

This *Homemaker/Non-Homemaker Provider Agreement* cannot be amended, altered, expanded or changed in any manner, other than the filling in of blanks and signatures, without the express written permission of the Executive Office of Elder Affairs.

*Commonwealth of Massachusetts  
Executive Office of Elder Affairs*

**PROVIDER AGREEMENT**

*for*

***Homemaker /  
Non-Homemaker Services***

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## **HOMEMAKER/PERSONAL CARE/NON-HOMEMAKER SERVICES PROVIDER AGREEMENT**

This Agreement is entered into by and between the Aging Services Access Point (ASAP), a Massachusetts non-profit corporation having its principal offices located at and, the Provider, with its principal offices at

*WHEREAS* the ASAP participates in the operation and administration of a program of home care services to consumers under a contract with the Executive Office of Elder Affairs (EOEA) pursuant to M.G.L. c. 19A, §4 *et seq.*, and any regulation promulgated thereto (hereinafter the Home Care Program);

*WHEREAS* the ASAP desires to purchase services for consumers in the Home Care Program from qualified providers under the terms and conditions set forth herein; and

*WHEREAS* the Provider desires to furnish homemaker and personal care services and, at the option of the ASAP, supportive home care aide services or non-homemaker services to consumers in accordance with the legal requirements of the Home Care Program and the terms of this Agreement and to receive payment therefore under the terms and conditions set forth herein;

*NOW, THEREFORE*, in consideration of the mutual promises herein, the parties agree as follows:

By entering into this Agreement, the Provider agrees to deliver homemaker and personal care services and, at the option of the ASAP, supportive home care aide services/or non-homemaker services, to consumers. This Agreement: specifies the conditions under which homemaker, personal care, non-homemaker and supportive home care aide services shall be delivered; describes the method by which the Provider shall be paid by the ASAP for services delivered; and defines the rights and responsibilities of the ASAP and the Provider.

By entering into this Agreement, the Provider acknowledges it is subject to certain federal and state laws, regulations, and policies. The Provider acknowledges that it is responsible for knowing and complying with federal and state laws, regulations and policies that apply to the Provider.

### **1. SCOPE OF SERVICES**

- a. The Provider agrees to perform the services outlined in Attachment A in accordance with the terms and conditions of this Agreement and, by reference, to any minimum requirements, terms, and conditions stipulated in the Notification of Intent to Contract.
- b. The Provider understands and agrees that under this Agreement it is obligated to provide services in the cities, towns, communities, or neighborhoods that appear in Attachment C of this Agreement.
- c. This agreement does not obligate the ASAP to authorize any services or any volume of services.

## **2. PERIOD OF PERFORMANCE**

- a. The Provider understands and agrees that performance of services under this Agreement shall begin on or about [redacted] and shall terminate no later than [redacted]. The Provider understands and agrees that it will not be paid for any services provided pursuant to this agreement after the date of termination stated in this paragraph.

## **3. PAYMENT**

- a. The ASAP shall make payments to the Provider for all homemaker, personal care, supportive home care aide services, and non-homemaker services properly delivered to consumers and properly billed to the ASAP in accordance with the terms of this Agreement and all applicable federal and state laws, regulations, and policies, as they may be amended from time to time.
- b. The ASAP shall make payments to the Provider in accordance with the unit rates listed in Attachment D.
- c. The Provider shall not bill the ASAP, and the ASAP shall not pay the Provider under this Agreement, for any services other than homemaker, personal care, supportive home care and/or non-homemaker services that are authorized by the ASAP pursuant to this Agreement and delivered in accordance with the terms and conditions of this Agreement and Attachment A.
- d. The Provider shall accept, as payment in full, the rates of payment set forth in Attachment D.
- e. The ASAP is solely responsible for payment to the Provider under this Agreement. The Provider shall not have any claim against or seek payment from any agency of the Commonwealth, including the EOE, but shall look solely to the ASAP for payment with respect to all services performed under this Agreement. Furthermore, the Provider shall not maintain any action at law or in equity against any agency of the Commonwealth, including EOE, to collect any sums that are owed by the ASAP under the Agreement for any reason, even in the event that the ASAP fails to make payment or otherwise breaches the terms and conditions of the Agreement.

## **4. CERTIFICATION OF EMPLOYEE COMPENSATION RATE**

- a. For providers of homemaker and personal care services, the Provider agrees to pay its employees at least the minimum average (hourly) employee compensation required by the EOE.

## **5. INVOICING**

- a. The Provider shall submit all requests for payment on the appropriate invoicing documents.
- b. Within fifteen (15) calendar days following the close of each calendar month, the Provider shall submit invoices and appropriate backup documentation to the ASAP in a form approved by the ASAP, covering homemaker, personal care, supportive home care aide

services and non-homemaker services authorized by the ASAP pursuant to this Agreement and delivered to consumers during the previous month. The Provider shall not bill, nor the ASAP pay, for services that were not delivered to consumers.

- c. Within fifteen (15) business days of receipt of payment from EOEA or within fifteen (15) business days of receipt of a properly completed invoice from the Provider, whichever is later, the ASAP shall issue payment to the Provider.
- d. If a Provider invoice is rejected, the ASAP shall provide the Provider with a written explanation for the rejection within ten (10) business days of receipt from the Provider.
- e. The ASAP shall retain the right to disallow payment of any invoice submitted by a Provider that is not in accordance with the terms of this Agreement.
- f. If the ASAP determines that the Provider received payments not authorized under this Agreement, the Provider shall reimburse the ASAP upon demand or in an alternate manner determined by the ASAP.
- g. Acceptance of the last payment for services upon completion or termination of this Agreement, without any written objections, shall in each instance operate as a release, and discharge the ASAP, its agents, and employees from all claims, liability, responsibility, or other obligations to this Provider relating to the fulfillment of this Agreement.
- h. If a Provider needs to adjust an invoice or correct discrepancies contained within an original monthly billing, the Provider shall submit invoices and appropriate backup documentation to the ASAP on forms approved by the ASAP so that said material is received by the ASAP no more than forty-five (45) business days following the close of the month in which services were delivered. The ASAP, within fifteen (15) business days of receipt of a properly adjusted invoice from the Provider, will issue payment to the Provider or make negative adjustment(s) to subsequent invoice(s) to reconcile any overpayment.

## **6. DETERMINATION OF CONSUMERS ELIGIBILITY**

- a. The ASAP shall have the sole responsibility for determining consumers' eligibility for services under this Agreement.

## **7. AUTHORIZATION OF SERVICES**

- a. The ASAP shall determine the services (homemaker, and/or personal care, and/or supportive home care aide services and/or non-homemaker), the number of units to be furnished, and the duration for the provision of each service to each consumer determined eligible by the ASAP.
- b. The ASAP shall authorize the Provider in writing or through electronic communication(Provider Direct) and documentation in electronic system of record, to furnish services to a consumer. Authorization would include a suspension of services and termination of services.

- c. The Provider using the electronic system of record to view and monitor authorizations is not required to print and keep hard copies of consumers service information, including authorizations that can be viewed in said system.
- d. The ASAP may verbally authorize the Provider to furnish services to a consumer. The ASAP shall submit authorization to the Provider within a reasonable time frame, but no later than two business days after the verbal authorization.
- e. Upon receipt of an authorization, the Provider shall furnish services to a consumer pursuant to the terms specified in the authorization. If, for any reason, the Provider is unable to provide services, the Provider shall immediately notify the ASAP of this situation and indicate specific reasons for the Provider's inability to provide services. The ASAP may, at its discretion, revoke or modify said authorization, and shall notify the Provider of its decision.

