.00	35,759.00	47,605.00	0.00	
NOVEMBER	40,584.00	36,446.00	49,140.00	44,926.00	0.00	
DECEMBER	35,250.00	44,908.00	49,796.00	60,562.00	0.00	
<b>YTD Subtotal*</b>	<b>297,013.00</b>	<b>303,185.00</b>	<b>319,085.00</b>	<b>315,203.00</b>	<b>330,318.53</b>	
Annual Total	537,446.00	553,934.00	590,179.00	613,260.00	330,318.53	
	537,446.00	553,934.00	590,179.00	613,260.00	330,318.53	
<b>YTD Average*</b>	<b>49,502.17</b>	<b>50,530.83</b>	<b>53,180.83</b>	<b>52,533.83</b>	<b>55,053.09</b>	
<b>Annual AVG</b>	44,787.17	46,161.17	49,181.58	51,105.00	N/A	
<b>DENTAL CLAIMS YTD</b>						
2011	330,318.53					
2010	315,203.00					
	15,115.53					
			<b>4.80% INCREASE</b>			

\* YTD for previous years is based on number of months of current year.





**CITY OF DULUTH**  
**YTD TOTAL DENTAL CLAIMS COMPARED TO PROJECTED DENTAL CLAIMS**

MONTH	DENTAL	PROJECTED	YTD PERCENT	ACTUAL
JANUARY	61,953.90	7.7%	9.0%	
FEBRUARY	49,237.24	15.4%	16.2%	
MARCH	56,718.91	25.0%	24.5%	
APRIL	52,869.97	33.3%	32.2%	
MAY	51,555.64	41.7%	39.8%	
JUNE	57,982.87	50.0%	48.2%	
JULY	0.00	58.3%	48.2%	
AUGUST	0.00	66.7%	48.2%	
SEPTEMBER	0.00	75.0%	48.2%	
OCTOBER	0.00	83.3%	48.2%	
NOVEMBER	0.00	91.7%	48.2%	
DECEMBER	0.00	100.0%	48.2%	
<b>YTD SUBTOTAL</b>	<u>330,318.53</u>			
<b>2011 PROJECTED DENTAL CLAIMS</b>	<u><u>685,000.00</u></u>			

## *Business Associate Contract*

This Business Associate Contract (Agreement) is entered into by and between Covered Entity and Zywave, Inc. (Business Associate), effective as of July 20, 2011 (Effective Date).

WHEREAS, Covered Entity is a group health plan as defined in the administrative simplification provisions within the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy and Security Rules).

WHEREAS, Business Associate is a consultant that provides an Internet-based data analysis and alternate plan modeling tool to group health plans, plan sponsors, and insurance brokers that allows the user to a) analyze its plan's claim experience against national norms, b) identify areas of high utilization, and c) receive suggestions on what changes may result in cost-savings.

WHEREAS, Business Associate has been retained by the Covered Entity to perform data analysis on behalf of the Covered Entity. In order for Business Associate to perform its duties, it must be provided access to Protected Health Information (PHI).

WHEREAS, Covered Entity desires to receive satisfactory assurances from the Business Associate that it will comply with the obligations required of business associates by the HIPAA Privacy and Security Rules.

WHEREAS, the parties wish to set forth their understandings with regard to the use and disclosure of PHI by the Business Associate in performance of its obligations.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties hereby agree as follows:

### **A. USE AND DISCLOSURE OF PHI**

Covered Entity hereby grants Business Associate permission to use, disclose, and request from third parties PHI on behalf of Covered Entity or an organized health care arrangement in which the Covered Entity is a member in order to:

1. Conduct data analysis on claims information associated with Covered Entity's plans.
2. Conduct data aggregation services on behalf of Covered Entity or an organized health care arrangement in which the Covered Entity is a member. Business Associate's data aggregation services shall include creation of databases for benchmarking, cost analyses, and cost comparisons that make use of de-identified claims information.
3. Provide Covered Entity with an Internet-based data analysis and alternate plan modeling tool that allows the Covered Entity, plan sponsor, and insurance broker to use summary health information to analyze its plan's claims.
4. Allow Business Associate to properly manage and administer the Business Associate's organization or to carry out the legal responsibilities of the Business Associate.
5. Perform functions, activities, or services for, or on behalf of, Covered Entity as specified above, except as otherwise limited by this Agreement, or if such use or disclosure would violate the HIPAA Privacy or Security Rules if done by the Covered Entity.

The parties hereby acknowledge and agree to the terms of this Agreement consisting of a total of five (5) pages, including this signature page, which together represent an Agreement between the parties concerning use and disclosure of PHI.

