

PROFESSIONAL / FACILITY USE AND PROTECTION AGREEMENT
BLUE CROSS BLUE SHIELD OF MICHIGAN
Secured Provider Portal/web-DENIS

This Use and Protection Agreement is entered into this ____ day of _____, _____, between Blue Cross Blue Shield of Michigan (BCBSM) a Michigan nonprofit health care corporation and independent licensee of Blue Cross and Blue Shield Association, and the undersigned User (the User).

WHEREAS, BCBSM owns and/or maintains certain computer data files containing, among other things, information regarding eligibility and benefits available to BCBSM and BCBSM Subsidiaries and Affiliates subscribers and their eligible dependents, the status of claims for health care services rendered to those subscribers and their eligible dependents, as well as current and historical utilization information concerning any subscriber and their eligible dependents and information about rendered health care (medical/professional, facility, etc.) services that may be payable by BCBSM or BCBSM Subsidiaries or Affiliates. Through the Michigan Department of Community Health, BCBSM may also provide access to computer data files containing eligibility and benefit information pertaining to Medicaid beneficiaries and information about rendered health care services that may be payable by the State of Michigan Medicaid program.

WHEREAS, the computer data files may consist of protected health information, as that term is defined in the Health Insurance Portability and Accountability Act implementing regulations, 45 CFR §164.501 (PHI), trade secrets and other information which is valuable, proprietary and confidential.

WHEREAS, User is a licensed professional or facility health care provider, third party administrator, primary care group, billing service bureau, medical association, governmental agency, billing agency or other authorized entity or individual having a legitimate right and need to obtain direct access to the computer data files to resolve Treatment and Payment matters such as eligibility and coverage issues associated with BCBSM and BCBSM Subsidiaries and Affiliates subscribers and their eligible dependents, and /or Medicaid beneficiaries;

NOW, THEREFORE, in consideration of the forgoing and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

ARTICLE I
DEFINITIONS

A. **BCBSM Subsidiaries and Affiliates.** BCBSM Subsidiaries and Affiliates shall mean all present and future subsidiaries and affiliates of BCBSM, including without limitation, Blue Care Network of Michigan Inc., a Michigan non-profit corporation and Health Maintenance Organization, Blue Care Network Service Company, a third party administrator and wholly owned subsidiary of Blue Care Network of Michigan Inc., M-Caid, a Medicaid Health Maintenance Organization, the Accident Fund Insurance Company of America, a Michigan for profit corporation, and the Accident Fund Insurance Company of America, a Michigan for profit third party administrator subsidiary. Subsidiaries and Affiliates may maintain Protected Information in BCBSM computer data files.

B. **The State Of Michigan Medicaid Program.** The State of Michigan Medicaid Program refers to the program operated by the Michigan Department of Community Health which has contracted with BCBSM to provide Medicaid Providers with access to Protected Information related to Medicaid beneficiaries.

C. **Protected Information.** Protected Information shall mean information contained in the BCBSM computer data files including among other things PHI, trade secrets and other information that is valuable, propriety and confidential, such as the web-DENIS User's Manual; information regarding eligibility and benefits available to BCBSM and BCBSM Subsidiaries and Affiliates subscribers and their eligible dependents and Medicaid beneficiaries, the status of claims for health care services rendered to those subscribers and their eligible dependents, utilization information, as well as current and historical information concerning any subscriber and their eligible dependents, and information about rendered health care (medical/professional, facility, etc.) services that may be payable by BCBSM, BCBSM Subsidiaries or Affiliates and/or the state of Michigan Program.

D. **Treatment and Payment.** Treatment and Payment shall have the same meaning as those terms are defined in the Health Insurance Portability and Accountability Act 45 CFR §164.501.

ARTICLE 2
USER RESPONSIBILITIES

A. Use and Protection of Protected Information

1. User agrees to access only the minimum necessary, as defined in 45 C.F.R. § 514 and pursuant to the requirements set forth in the HITECH Act § 13405 (b), Protected Information for the limited purpose of resolving Treatment and Payment matters such as eligibility and coverage issues involving User or a client of User and associated with BCBSM and BCBSM Subsidiaries and Affiliates subscribers, their eligible dependents, and /or Medicaid beneficiaries

2. User agrees not to cause, authorize or permit the Protected Information to be disclosed to, used or duplicated, in whole or in part, by any person or entity other than authorized officers and employees to whom disclosure is necessary to carry out the purposes set forth in this Article. User shall not, and shall ensure that its authorized officers and employees, do not use or disclose Protected Information received from BCBSM in any manner that would constitute a violation of applicable law.

3. User agrees to use the Protected Information solely for the purposes stated herein and shall not use the Protected Information for any profit-making or other unauthorized or illegal use.

4. User agrees to hold all Protected Information strictly confidential, to use the same care as a reasonable person in similar circumstances would use to protect his, her or its own trade secrets, confidential and proprietary information, PHI, and to comply with all applicable federal and state laws including but limited to those governing the confidentiality and security of the Protected Information such as the Health Insurance Portability and Accountability Act of 1996, as amended. This provision shall survive termination of this Agreement.