## **8. CONFIDENTIALITY**

- a. The Provider acknowledges it is subject to certain federal and state laws, regulations, and policies, including, but not limited to, Massachusetts Executive Order 504 and EOEAs Program Instructions, and Attachment E: Privacy and Confidentiality Guidance (governing the use, safeguarding and access to personal data). The Provider acknowledges that it is responsible for knowing and complying with federal and state laws, regulations and policies that apply to the Provider.
- b. The Provider agrees to take reasonable steps to ensure the physical security of such data under its control, including any additional conditions specified in Attachments to this Agreement.
- c. The Provider agrees that it will inform each of its employees having any involvement with such personal data or other confidential information, of the laws and regulations relating to confidentiality.
- d. The ASAP shall have access at all times to any data maintained pursuant to this Agreement, without the consent of the data subject. The Provider shall allow the ASAP access to any personal data held by the Provider.
- e. The Provider shall use personal data and material derived from such data only as necessary for the performance of this Agreement.
- f. The Provider shall furnish to the ASAP, within thirty (30) calendar days following a request by the ASAP, a written description of the Provider's system for gathering, storing and releasing personal data so that the ASAP may determine compliance with this Agreement.
- g. The Provider shall immediately notify the ASAP, both verbally and in writing, if any personal data in the Provider's possession regarding consumers served under this Agreement is subpoenaed, improperly used, copied or removed by anyone except an authorized representative of the ASAP, EOEAs, or the Commonwealth.

- h. The Provider shall cooperate with the ASAP to enjoin or prevent misuse, regain possession, and otherwise protect the Commonwealth's rights in such personal data and to ensure the data subject's privacy.
- i. All personal data held by the Provider, other than that which must be retained for either tax preparation or audit purposes, shall be delivered to the ASAP within ten (10) business days after completion or termination of this Agreement.

## **9. RECORDKEEPING, INSPECTION OF RECORDS AND AUDITS**

- a. The Provider shall maintain books, records (including personnel policies and records), and other compilations of data in such detail as shall properly substantiate claims for payment under this Agreement.
- b. The Provider shall maintain books and records in accordance with generally accepted accounting principles, including detailed fiscal and programmatic reports on the services provided, and the expenditures made under this Agreement.
- c. The Provider shall keep all funds received from the ASAP pursuant to this Agreement in an identifiable bookkeeping account and shall provide to the ASAP such data as the ASAP reasonably may require to permit it to monitor performance of this Agreement and at a level sufficient to assure appropriate fiscal administration, accountability, and program quality.
- d. All such records and reports shall be kept for a minimum retention period of seven (7) years beginning on the first day after the final payment under this Agreement, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Agreement.
- e. The Provider must maintain and retain any records necessary to disclose the extent, quality and appropriateness of services provided under this Agreement, to substantiate any claims for payment submitted by the Provider to the ASAP, or as otherwise required by the ASAP or applicable law. Such records must, at reasonable times and upon reasonable notice, be made available and provided to the ASAP, the Executive Office of Administration and Finance, the Office of the State Auditor, the Operational Services Division, the Executive Office of Health and Human Services, EOE, and other government agencies as provided in applicable law, or any of their duly authorized representatives or designees. Such access shall include on-site audits, review and copying of records. The ASAP shall make a good faith effort to coordinate multiple requests by the ASAP so as to reduce any hardship or undue burden on the Provider.

## **10. NON-DISCRIMINATION IN SERVICE DELIVERY**

The Provider must furnish services to consumers without regard to race, color, religion, national origin, disability, age, sex, sexual orientation, or status as a recipient of public assistance, and must comply with all applicable law.



## **11. NON-DISCRIMINATION IN EMPLOYMENT**

The Provider must comply with all applicable federal and state law promoting fair employment practices and prohibiting employment discrimination and unfair labor practices. The Provider must not discriminate in employment based on race, color, religion, national origin, disability, age, sex, sexual orientation, or status as a recipient of public assistance, and must comply with all applicable law.

## **12. CONSUMERS AS RESEARCH SUBJECTS**

The Provider agrees to comply with EOEAs policies and procedures regarding researchers who wish to gain access to consumers for participation in research or surveys. The Provider shall comply with the provisions of Attachment F: Consumers Rights Review Committee Requirements (pertaining to consumers as research subjects) (EOEA PI-03-17).

## **13. AFFIRMATIVE ACTION**

- a. The Provider shall develop and adhere to a policy of affirmative action in all aspects of employment under this Agreement. The Provider acknowledges it is subject to certain federal and state laws, regulations, and policies, including Massachusetts Executive Order 526.
- b. The Provider agrees to take affirmative steps to utilize certified small businesses, certified minority and women-owned businesses, and businesses and firms owned or controlled by socially or economically disadvantaged individuals or individuals with disabilities, as sources of supplies and subcontracted services.

## **14. TERMINATION OR SUSPENSION**

This Agreement shall terminate on the date specified above unless terminated prior to that date:

- a. Without cause by either party giving written notice to the other party at least sixty (60) calendar days prior to the effective date of termination.
- b. For cause if the Provider breaches any term or condition of this Agreement or fails to perform or fulfill any obligations required by this Agreement. If the ASAP determines that the Provider has breached this Agreement or has otherwise violated the laws, regulations, or rules that govern the Home Care Program administered by the EOEAs, the ASAP may take any appropriate action under applicable law, including, but not limited to, termination of this Agreement for cause. The ASAP may terminate this Agreement by giving written notice to the Provider at least seven (7) calendar days prior to the effective date of termination. The notice shall state the circumstances of the alleged breach and, at the ASAP's option, may state a reasonable period during which the alleged breach may be resolved. The ASAP reserves the right to terminate this Agreement immediately, upon written notice to Provider, in the event of fraud, criminal indictment of the Provider, or in the event the Provider files for bankruptcy.

- c. Due to an emergency if the ASAP determines that a situation exists which necessitates immediate action to protect property or persons from injury, abuse, or other harm.
- d. The ASAP may suspend this Agreement for up to sixty (60) calendar days by providing written notice to the Provider stating the reasons for the ASAP's action. Such suspension shall be effective upon the Provider's receipt of written notice or another date as specified in the notice. The notice shall be accompanied by instructions from the ASAP specifying required action(s) to be performed by the Provider during the period of suspension, a timetable for meeting those requirements, and a description of allowable activities by the Provider, if any, during the suspension period. Failure by the Provider to meet such requirements or to remedy any stated deficiencies according to the timetable prescribed by the ASAP shall be cause for immediate termination of this Agreement.

#### **15. OBLIGATIONS IN THE EVENT OF COMPLETION, TERMINATION, OR SUSPENSION**

- a. The ASAP shall promptly pay the Provider for all services performed in accordance with the terms of this Agreement, provided the Provider submits completed invoices with supporting documentation covering such services, no later than sixty (60) calendar days after the effective date of termination, but in no event later than August 15th for services performed or goods delivered in the preceding fiscal year (July 1 - June 30).
- b. The Provider shall not be relieved of liability to the ASAP for any costs, injuries, penalties, damages or other charges sustained by the ASAP by virtue of any breach of this Agreement by the Provider. In addition to any other termination rights, the ASAP retains the right to pursue any and all available legal and equitable remedies and may withhold any payments to the Provider until such time as the exact amount of damages to be paid by the Provider is determined by the ASAP.
- c. Upon notice of termination or suspension of this Agreement, the Provider must cooperate with the ASAP by coordinating with and assisting the ASAP to transfer consumers to other appropriate services.

#### **16. ASSIGNMENT AND SUBCONTRACT**

- a. The Provider shall not assign or subcontract any interest in this Agreement without the prior written consent of the ASAP.
- b. None of the services to be provided by the Provider pursuant to this Agreement shall be subcontracted to any other organization, association, individual, partnership or group of individuals without the prior written consent of the ASAP.

#### **17. LIABILITY INSURANCE**

The Provider shall procure and maintain appropriate liability insurance issued by companies authorized to do business in the Commonwealth and certified by the Massachusetts Commissioner of Insurance.

## **18. WAIVER OF DEFAULT**

Waiver by either party of any non-compliance shall not constitute a waiver of any prior or subsequent noncompliance.

## **19. CONFLICT OF INTEREST**

- a. The Provider shall not knowingly employ, compensate or arrange to compensate any employee of the ASAP or of EOEА during the term of this Agreement without the prior written approval of the ASAP or EOEА.
- b. Employees of the Provider are prohibited from accepting gifts or gratuities of more than token value, or cash of any value, from consumers or caregivers.