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

"COVERED ENTITY" NAME:  
Duluth Joint Powers Enterprise Trust

Signed: \_\_\_\_\_

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

Name: David Montgomery

Title: Chairman of Board of Trustees

Address: Duluth City Hall Room 402

411 West First Street, Duluth, MN 55802

"BUSINESS ASSOCIATE" NAME:  
ZYWAVE, INC.

Signed:  \_\_\_\_\_

Date: August 1, 2009

Name: James Emling

Title: President & COO

Address: 10700 W. Research Drive, Suite 400

Milwaukee, WI 53226



## B. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1. Use of Protected Health Information (PHI). Business Associate shall not use or further disclose PHI other than as permitted by this Agreement or as required by law. To the extent practicable, Business Associate shall limit its use or disclosure of PHI or requests for PHI to a limited data set, or if necessary, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request.
2. Safeguards. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement, including establishing procedures that limit access to PHI within its organization to those employees with a need to know the information. Business Associate agrees that it will implement reasonable administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the HIPAA Security Rule. Effective February 17, 2010, the requirements of 45 C.F.R. Sections 164.308, 164.310 and 164.312 applicable to such administrative, physical and technical safeguards shall apply to Business Associate in the same manner that such sections apply to Covered Entity. Further, effective February 17, 2010, Business Associate shall implement, and maintain in written form, reasonable and appropriate policies and procedures to comply with the standards, implementation specifications or other requirements of the HIPAA Security Rule, in accordance with 45 C.F.R. Section 164.316, which shall apply to Business Associate in the same manner that such sections apply to Covered Entity.
3. Unauthorized Disclosures of PHI. Business Associate shall, within ten (10) business days of becoming aware of a disclosure of PHI in violation of this Agreement by Business Associate, its officers, directors, employees, contractors, or agents or by a third party to which Business Associate disclosed PHI, report to Covered Entity any such disclosure. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of the unauthorized disclosure. Effective for breaches discovered on or after the date that is 30 days after applicable regulations are issued, this section shall also apply to any breach of unsecured PHI, as defined by the applicable regulations. Notice of any such breach shall include the identification of any individual whose unsecured PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired or disclosed during such breach and any other information required by the applicable regulations.
4. Security Incidents. Business Associate shall promptly report to Covered Entity any Security Incident of which it becomes aware, in accordance with the HIPAA Security Rule.
5. Agreements with Third Parties. 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 the Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
6. Access to Information. Within ten (10) business days of a request by the Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained in a Designated Record Set. In the event any individual requests access to PHI directly from the Business Associate, Business Associate shall respond to the request for PHI within ten (10) business days. Any denials of access to the PHI requested shall be the responsibility of the Business Associate.
7. Availability of PHI for Amendment. Business Associate agrees to make any amendments 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 the Covered Entity or an individual, and in the time and manner designated by Covered Entity.
8. Inspection of Books and Records. Business Associate agrees to make 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 Covered Entity, available to the Covered Entity, or at the request of the Covered Entity, to the Secretary of the U.S. Department of Health and Human Services or its designee (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.
9. Accounting of Disclosures. Business Associate agrees to maintain and make available to the Covered Entity an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual made in accordance with 45 CFR 164.528. Business Associate shall provide an accounting of disclosures made during the six (6) years prior to the date on which the accounting is



requested (or during the three (3) years prior to the date the accounting is requested for PHI maintained in an electronic health record, beginning on the applicable effective date pursuant to the American Recovery and Reinvestment Act of 2009). At a minimum, the accounting of disclosures shall include the following information:

- a. Date of disclosure,
- b. The name of the person or entity who received the PHI, and if known, the address of such entity or person,
- c. A brief description of the PHI disclosed, and
- d. A brief statement of the purpose of such disclosure which includes an explanation of the basis of such disclosure.

In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall respond to the request within ten (10) business days. Any denials of a request for an accounting shall be the responsibility of the Business Associate. Business Associate agrees to implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.

10. Remuneration in Exchange for PHI. Effective six (6) months after the issuance of applicable final regulations pursuant to the American Recovery and Reinvestment Act of 2009, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI without a valid authorization permitting such remuneration, except as permitted by law.

#### **C. OBLIGATIONS OF COVERED ENTITY**

1. Covered Entity shall comply with each applicable requirement of the HIPAA Privacy and Security Rules.
2. 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.
3. 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.
4. 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.
5. Covered Entity shall provide Business Associate with the names of the individuals authorized to receive access to the claims analysis tools provided by Business Associate. Covered Entity shall limit its use and disclosure of the claims analysis tools provided by Business Associate to planning activities related to managing its employee benefits plans.