5. User agrees to inform each person authorized to use the Protected Information pursuant to this Agreement of the obligations contained herein regarding the use and protection of the Protected Information and to ensure their compliance therewith.

6. User agrees to report immediately to BCBSM any actual or suspected unauthorized use, duplication or disclosure of Protected Information or any breach of unsecured protected health information (as defined in § 13402(h) of the HITECH Act); and to take all necessary steps to halt such unauthorized practices. Included with such notice shall be the identification of each person whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed. A "breach" has the meaning described in § 13400(1)(A) (42 U.S.C. § 17921(1)(A)) of the HITECH Act.

User shall comply with applicable laws that require notifications to individuals in the event of an unauthorized access to or release of personally-identifiable information ("PHI") or PHI, as defined by applicable state or federal law, or other event requiring notification ("Notification Event"). When notification to individuals is required, User shall coordinate with BCBSM to (a) investigate the Notification Event, (b) inform all affected individuals and (c) migrate the Notification Event. Mitigation including but is not limited to securing credit monitoring or protection services for affected individuals. Users shall be responsible for any and all costs associated with responding and mitigating such Notification Events, including but limited to mailing costs, personnel costs, attorney fees, credit monitoring costs, and other related expenses or costs. User agrees to indemnify, holds harmless, and defend BCBSM from and against any and all claims, damages, fines costs or other related harm associated with Notification Events. This provision shall survive termination of the Agreement.

7. User agrees not to distribute or duplicate the Protected Information including any non-literal duplication such as abridgement summary description, synthesis, outline, or computer storage, without first obtaining the express written consent of BCBSM.

8. User agrees not to alter, add to, delete, or attempt to alter, add to or delete the Protected Information.

9. User agrees to protect User's access ID and personal password and not to share User's ID and password with any other person under any circumstances. User agrees not to post User's password in writing to User's computer screen or otherwise where others can view it. User agrees to change the password frequently, but no less often than every thirty (30) days. User agrees to report immediately to BCBSM any actual or suspected unauthorized use of User's ID password, and to take all necessary steps to halt such use. Unless and until BCBSM is notified of unauthorized use of User's ID and password, all activities undertaken with User's ID and password are deemed to be undertaken by User.

10. Before using web-DENIS to access any Protected Information pursuant to this Agreement a User who renders services to a patient/cardholder agrees to verify at the point of contact that patient/cardholder is the subscriber named on the BCBSM identification card, or an eligible dependent of the subscriber.

B. Conditions for Access On Behalf Of Third Parties

1. Users, such as service bureaus, vendors, third party administrators, primary care groups and billing agents, who are business associates of third parties, may access web-DENIS on such third parties' behalf. Such Users are subject to all of the responsibilities and obligations of "Users" set forth in this Agreement as well as the additional responsibilities and obligations set forth below.

2. Users who access web-DENIS on behalf of third parties agree to obtain the written authorization of the third party, utilizing the "Authorization for Representative Access" which is included herein by reference as Addendum B. All executed versions of Addendum B must be submitted to BCBSM prior to accessing web-DENIS on behalf of a given client.

3. Users who access web-DENIS on behalf of third parties must report additions and deletions to this list of provider identification numbers on a monthly basis.

4. Users who access web-DENIS on behalf of third parties agree not to seek reimbursement from their clients for the annual service fees paid by said Users for access to web-DENIS.

5. Users who access web-DENIS on behalf of third parties agree to obtain prior approval from BCBSM of all language contained in newsletters or other publications advertising their ability to offer access to BCBSM information databases via web-DENIS.

C. Indemnity. User agrees to indemnify and hold BCBSM and BCBSM Subsidiaries and Affiliates harmless against any and all liability, losses, damages and cost including reasonable attorney fees, imposed upon or accessed to BCBSM arising out of any and all claims, demands, awards, settlements or judgments related to the access to, the use or the disclosure of Protected Information by the User or by its agents, servants and employees. This provision shall survive termination of this Agreement.

D. Feature Enhancements. The provisions of this Agreement will apply to any feature enhancements, modifications, or other changes BCBSM makes to the Protected Information or to web-DENIS unless otherwise provided in writing

E. Third Party Beneficiaries. Article II of this Agreement is intended and shall be interpreted to be for the benefit of BCBSM as well as BCBSM Subsidiaries and Affiliates. BCBSM and BCBSM Subsidiaries and Affiliates are individually entitled to enforce their legal rights under this Article II.

ARTICLE III BCBSM'S RESPONSIBILITIES

A. Upon credential verification BCBSM will provide User access via web-DENIS to eligible Protected Information as indicated on the Use and Protection Agreement Featuring Access Addendum which may include where indicated, Protected Information regarding eligibility for benefits coverage, claims status, as well as such future enhancements to Protected Information.

B. BCBSM will provide User with access to the on-line User's Manual, and telephone help for support during normal working hours.

C. BCBSM agrees to use its best efforts to maintain and provide access to web-DENIS and to incorporate any changes in Protected Information promptly; provided, however, that the protected information will be subject to retroactive corrections as necessary and access to the Protected Information does not guarantee payment for any services provided.