## **20. ANTI-BOYCOTT COVENANT**

The Provider warrants, represents, and agrees that during the time that this Agreement is in effect, neither it nor any affiliated company, as hereafter defined, shall participate in or cooperate with an international boycott, as defined in sec. 999(b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or shall engage in conduct declared to be unlawful by M.G. L. c. 151E. Any breach in this warranty, representation, and agreement may result in the termination of this Agreement by the ASAP. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Provider or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Provider or which directly or indirectly owns at least 51% of the ownership interests of the Provider.

## **21. AMENDMENT**

The provisions in this Agreement may be modified only as specifically permitted in this Agreement, and must be agreed to in writing by both parties. Persons authorized to bind the ASAP and the Provider must sign any amendment to this Agreement.

## **22. NOTICE**

Unless otherwise specified herein, any notice, approval, request or demand hereunder from either party to the other shall be in writing and shall be deemed to have been given when delivered personally, electronically by FAX, or deposited in a United States mailbox in a postage prepaid envelope addressed to the other.

## **23. LICENSES, CERTIFICATIONS, ACCREDITATIONS, PERMITS**

The Provider hereby represents and warrants that: it is qualified and shall at all times remain qualified to perform this Agreement; performance shall be timely and meet or exceed industry standards, including obtaining requisite licenses, registrations, permits and resources for performance; and, in connection therewith, the Provider shall provide access to records to state officials under Massachusetts Executive Order 195 and M.G.L. c. 11, §12. The Provider further warrants and represents that the Provider and all of its principals, subcontractors, or affiliates are and shall at all times remain in good standing and are not currently debarred or

suspended by the federal or state government under any law or regulation including Massachusetts Executive Order 147; M.G.L.c. 29, § 29F and M.G.L. c. 152, § 25C. The Provider shall, upon request of the ASAP, submit to the ASAP proof that it is in good standing and qualified to perform this Agreement.

#### **24. INTEGRATION**

All Attachments to this Agreement are deemed to be part of this Agreement. This Agreement constitutes the full and complete agreement between the parties with respect to the subject matter herein and supersedes any and all previous written agreements, negotiations, and verbal agreements between the parties relating to the subject matter contained herein.

#### **25. PROCUREMENT STANDARDS**

To the extent that the Provider is procuring goods and services and personal services to satisfy the terms of this Agreement, it shall do so using good business practices [see AICPA Statement on Auditing Standards No. 5 (SAS55)].

#### **26. CRIMINAL OFFENDER RECORD INFORMATION (CORI) CHECKS**

The Provider agrees to conduct CORI checks for all employees. CORI checks must be completed in compliance with M.G. L. c. 6 §172 and § 172C, and 101 CMR 15.00 et seq.

#### **27. MINIMUM PUBLIC HEALTH, LICENSING, REGISTRY AND PATIENT ABUSE REPORTING COMPLIANCE**

The Provider, its employees, agents, subcontractors and assignees shall comply with the provisions of M.G.L. c. 211, §§ 72F - 72L1/2 and 105 CMR 155.00 *et Seq.* regarding the licensing, registration, and reporting requirements affecting providers.

#### **28. INDEMNIFICATION**

- a. The Provider and the ASAP, their employees, subcontractors, and any other of their agents in the performance of this Agreement are acting in an independent capacity and not as officers or employees of EOEa or the Commonwealth of Massachusetts.
- b. The Provider shall indemnify and hold harmless the ASAP, EOEa, and the Commonwealth from and against any and all liability, loss, damage, costs, or expenses which the ASAP, EOEa, or the Commonwealth may sustain, incur, or be required to pay for any claims or suits, arising out of or in connection with the Provider's breach of its obligations under the Agreement, or any negligent action or inaction or willful misconduct of the Provider, or any person employed by the Provider, or any of its subcontractors, provided that the Provider is notified of any claims within a reasonable time from when the ASAP or EOEa becomes aware of the claim and the Provider is afforded an opportunity to participate in the defense of such claims.

**29. REMEDIES FOR BREACH**

The Provider is responsible for any direct, consequential, incidental, or other damages the ASAP suffers as a result of the Provider's breach of its obligations hereunder, or damages arising out of or in connection with the Provider's performance of the Agreement.

**30. COMPLIANCE WITH LAW**

The Provider agrees to comply with, and is subject to, all state and federal statutes, regulations, and rules applicable to its performance under this Agreement, including, but not limited to such statutes, regulations, and rules governing the Home Care Program. All references to statutes, regulations, and rules refer to such statutes, regulations, and rules as they may be amended from time to time. In addition, the Provider must comply with all applicable Program Instructions issued by EOE that are applicable to the Home Care Program, whether now existing or adopted during the term of this Agreement.

**31. NON – COMPETE**

The Provider may not require any current or prospective direct care worker to agree to a non-compete clause as a condition of employment. As used in this paragraph, a non-compete clause is any contractual provision that attempts to preclude the employment of or impose restrictions on the employment of a direct care worker by another Home Care Program provider.

*IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.*

|          |  |       |
|----------|--|-------|
| _____    | _____                                  | _____ |
| ASAP     | Authorized Signature & Date            | Title |
| _____    | _____                                  | _____ |
| Provider | Provider's Authorized Signature & Date | Title |

**ATTACHMENT A**

**Service Description(s)**

## **ATTACHMENT A HOMEMAKER STANDARDS AND PERSONAL CARE GUIDELINES**

**HOMEMAKER (HM)** service includes assistance with: shopping, menu planning, laundry, and the performance of general household tasks (e.g., meal preparation and routine household care) provided by a qualified homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home.

**PERSONAL CARE (PC)** service may take the form of hands-on assistance (actually performing a task for the consumer) or cuing and supervision to prompt the consumer to perform a task. Such assistance may include assistance in bathing, dressing, personal hygiene, other activities of daily living, and reminders with medications in accordance with EOE's Personal Care Guidelines. This service may include assistance with preparation of meals. When specified in the care plan, this service may also include such housekeeping chores as bed-making, dusting, and vacuuming, which are incidental to the care furnished, or which are essential to the health or welfare of the consumer, rather than the consumer's family. Personal Care services must be provided in accordance with EOE's Personal Care Guidelines contained in this attachment.

**SUPPORTIVE HOME CARE AIDES (SHCA)** perform personal care and/or homemaking services in accordance with the definitions in this attachment, in addition to providing emotional support, socialization, and escort services to consumers with Alzheimer's Disease/Dementia or emotional and/or behavioral problems.

In accordance with PI-11-01, Standards for Home Care Program Consumers with Alzheimer's disease or a related disorder (ADRD Standards), Care Planning section 4.d. Supportive Home Care Aide; The standard personal care service is not recommended for persons with a cognitive impairment and ASAP Training and Care Coordination section 3.; All care plans for consumers who are at risk due to a cognitive impairment are reviewed by an interdisciplinary team that includes an ASAP staff member trained by the Alzheimer's Association. If the care plan includes personal care, the personal care plan must be developed or reviewed by an ASAP RN who has received the required training.

The 87-hour SHCA training includes the 75-hour HHA course and an additional 12 hours of training relating to the responsibilities of a SHCA. When a Non-Homemaker Provider Agreement is in place to provide Home Health Services, the SHCA may provide assistance with ADLs and personal care as defined in the Home Health Services Attachment A Description for Home Health Aide Services (HHA).

Refer to PI-2000-40, Revised Home Health Services Protocol, Home Health Services Procedure section, regarding the plan of care.

### **1. PROVIDER POLICIES AND PROCEDURES**

- a. A sufficient number of HM/PC workers should be available to meet the needs of consumers accepted for service. The provider shall accept or reject an ASAP service request by the end of the next business day.
- b. Providers shall have job descriptions and salary scales.