#### **D. PERMISSIBLE REQUESTS BY COVERED ENTITY**

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by the Covered Entity, except that Business Associate shall be permitted to use PHI as set forth in this Agreement.

#### **E. TERMINATION**

1. Term. The term of this Agreement shall begin on the Effective Date and shall remain in effect until terminated under Section E(2) of this Agreement.
2. Termination. This Agreement shall be terminated only as follows:
  - a. Termination For Cause by Covered Entity

This Agreement may be terminated by the Covered Entity upon fifteen (15) business days written notice to the Business Associate in the event that the Business Associate breaches any provision contained in Paragraphs A or B of this Agreement and such breach is not cured within such fifteen (15) day period; provided, however, that in the event that termination of this Agreement is not feasible in the Covered Entity's sole discretion, Business Associate hereby acknowledges that the Covered Entity shall have the right to report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary.
  - b. Termination for Cause by Business Associate

Effective February 17, 2010, this Agreement may be terminated by the Business Associate upon fifteen (15) business days written notice to the Covered Entity in the event that the Covered Entity breaches any provision contained in Paragraphs C or D of this Agreement and such breach is not cured within



such fifteen (15) day period; provided, however, that in the event that termination of this Agreement is not feasible in the Business Associate's sole discretion, Covered Entity hereby acknowledges that the Business Associate shall have the right to report the breach to the Secretary, notwithstanding any other provision of this Agreement to the contrary.

c. **Termination Due To Change in Law**

Either party may terminate this Agreement effective upon thirty (30) days advance written notice to the other party in the event that the terminating party has sought amendment of this Agreement pursuant to Paragraph G(1) and no amendment has been agreed upon.

d. **Termination Without Cause**

Either may terminate this Agreement effective upon ninety (90) days advance written notice to the other party given with or without any reason.

3. **Return or Destruction of PHI**

Upon termination of this Agreement, 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.

Notwithstanding the above, to the extent that the Business Associate determines that it is not feasible to return or destroy such PHI, the terms and provisions of Paragraphs A, B and C shall survive termination of this Agreement and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

**F. DEFINITIONS**

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501. Capitalized terms within this Agreement are defined in the text or as follows:

1. **Designated Record Set** means a group of records maintained by or for the Covered Entity that is (a) medical records and billing records about individuals maintained by or for the Covered Entity, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (c) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. As used herein the term "record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the Covered Entity.
2. **Protected Health Information (PHI)** as defined at 45 CFR 164.501 means information that is received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, whether oral, written, or electronic, that
  - a) is created or received by a health care provider, health plan, employer, or health care clearinghouse, and
  - b) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and (1) identifies the individual or (2) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**G. GENERAL PROVISIONS**

1. **Amendment**. This Agreement may be amended only by the mutual written agreement of the parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity or Business Associate to comply with the requirements of HIPAA.
2. **Indemnification**. Business Associate shall release, indemnify and hold Covered Entity harmless from and against any claims, fees, and costs, including, without limitation, reasonable attorneys' fees and costs, which are related to Business Associate's failure to perform its obligations under this Agreement. Covered Entity shall release, indemnify and hold Business Associate harmless from and against any claims, fees, and costs, including without limitation, reasonable attorneys' fees and costs, which are related to Covered Entity's alleged improper use or disclosure of PHI or other breach of this Agreement.
3. **Remedies**. The parties acknowledge that breach of Paragraphs A or B of this Agreement may cause irreparable harm for which there is no adequate remedy at law. In the event of a breach, or if either party has actual notice of an intended breach, such party shall be entitled to a remedy of specific performance

and/or injunction enjoining the other party from violating or further violating this Agreement. The parties agree the election of the party to seek injunctive relief and or specific performance of this Agreement does not foreclose or have any effect on any right such party may have to recover damages.

4. Survival. Business Associate's obligation to limit its use and disclosure of PHI as set out in Paragraphs A and B survive the termination of this Agreement so long as Business Associate has PHI received during the performance of its services as described in this Agreement.
5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
6. Assigns. Neither this Agreement nor any of the rights, benefits, duties, or obligations provided herein may be assigned by any party to this Agreement without the prior written consent of the other party.
7. Third Party Beneficiaries. Nothing in this Agreement shall be deemed to create any rights or remedies in any third party.
8. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Entity and/or Business Associate, as applicable, to comply with HIPAA.
9. Notices. Any notice given under this Agreement must be in writing and delivered via first class mail, via reputable overnight courier service, or in person to the parties' respective addresses as first written above or to such other address as the parties may from time to time designate in writing.