**ARTICLE 4
GENERAL PROVISIONS**

A User Breach.

1. Any violation by the User of the Use and Protection provisions contained in Article II of this agreement, including any misrepresentation, false billing, fraud, abuse or any other use not expressly authorized under this Agreement will be considered a material breach of this Agreement and will give BCBSM the immediate right to terminate this Agreement without any prior notice and to discontinue access to any Protected Information. Within twenty four (24) hours after the effective date of termination, User will destroy all originals and copies of any Protected Information gained through access of web-DENIS in its possession and shall certify in writing that all such originals and copies printed from web-Denis have been destroyed.

2. In all instances of any breach material or otherwise, BCBSM and BCBSM Subsidiaries and affiliates shall be entitled to pursue all remedies available at law against the User, including all costs and reasonable attorney fees.

B. Normal Termination. Either party may terminate this Agreement for any reason upon thirty (30) days written notice to the other.

C. Limitation of Liability. BCBSM is not responsible for any loss or damage arising from your use of this Web site, including but not limited to any incidental, indirect, consequential, or special damages, such as loss of revenue or income, pain and suffering, emotional distress or similar damages even if we have been advised of the possibility of such damages. Users must be at least 18 years old and cannot:

- Erase or alter any copyright or other proprietary notices on any copies you made;
- Reproduce, transmit, publish or distribute any part of the BCBSM/BCN Secured Services Web site for commercial, public, or other purposes without our written consent;
- Allow anyone to Co-brand this Web-site or any portion (which means a name, logo trademarks or other means of attribution or identification of any party is displayed in such manner reasonably likely to give a Web site user the impression that any other as the right to display, publish, or distribute the Blue's Web Site or its accessible content);
- Frame this Web site or any portion (where the Web site or portion will appear on the same screen with a portion of another Web site);
- Interfere with privacy or publicity rights of others;
- Send a sexually-explicit image; use obscene, defamatory, threatening, harassing, abusive, or hateful language;
- Violate the Children's Online Privacy Protection Act as amended;
- Use this Web site as a substitute for professional medical advice;
- Adversely affect resources or availability of this Web site to others; or
- Send material or information containing software viruses, corrupted data, mass mailings, or any form of spam.

D. Assignment. Any assignment or transfer or attempted assignment or transfer of User's rights or obligations under this Agreement will null and void and shall result in immediate termination of this Agreement

E. Title and Ownership. All rights to title and ownership of the Protected Information will remain with BCBSM and with BCBSM Subsidiaries and Affiliates, and with respect to Medicaid data, the State of Michigan Program, as applicable. All rights to title and ownership to web-Denis and to the web-DENIS User's Manual will remain with BCBSM. User will not acquire any ownership title, license or other interest in either the Protected Information or web-DENIS except as expressly stated in this Agreement.

F. **Notices.** All notices required under this Agreement shall in be writing and sent by First Class mail or BCBSM may post written notice to User on web-DENIS.

If notice is sent by First Class Mail, it shall be sent postage paid, addressed as follows:

If to User: To the address, including email address, submitted with User's Application for Access to web-DENIS. Any changes to User's address shall be reflected in User's registration profile within thirty (30) days of the change of address.

If to BCBSM: BCBSM Provider Systems - Inquiry
53200 Grand River L831
New Hudson, MI 48165-9801

G **Amendments** This Agreement may be amended by BCBSM upon 30 days written notice to User Additionally this Agreement may be amended by both parties in writing when signed by a duly authorized representative of each party.

H **Governing Law.** This Agreement will be constructed and governed by the laws of the state of Michigan.

I. **Execution.** This Agreement shall be executed in duplicate and each copy shall be deemed an original.

J. **Enforceability.** The invalidity of unenforceability of any of the terms or provisions of this Agreement shall not affect the validity or enforceability of any other term or provision.

K. **Section Headings.** Section Headings are inserted for convenience only and shall not be used in any way to construe the terms of this Agreement.

L. **Waiver.** The waiver of any breach or violation of this Agreement shall not constitute a waiver of any subsequent breach or violation of the same or any other term or provision.

M. **Entire Agreement.** This Agreement, together with the Addendum(s) hereto, embodies the entire understanding of the parties in relation to the subject matter hereof, and no other agreement understanding, or representation, verbal or otherwise, relative to the subject matter hereof exists between the parties at the time this Agreement is executed.

Signing Authority,

By signing below, I represent and warrant that I have been granted full legal authority, by corporate resolution, appropriate delegated signature authority, or as permitted by a signature authorization policy, to enter into and bind the provider and / or provider group to contracts and agreements and intending to be legally bound with Blue Cross Blue Shield of Michigan and Blue Care Network have executed this agreement on the date below.

FOR USE BY THE PRACTICE/FACILITY SIGNING AUTHORITY

(Practice/Facility Name - Please Print)

(Date)

(Signature of Authorized Individual)
(Do Not Use a Signature Stamp on the Above Line)

(Print the Name of the Authorized Individual)

(Title of Authorized Individual)