- c. A Criminal Offender Record Information (CORI) check shall be performed in compliance with the laws of the Commonwealth and any applicable regulations and guidelines issued by EOEa.
- d. Personnel files shall be maintained with documentation on the results of the interview and references; completed CORI investigation; training/in-service certificates, waivers and exemptions; if appropriate, PC skills checklist; supervisory visits; and performance reports and annual evaluations.
- e. Providers shall have policies regarding consumer privacy and confidentiality and non-discrimination in service delivery. These policies shall prohibit discrimination against persons with AIDS/HIV and ensure that information concerning AIDS/HIV status is not apparent or accessible and is not released to anyone without specific written consent.
- f. Providers shall have an infection control plan to prevent occupational exposure to blood-borne illnesses including AIDS/HIV and Hepatitis B. The Center for Disease Control/OSHA guidelines for standard precautions shall be followed.
- g. Providers shall have policies to ensure tuberculosis screening and testing is performed for all provider staff who come into direct contact with consumers, using the CDC Tuberculosis Guidelines.
- h. Providers shall have policies for handling allegations of loss, theft, and/or damage of consumer property.
- i. Providers shall have a policy that prohibits the handling of the consumer's money that includes, but is not limited to: reconciling checkbooks, writing checks, using bank cards/Automated Teller Machines (ATMs), or providing banking services. Checks may be used to pay for groceries if the check is written to the store. The ASAP may establish these special arrangements, including use of the Electronic Benefit Transfer card for grocery shopping, with the store.
- j. A plan shall be in place for dealing with emergencies in the consumer's home, including accessing emergency medical services and contacting provider supervisors.
- k. Providers shall have a policy for incidents when the consumer does not answer the door, including the use of reasonable efforts (e.g. telephone) to gain access to the home. The provider will contact the ASAP immediately to determine the next course of action.
- l. Providers shall have policies to ensure compliance with the Department of Public Health's (DPH) requirements regarding prevention, reporting, and investigation of abuse by homemakers and home health aides under 105 CMR 155.000 *et seq.* as outlined in EOEa-PI-07-03. Specifically, providers shall comply with all DPH regulatory requirements regarding hiring staff and reporting abuse.

## **2. REPORTABLE INCIDENTS**

- a. If there is reasonable cause to believe a consumer has been abused, neglected, or financially exploited, the provider must immediately, day or night, contact the 24-hour ELDER ABUSE HOTLINE at 1-800-922-2275.



- b. The Provider must report to the ASAP the same business day any hospitalization, addition or loss of a household member, consumer's absence from the home, alleged theft, alleged breakage of consumer's possessions, injury to employee or consumer, or consumer complaint.
- c. The consumer and ASAP must be notified of a canceled visit or any variation in service delivery from the written authorization.
- d. The provider must report to the ASAP by the next business day a new consumer address, name, or telephone number; new MD, new diagnosis, and employee complaints.

### **3. QUALIFICATIONS**

- a. Providers shall ensure that PCHMs are able to: perform assigned duties and responsibilities; communicate observations verbally and in writing; accept and use supervision; respect privacy and confidentiality; adapt to a variety of situations; and respect and accept different values, nationalities, races, religions, cultures, and standards of living.
- b. Providers shall ensure that supervision is provided by Social Workers, Registered Nurses, and/or professionals with expertise related to the consumer profiles.

### **4. TRAINING AND IN-SERVICE EDUCATION**

- a. Prior to placement, all HM/PCHMs shall receive a 3-hour orientation (Mass Council's Training Curriculum or equivalent) with a 1/2-hour session on communicable disease including AIDS/HIV and Hepatitis B, infection control, and the principles of standard precautions.
- b. 40-Hour Homemaker Training: In addition to the 3-hour orientation, all HMs must complete 37 hours of training within the first 6 months of employment. The training shall include the nature and transmission of HIV/AIDS, standard precautions and other infection control practices, and protection of consumer confidentiality regarding AIDS/HIV. The Mass Council's Home Care Aide course is recommended. Other courses may be used that contain the same subject matter and number of hours per subject.
- c. 60-Hour Personal Care Training: PC Workers must have completed the 20-hour PC training and the 40-hour HM training before providing PC. The Mass Council's PC training outline is recommended, with 17 hours of class instruction, including a review and demonstration on universal precautions, and a 3-hour practicum. The 3-hour practicum shall include an assessment of competency in each PC task before placement by using the Mass Council's skills checklist.
- d. Training must be conducted by an RN with a valid license in Massachusetts. A Registered Physical Therapist is recommended for the training on mobility. Return demonstrations are required on the hygiene and mobility sections of the training. The use of gait belts is strictly prohibited.
- e. 87-Hour Supportive Home Care Aide (SHCA) Training: SHCAs must complete the following 87 hours of training before providing Supportive Home Care Aide Services:

- i) A 3-hour orientation (Mass Council for Home Care Aide Services Training Curriculum or equivalent) with a 1/2-hour session on communicable disease, including AIDS/HIV and Hepatitis B, infection control, and the principles of universal precautions.
- ii) The 57-hour Personal Care training set forth in the Personal Care Homemaker Standards issued by EOEA.
- iii) An additional 15 hours of Home Health Aide (HHA) training. The 75-hour HHA course prepared by the Mass Council is recommended. Other courses may be used if they contain the same subject matter and same number of hours for each subject.
- iv) An additional 12 hours of training related to the responsibilities of a SHCA. There are two SHCA training tracks: Mental Health Supportive Home Care Aide and Alzheimer's Supportive Home Care Aide.
  - a. **Mental Health Supportive Home Care Aide** - The following topics are recommended for Mental Health Supportive Home Care Aide: limit setting, depression, personality and character disorders, substance abuse, abuse and neglect, and the stigma of mental illness and behavioral disorders. The Mass Council's curriculum is recommended.
  - b. **Alzheimer's Supportive Home Care Aide** - The following topics are recommended for Alzheimer's Supportive Home Care Aide: understanding Alzheimer's and Dementia, habilitation therapy, communication skills, personal care, behavior as communication, and working with families. The Alzheimer's Association curriculum is required.
- f. Certificates: Providers must award a certificate to those who have successfully completed the HM, PC, or SHCA training.
- g. Training Exemptions: The following individuals are exempt from training requirements:
  - i) Registered Nurses (RNs) and Licensed Practical Nurses (LPNs) with documentation of successful completion of a nursing program approved by the Massachusetts Board of Registration in Nursing or, when applicable, the appropriate nurse training approval authority in the state where the training was conducted;
  - ii) Physical Therapists (PTs) and Occupational Therapists (OTs) with documentation of successful completion of a training program approved by the Massachusetts Board of Registration or, when applicable, the appropriate training approval authority in the state where the training was conducted;
  - iii) Students enrolled in a nursing program approved by the Massachusetts Board of Registration in Nursing, with documentation of satisfactory completion of "Fundamentals of Nursing" course and/or one Medical /Surgical clinical nursing rotation;
  - iv) Certified Nurse's Aides with documentation of successful completion of a certified nurses aide training program;
  - v) Home Health Aides with documentation of successful completion of a home health aide training program;
  - vi) PCHM's with documentation of having successfully completed the 60-Hour PC Training Program;

- vii) HM's with documentation of having successfully completed the 40-Hour Training Program; and
  - viii) HMs with documentation of having successfully completed the Homemaker Training Waiver Procedure, described in the Mass Council's HTWP Guide, are exempt from the 37-hour HM training program.
  - ix) No exemptions for the additional 12-hour SCHA training.
- h. NOTE: All new employees exempt from any of the training components must receive the 3-hour orientation described in the Mass Council Training Outline.

In addition to providing a basic three-hour orientation, agencies should determine based on each individual's training how much, if any, supplemental training to homecare is recommended.

- i. Training Facilities: Agencies providing PC training shall have appropriate training facilities and equipment. A minimum standard of equipment shall include a bed with side rails, linen and blanket, running water and basins, towels and washcloths, chair, commode, wheelchair, and walker. A variety of teaching methodologies such as lectures, equipment demonstrations, visual aids, videos, and handouts shall be used.
- j. Supervisors and other professionals shall provide on-going in-service education and on-the-job training aimed at reinforcing the initial training and enhancing skills. This may be carried out with videos, lectures, group discussions, and demonstrations.
- k. A minimum of 6-hours per year of on-going education and training is required for all HMs and PC HMs. These hours shall be pro-rated for part-time employees. One to one PC supervision may comprise one-half the required hours. Instruction and reinforcement of universal precautions and infection control procedures count toward the required hours.
- l. Providers shall ensure that SHCAs receive a minimum of 12-hours per year on-going in-service education and on-the-job training provided by supervisors and other professionals. This may be carried out in a variety of ways such as video presentations, lectures, group meetings and demonstrations.

## 5. SUPERVISION

- a. Supervision shall be available during regular business hours and on weekends, holidays and evenings for HMs, PC Workers, and SHCAs providing services to consumers during these times.
- b. Supervision shall be carried out at least once every three months by a qualified supervisor. In-home supervision shall be done in a representative sample of consumers.
- c. PC Introductory Visits, including SHCAs providing personal care: On the first day of service in the consumer's home, a PC Worker shall receive an orientation from an RN to demonstrate the PC tasks. During this visit the PC Worker will demonstrate competence in the PC tasks assigned in the care plan. LPNs may carry out the orientation visits if the LPN has a valid license in Massachusetts, is working under the direction of an RN, and an RN

from the ASAP has conducted an initial home visit to assess the need for PC prior to implementing the care plan.

- d. PC Supervision: An RN shall provide in-home supervision of PC Workers at least once every 3 months with a representative sample of consumers. A written performance of PC skills shall be completed after each home visit. LPNs may provide in-home supervision if the LPN has a valid license in Massachusetts, and works under the direction of an RN who is engaged in field supervision a minimum of 20-hours per week and is responsible for the field supervision carried out by LPN.
- e. SHCA Weekly Support: Each SHCA shall receive weekly support through training/in-services, team meetings, or supervision that includes in-home, by telephone, or in person. Team meetings shall be held quarterly and shall include SHCAs, supervisors, and other appropriate personnel involved in providing SHCA services. The focus of these meetings is to provide training and group supervision, to conduct case reviews or interdisciplinary case conferences, and to provide support to the SHCA.

## **6. CONSUMER RECORDS**

Providers shall maintain a record in a secure setting for each consumer receiving service. Access to consumer records shall be limited to provider staff involved with direct care of the consumer and appropriate administrative staff in compliance with EOEAs Instruction on Privacy and Confidentiality. The record shall contain consumer information provided by the ASAP and the following information:

Consumer Information available for viewing in Provider Direct:

- source/date of referral,
- documented Risk level,
- names of ASAP care managers, physicians, family/friends,
- date of service initiation and tasks to be performed,
- hours and duration of service/subsequent changes,
- record of services provided, and
- date of and report on termination.

**Consumer information not available for viewing in Provider Direct:**

- medical and/or functional status,
- release of information forms, if applicable,
- notes regarding supervisory visits, team meetings, etc., and,
- reportable incidents (Section B).

## PERSONAL CARE GUIDELINES

The goal of Personal Care (PC) Services is to provide care in a community setting, with the aim of maintaining the dignity and independence of consumers in a community setting for as long as possible.

Personal Care (PC) services provide physical assistance and verbal cuing with personal care tasks such as bathing, dressing, grooming, ambulation, and transfers. PC services are provided to consumer who, based on an assessment performed by an Aging Service Access Point Registered Nurse (ASAP RN), need assistance with these types of services.

The ASAP RN assesses the consumer's overall functional and clinical status, the type and amount of care needed, the consumer's environment, and current support systems, both formal and informal, in determining the appropriateness for PC.

Consumers with conditions/diagnoses that may not be appropriate for PC services include, but are not limited to: consumers with extensive paralysis or total immobility, consumers requiring assist of two or use of a mechanical lift, severe contractures, open wounds, certain types of fractures including, but not limited to those casted to immobilize, unstable medical conditions, and those that require special skin care.

The ASAP RN collaborates with the provider RN to ensure an individualized, comprehensive, and effective care plan for each consumer. The provider RN is responsible for orientation and ongoing supervision of the PC Homemaker (PCHM) to the care plan developed in collaboration with the ASAP RN. Licensed Practical Nurses (LPN), working under the supervision of an RN, may perform PCHM orientation and supervision in accordance with Attachment A Homemaker Standards.

### 1. BATHING

- a. Sponge bathing is allowed to maintain personal hygiene.
- b. Hot water must be well controlled and utilized with extreme caution.
- c. Bath oil products may not be used.
- d. Tub baths and showers are allowed on a case-by-case basis only after the ASAP RN has completed a nursing assessment. Consumers with conditions/diagnoses that may not be suitable for tub and shower baths include but are not limited to: consumers with a history of falls, severe osteoarthritis, severe osteoporosis, compression fractures, advanced neuromuscular disease, unmanageable seizure disorders, cancer with metastasis to the bone, peripheral vascular disease, severe cardiac/respiratory disease, vertigo, obesity, open wounds, and certain types of fractures including, but not limited to those immobilized with a cast. This may include a fairly recent hip fracture.
- e. Prior to approving a tub bath or shower, the ASAP RN must determine that no physical barriers exist that prohibit immediate access to the consumer in the event of an emergency.
- f. The following safety equipment is required for tub baths and showers: grab bar(s); a rubber mat, nonskid surface, or decals inside of the tub/shower; and a rubber backed floor mat outside of tub/shower. A tub/shower stool must be present when determined to be necessary by the ASAP RN.

- g. In certain cases, when it is not feasible to install safety equipment such as grab bars, the ASAP RN may waive the requirement of safety equipment when determining that the lack of safety equipment does not put the consumer's safety at risk. The requirements regarding nonskid surfaces and the use of a rubber backed floor mat outside of the tub may not be waived.
- h. Complete bed baths are allowed on a case-by-case basis after the ASAP RN has completed a nursing assessment. The PCHM cannot take responsibility to turn, lift, or roll the consumer, but may assist the primary caregiver who is taking responsibility for these tasks.

## **2. SKIN CARE**

- a. The application of over the counter emollients, excluding bath oil products, is allowed on a case-by-case basis as determined by the ASAP RN. The consumer must be alert, able to assume responsibility for the product, and able to direct the PCHM, but unable to complete the task independently because of physical limitations.
- b. Application of medicated creams and lotions is not allowed. This includes, but is not limited to over the counter products such as cortisone creams, Aspercream, Ben-Gay, anti-fungal products, Bacitracin and Neosporin or their generic counterparts.
- c. Care of ulcers/open wounds is not allowed.
- d. Treatments involving the application of heat are not allowed. This includes, but is not limited to hot packs, hot water bottles, and electric heating pads.
- e. Treatments involving the application of cold are not allowed. This includes, but is not limited to cold packs and ice.

## **3. FOOT CARE**

- a. Foot soaks, limited to 10 minutes, and toenail filing are allowed.
- b. Foot soaks and toenail filing are not allowed on consumers with diabetes, severe peripheral vascular disease, or if the ASAP RN feels the consumer has a condition that would make this task inappropriate, such as an infection or an injury.
- c. Toenail cutting is not allowed in any instance.

## **4. GROOMING**

- a. Shampoos may be provided unless restricted by the ASAP RN. The PCHM may comb, set with curlers/pins, and blow-dry the consumer's hair. The blow dryer must be used on the low setting and in accordance with the safety recommendations of the manufacturer. The use of curling irons and/or electric curlers is not allowed. Hair cutting is not allowed.
- b. The use of any chemical hair product is not allowed. This includes, but is not limited to hair color, permanent wave products, henna etc.
- c. Fingernail cutting is not allowed.

- d. Fingernail filing is allowed unless the ASAP RN feels that the consumer has a condition that renders this task inappropriate such as an infection or an injury.
- e. Facial shaving with an electric razor may be provided. Safety or straight razors are not allowed.

## **5.DRESSING**

- a. Assistance with dressing may be provided. Assistance with the application and removal of prescription and non-prescription anti-embolism stockings is allowed on a case-by-case basis as determined by the ASAP RN.

## **6. PERSONAL APPLIANCES**

- a. Assistance with personal items such as denture care, assistance with hearing aids and eyeglasses, and help with the application of certain braces, splints, slings, and prostheses is determined on a case by case basis, based on the assessment of the ASAP RN.
- b. With the approval of the ASAP RN, consumers who have been using artificial limbs, splints, or braces on a continuing basis, may receive assistance with the application only if the consumer is: mentally alert, has received instruction and understands the correct application of the appliance, and the tension strap has been marked by the primary nurse or therapist to indicate the correct degree of tension. In the case of an arm or leg prosthesis, the residual limb must be well healed and shaped.
- c. Care of or insertion of contact lenses and application of new braces, splints, prostheses or slings is not allowed.

## **7. INCONTINENCE MANAGEMENT**

- a. Incontinence management may be provided. This includes assistance with the use of the toilet, commode, bedpan, or urinal. When assisting with the use of the bedpan, the consumer must be able to lift his/her buttocks onto the bedpan independently or with the aid of a trapeze. Assistance on and off the commode must comply with transfer guidelines listed below. Incontinence assistance includes assisting with bowel/bladder training regimes, disposable incontinent briefs/pads, and personal hygiene. With the approval of the ASAP RN, the PCHM may remind the consumer to perform pelvic strengthening exercises, e.g. Kegal exercises.
- b. The emptying of urinary drainage bags, the application of urinary leg bags, and routine catheter care are allowed with ASAP RN approval. The PCHM must be able to demonstrate competency by means of return demonstration of these techniques to the Provider RN.
- c. The application of a condom/Texas catheter is not allowed.
- d. Ostomy care, in most cases, is not allowed. With approval of the ASAP RN, occasional exceptions may be made when the ostomy is long-term, well-healed, and without complications. In those cases when a consumer has received and understands instruction in stoma bag application, but is not able to manage it due to physical limitations such as poor vision or severe arthritis, assistance may be given by the PCHM in applying the bag. The PCHM must be able to demonstrate competency by means of a return demonstration of this technique to the Provider RN.

- e. Manual disimpactions and the administration of douches and enemas are not allowed.

## **8. TRANSFERS**

- a. Assistance with transfers is allowed when the consumer is able to bear at least 50% of his/her weight when moving from a sitting to a standing position and while transferring. The ASAP RN may approve transfer assistance when the consumer's caregiver provides support for 50% of the consumer's weight. The ASAP RN may also approve assistance with slide board transfers. The PCHM must demonstrate competency by means of a return demonstration to the Provider RN.
- b. Use of mechanical lifts and participation in a two-person carry of a totally dependent consumer is not allowed.

## **9. AMBULATION**

- a. The PCHM may assist the consumer with ambulation inside and outdoors, as well as with a walker, wheelchair, and/or cane that has been properly fitted to the consumer. The personal care plan shall specify where ambulation assistance may take place, e.g. "consumer may be assisted with ambulation outside". The ASAP RN, on a case-by-case basis, may approve assistance with stair use.
- b. Consumers who are following a written exercise program may be coached by the PCHM in carrying out active range of motion and strengthening exercises. The care plan must be very specific with regard to the exercises to be performed and supported with orders/instructions from either a physician or a physical therapist.
- c. Active participation in an exercise program, or passive range of motion exercises are not allowed.

## **10. NUTRITION**

- a. The PCHM may prepare and set up meals, and provide encouragement and/or cuing for food/fluid intake as appropriate. The ASAP RN may approve feeding consumers on a case-by-case basis.
- b. Tube feedings, syringe feeding, and the feeding of consumers with a history of choking and/or swallowing difficulties are not allowed.

## **11. MEDICATION ASSISTANCE**

- a. Administration of medication, prescription or non-prescription, and/or oxygen is not allowed.
- b. The PCHM may not participate in any aspect of automated medication dispensing systems.
- c. The PCHM may remind the consumer to take his/her medications.
- d. The PCHM may place the medications within reach of the consumer.
- e. On a case-by-case basis, the ASAP RN may approve that the consumer direct the PCHM to act as the hands and/or eyes of the consumer.



- f. If, by reason of poor vision or other physical limitation, the consumer needs help with the mechanical aspects of medication administration, e.g. reading medication labels or opening medication packaging, the PCHM may provide mechanical assistance.
- g. The ASAP RN must determine and document in the consumer record that the consumer has met the following criteria:
  - The consumer is aware that they are taking medications.
  - The consumer is alert and assumes responsibility for taking his/her medications, but requires assistance because of physical limitations.
  - The consumer is able to direct the PCHM in assisting him/her with the mechanical aspects of medication administration.
  - The medication is an oral medication.
  - The PC plan includes a directive to provide the assistance.

## **12. RESTRAINTS**

The PCHM is not allowed to provide care to the consumer when a physical restraint is in use. This excludes the use of side rails if the use of side rails has been approved by the ASAP RN as a necessary safety measure and the consumer is in agreement with and understands their use.

ATTACHMENT B

Consortium Agreement

if not applicable

ATTACHMENT C

Springwell towns in which \_\_\_\_\_ will  
provide \_\_\_\_\_ services:

Springwell Catchment Area

- |                    |                    |
|--------------------|--------------------|
| Belmont <u>x</u>   | Waltham <u>x</u>   |
| Brookline <u>x</u> | Watertown <u>x</u> |
| Needham <u>x</u>   | Wellesley <u>x</u> |
| Newton <u>x</u>    | Weston <u>x</u>    |



**ATTACHMENT E**  
**Coversheet**

**ASAP: Insert "Privacy & Confidentiality" Regulations**  
***EOEA-PI-97-55***

**PROGRAM INSTRUCTION**

**EOEA-PI-97-55**

(reference EOEA-PI-97-49)

To: Area Agencies on Aging  
Home Care Corporations  
Nutrition Projects  
Protective Services Agencies  
Ombudsman Programs  
EOEA Contractors Holding Personal Data  
Interested Agencies

From: Franklin P. Ollivierre

Date: December 26, 1997

Subject: Clarification of Client Privacy and Confidentiality Policies Resulting From  
Consolidation of EOEA Privacy and Confidentiality Regulations

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As you know, pursuant to Executive Order #384, our Privacy and Confidentiality Regulations (other than those affecting Protective Services Programs) are being consolidated into an Executive Office for Administration and Finance regulation (801 CMR 3.00 et seq.) (See EOEA PI-97-49). Under the statute which governs these regulations, (M.G.L. c. 66A, the Fair Information Practices Act) Executive Office of Elder Affairs (EOEA) and contractors which “hold” personal client data for us in the course of performing their contracts are required to perform several important duties in the collection, use, maintenance or dissemination of personal data, including, but not limited to the following:

1. identify an individual responsible for the contractor’s personal data system and educate that person about design, development, operation and maintenance of the personal data system and the rules and remedies available to individuals whose rights are affected by the holding of data;
2. not allow any other agency or individual not employed by the holder to have access to personal data unless such access is authorized by statute or regulations which are consistent with the purposes of this chapter;
3. take reasonable precautions to protect personal data from dangers of fire, theft, flood, natural disaster, or other physical threat;

EOEA PI-97-55  
December 26, 1997

4. inform in writing an individual upon his request whether he is a data subject, and if so, make such data fully available to him, unless doing so is prohibited by law;
5. maintain personal data with accuracy, completeness and relevance and not collect more personal data than are reasonably necessary for the performance of the statutory functions;
6. establish procedures that allow each data subject to contest the accuracy, completeness, pertinence, timeliness, relevance or dissemination of his personal data or denial of access to such data; and
7. maintain procedures to ensure that no personal data are made available in response to a demand for data made by compulsory legal process (e.g. a subpoena) unless the data subject has been notified of such demand in reasonable time to have the process quashed.

As part of this process, we would like to:

1. attach a copy of 801 CMR 3.00, et seq.;
2. clarify certain policies and procedures regarding the privacy and confidentiality of the client case records of EOEAs contractors as so called “supplementary privacy and confidentiality policies;” and
3. clarify that any agency, individual or entity which holds personal data under an arrangement, understanding or ongoing contract, or subcontract, grant or agreement with EOEAs on December 25, 1997 shall in consideration of receipt of funding and continuation of performance continue to be a Holder of Personal Data under M.G.L. c. 66A, s. 1, et seq., Executive Order 111, 801 CME 3.00, et seq. applicable regulations and section 6 of the Commonwealth Terms and Conditions for Human and Social Services on and after December 26, 1997, during the term of such agreement.

We hope to be able to provide training on issues related to Privacy and Confidentiality in the near future.

If you have any questions, please call Joel M. Semuels, Acting General Counsel at (617)222-7461.

**SUPPLEMENTARY PRIVACY AND CONFIDENTIALITY POLICIES OF THE EXECUTIVE OFFICE OF ELDER AFFAIRS (EOEA) FOR EOEA AND HOLDERS OF PERSONAL DATA UNDER AGREEMENT WITH EOEA.**

December 26, 1997

1. Scope and Purpose

This Program Instruction provides supplementary privacy and confidentiality policies to M.G.L. c. 66A, Executive Order 111, 801 CMR 3.00 et seq. and where applicable, 651 CMR 5.20 and apply to the collection, maintenance and dissemination of personal data contained in manual or computerized personal data systems. Except, where otherwise provided by law or judicial order, these policies shall apply to EOEA and to any Holder of personal data as defined in these policies.

2. Definitions

In addition to the definitions set forth in M.G.L. c. 66A, s. 1, 801 CMR 3.00 et seq., and M.G.L. c. 214, ss. 1B and 3B, the following definitions shall apply to the policies set forth herein:

(A) Data Subject shall also mean any person concerning whom personal data is held for any purpose, whether or not he has knowledge of such holding.

(B) Executive Office of Elder Affairs (EOEA) means the Executive Office of Elder Affairs established by the General Court to be the principal agency of the Commonwealth to mobilize the human, physical, and financial resources available to plan, develop and implement innovative programs to insure the dignity and independence of elderly persons, including the planning, development, and implementation of a home care program for the elderly in the communities of the Commonwealth.

(C) Holder shall also mean that any agency, individual or entity which holds personal data under an arrangement, understanding or ongoing contract, or subcontract, grant or agreement with EOEA.

(D) Holds shall mean collects, maintains, or disseminates, whether manually, mechanically, or electronically. Collects shall mean gathers, obtains, or receives. Maintains shall mean stores, updates, or corrects. Disseminates shall mean transfers for any purpose from a holder to any other agency, person, or entity.

(E) Personal Data shall mean any data concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular



individual; provided that such information is not contained in a public record, as defined in clause 26<sup>th</sup> of section seven of chapter four and shall not include intelligence information, evaluative information or criminal offender record information as defined in section one hundred sixty seven of chapter six. (This may include, but not be necessarily limited to that which relates to the examination, care, custody, treatment, support, or rehabilitation of an individual; medical, psychological, psychiatric, social, financial, and vocational data, and which is nominally contained in case files, personnel files, or similar files). The term "personal data" shall be applied to data maintained in either manual or computerized form or any combination thereof.

(F) Personal Data System means a system of records containing personal data which system is organized such that the data are retrievable by use of the identity of the data subject.

(G) Personal Identifier shall mean any element of data which may be used to fix a person's identity either by itself or when combined with other data accessible to the holder of such data and which may include, but is not necessarily limited to: name, address, social security number, date of birth, race, zip code, mother's given name, mother's maiden name, or any letters of the mother's given or maiden name.

### 3. Personal Data

(A) General. Except where otherwise provided by statute, or judicial order, a holder shall not collect, maintain, or disseminate any personal data other than that which is essential for the performance of functions authorized by law. Any agency, individual or entity which holds personal data under an arrangement, understanding or ongoing contract, or subcontract, grant or agreement with EOEA on December 25, 1997 shall continue to be a Holder of Personal Data under M.G.L. c. 66A, s. 1, et seq., Executive Order 111, 801 CME 3.00, et seq. applicable regulations and section 6 of the Commonwealth Terms and Conditions for Human and Social Services on and after December 26, 1997, during the term of such agreement.

(B) Disclosure of Social Security Number. Pursuant to the Federal Privacy Act of 1974, as amended by P.L. 94-455, s. 1211, no holder shall deny to any individual any right, benefit or privilege provided by law because of the refusal by such individual to close his Social Security account number except as provided in this section. Exceptions: The previous sentence shall not apply to any disclosure which is required by federal statute; or the disclosure of a Social Security number to any holder maintaining a personal data system in existence and operating before January 1, 1975 if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(C) Identification and Assurance as Essential. A holder shall identify the kinds of personal data held and shall assure that the holding of such data is essential for the performance of functions authorized by law:

(D) Informed Consent. Each data subject may give or withhold informed consent when requested by any holder to provide personal data.

EOEA Supplementary Privacy Policies

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December 26, 1997

### 4. Administration of Personal Data

(A) Officer Designation: Each holder shall designate for each personal data system it maintains, a person to serve as the responsible person under M.G.L. c. 66A, s.2(a). A single employee may serve as the responsible person for more than one such system. He shall receive complaints and objections; answer questions; and direct operations with respect to the privacy, confidentiality, and security of personal data.

(B) Expungement of Obsolete Data. Each holder shall develop and implement a definite plan for the expungement of obsolete data with the approval of EOEIA and the Records Conservation Board pursuant to M.G.L. c. 30, § 42.

(C) Use of Personal Data for Unrelated Purposes. Except where otherwise provided by statute or judicial order, personal data collected for one purpose, shall not be used for another unrelated purpose without the informed consent of the data subject.

(D) Access by a Holder. A holder shall have unlimited access to personal data it holds or which is held on its behalf by another holder, provided that each holder shall permit only those employees whose duties require access to have access to personal data.

(E) Access by Non-Holders. A holder shall not allow any other entity or individual not employed by the holder to have access to personal data unless such access is authorized by statute or regulations which are consistent with the purposes of M.G.L. c. 66A, or is approved by the data subject whose personal data are sought. Medical or psychiatric data may be made available to a physician treating a data subject upon request of the physician if a medical or psychiatric emergency arises which precludes the data subject's giving approval for the release of such data.

5. Personnel Security. Each holder shall permit only those employees whose duties require access, to have access to personal data, and shall:

(A) design personnel procedures which limit the number of employees whose duties involve access to personal data;

(B) train existing personnel concerning standards of confidentiality and security required by these policies;

(C) screen prospective personnel with regard to previous work experience with personal data and corresponding violations of confidentiality; and, ensure that all personnel working with or having access to personal data are familiar with M.G.L. c. 66A and pertinent regulations and policies.

EOEA Supplementary Privacy Policies

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December 26, 1997

6. Physical Security. Each holder shall take all reasonable steps for the protection of data from physical damage or removal, including procedures providing for:

(A) adequate fire detection and sprinkling systems;

- (B) protection against water and smoke damage;
- (C) alarm systems, safes and locked files, window bar, security guards or any other devices reasonably expected to prevent loss through larceny or other means of removal for manually held data, including files, tapes, cards and like materials;
- (D) passwords, keys, badges, access logs, or other methods reasonably expected to prevent loss through larceny or other means of removal for mechanically or electronically held data.
- (F) insure that the number of duplicate files of personal data is maintained at an absolute minimum.
- (G) maintain an audit trail of access to personal data held by it by persons or entities from outside the agency or entity.

## 7. Access by Data Subject

(A) Right of Access of Data Subject. Each data subject or his duly authorized representative shall have access to any personal data concerning him except where prohibited by law or judicial order. In addition, each data subject or his duly authorized representative shall enjoy the right to inspect and copy any personal data concerning him, except where prohibited by law or judicial order.

(B) Roles Governing Access to Data. A holder may adopt reasonable written rules governing access to personal data, consistent with applicable law, regulations and these policies, which:

- (1) insure that any substitute or proxy for the individual data subject be duly by him;
- (2) regulate the time and place for inspection and the manner and cost of copying; provided that the time for inspection shall not be unduly restricted nor shall an unreasonable cost for copying be charged; and, require that data files be reviewed in the presence of or under the supervision of the holder.

(B) Denial of Access to Data. A holder may deny a request by a data subject for access to certain personal data, such as psychiatric or psychological data, only if the denial of access is permitted by statute.

(C) Notification of Denial of Access to Data. A holder shall notify in writing an individual, in a form comprehensible to him, of its denial of his request for access, the reasons therefore, and the rights of appeal set forth in 801 CMR 3.03(3).

(D) Subpoena-Special Notice. Any holder served with a subpoena or other judicial or administrative order directing it to disseminate personal data, unless otherwise prohibited by law or judicial order, shall immediately give notice of such fact to the data subject to whom the data in demand relates. Such notice, where possible, shall include a copy of the order, except where the data subject himself requested the order from the issuing body or is otherwise obviously aware of its existence.. Such notification must occur no later than the first business day following the day upon which the subpoena is served. Notification shall be sent immediately by mail and include a copy of the subpoena. The holder, wherever legally and practically possible, shall allow the data subject ample time to quash the order. In addition, the holder shall attempt to reach the client (and personal representative, if known) by telephone or in person in any case where the mail might not reach him/her before the date the records production date.

The holder who accepts service of such a subpoena may wish to telephone its counsel to determine if contact with the person who caused the subpoena to be served is appropriate to determine:

1. the nature of the case;
2. whether all or some of the records described in the subpoena are truly required; and
3. whether an appearance by holder personnel may be avoided by submission of certified documents or otherwise, and if an appearance is truly necessary, narrowing the scope of the subpoena to those matters truly required.. The holder's legal counsel shall, as appropriate, provide additional advice or representation.

#### 8. Monitoring and Enforcement

(A) Generally. The Secretary of EOEA or his/her designee shall be responsible for the monitoring of compliance with applicable law, regulations and these policies in cooperation with the Department of the Attorney General pursuant to M.G.L. c. 214, § 3B.

(B) Sanctions Against Employees of EOEA. Any employee of the Department of Elder Affairs found breaching the confidentiality of data subjects through violation of applicable law, regulations and these policies shall be subject to reprimand, suspension, dismissal, or other disciplinary actions by the holder consistent with any rules and regulations of the Executive Office and the Commonwealth which may govern its employees, and may be denied future access to personal data and removed from any holding responsibilities.

EOEA Supplementary Privacy Policies

Page 6

December 26, 1997

(C) Non-Agency Holders. Any holder, other than an agency defined under these policies, found breaching the confidentiality of data subjects through violation of applicable law, regulations and these policies shall be subject to a review and an investigation by the appropriate contracting agency of EOEA, which may lead to suspension of any contractual relationship and to legal sanctions brought by the Attorney General.

9. Agreements With Holders of Personal Data. A holder shall not allow any other person, entity or agency to hold personal data in the absence of an express contract or agreement. A holder shall assure that all contracts, subcontracts and agreements affecting the collection, maintenance or dissemination of personal data between it and any other holder of the same personal data, and a person or entity not otherwise subject to M.G.L. c. 66A, 801 CMR 3.00 et seq., other applicable regulations and these policies shall contain a provision requiring compliance with same.

Draft for use in 1998 contracts

**EOEA HOLDER OF PERSONAL DATA AGREEMENT UNDER THE MASS. FAIR  
INFORMATION PRACTICES ACT, M.G.L. c. 66A, AND APPLICABLE  
REGULATIONS, AND POLICIES**

\_\_\_\_\_ agrees to designation or continued designation by  
(Print or type name of organization)

the Executive Office of Elder Affairs (EOEA) under the Commonwealth Terms and Conditions for Human and Social Services Contracts or other applicable agreement as a "holder" of "personal data" of clients and agrees to collect, use, maintain and disseminate such personal data in compliance with the Privacy and Confidentiality statute, M.G.L. c. 66A, 801 CMR 3.00, et seq. and other applicable regulations and policies developed by EOEA.

CONTRACTOR AUTHORIZED SIGNATORY: \_\_\_\_\_  
(signature)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Full Legal Organization Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

FAX: \_\_\_\_\_

**ATTACHMENT F**

**Clients As Research Subjects**

**EOEA-PI-03-17**

Program Instruction

EOEA-PI-03-17

TO:       Aging Service Access Points  
          Area Agencies on Aging  
          Councils on Aging  
          Elder Law Projects

FROM:     Jennifer Davis Carey

DATE:     June 3, 2003

SUBJ:     Elder Rights Review Committee

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We would like to remind you again about the Elder Rights Review Committee (ERRC). As you may know, since 1977, the ERRC has had jurisdiction over proposals by any researcher seeking to do research, surveys, or market studies which seek access to clients of any Elder Affairs grantee, subgrantee, contractor or subcontractor. The ERRC receives the research proposal, meets with the researcher to discuss the proposal, in particular the informed consent form(s). It then votes to recommend approval, qualified approval or disapproval by the Secretary, and/or request additional information. The ERRC includes: Elder Affairs legal counsel, at least one other staff member from Elder Affairs, one physician with a background in geriatrics and social service issues, one social scientist who may be an employee of the Elder Affairs and three elders who are not employees of Elder Affairs.

The goals of the ERRC are to ensure that: elders receive adequate information regarding any research and experimentation involving them; elders are not exposed to more than minimum physical or psychological risk after careful review of the impact of any medical procedures to be performed or medication to be used during the research; the research provides some reasonable expectation of direct or indirect improvement in service or of the well-being to elders; elders understand and consent to any research; the research does not put undue pressure upon individuals to participate in the project through either financial or psychological means; and the privacy and confidentiality of participant-related information is protected.

If there are any questions regarding the Elder Rights Review Committee, contact Tom Chung, Ph.D at (617)222-7456 or Joel Semuels, General Counsel at (617)222-7461.



## PROTECTION OF CLIENTS WHO ARE PARTICIPATING IN RESEARCH PROJECTS (ELDER RIGHTS REVIEW COMMITTEE)

6/3/2003

### 1. Scope and Purpose

(1) This Program Instruction sets forth requirements for the submission to the Executive Office of Elder Affairs and for Executive Office of Elder Affairs' evaluation of proposals for research, experimentation, surveys, market research or similar research or experimentation which would affect any clients of the Executive Office of Elder Affairs when any proposal seeks access to clients through the Executive Office of Elder Affairs or any of its grantees, subgrantees, contractors or subcontractors. The Secretary shall forward all appropriate proposals to the Committee. **Please note: It is not necessary to submit a research proposal or survey to the Elder Rights Review Committee (ERRC) if the subject of the research proposal or survey involves an assessment of programs or processes of Elder Affairs, any Aging Services Access Point(s), Area Agency(ies) on Aging or Council(s) on Aging which is initiated by such agency or entity, and in which such agency is participating with a research entity. In these cases, the agency or entity is responsible for assuring the informed consent of participants and safeguarding their personal data under existing privacy laws.**

### 2. Definitions

Client of the Executive Office of Elder Affairs means any person receiving services administered by agents, grantees, subgrantees, contractors or subcontractors of the Executive Office of Elder Affairs.

Committee means the Elder Rights Review Committee established by the Secretary pursuant to this Program Instruction.

Data means any information concerning an individual which because of name, identifying number, mark or description can be readily associated with a particular individual.

Elder means any individual aged 60 or above.

Grantee, Subgrantee, Contractor, or Subcontractor means any agency or organization in receipt of state and federal funds, either directly or indirectly from the Executive Office of Elder Affairs, including those funded under the Older Americans Act, as amended.

Informed Consent means written consent required by and conforming to section 4(2)(i) below given by a client who is physically and mentally capable of giving consent.

Project means any proposal which has been approved by the Secretary upon the recommendation of the Elder Rights Review Committee.

Proposal means any written statement of intent, conforming to section 4(2) which seeks to gain access to clients of the Executive Office of Elder Affairs or data pertaining to clients for the purpose of conducting research, experimentation, surveys, market testing or similar research or experimentation.

Researcher/Investigator means any person, agency, organization, corporation or institution wishing to gain access to clients of the Executive Office of Elder Affairs for the purpose of conducting research, experimentation, surveys, market testing or similar research or experimentation.

Secretary means the Secretary of Elder Affairs.

### 3. Elder Rights Review Committee

#### (1) Composition.

- (a) The Secretary shall appoint the Elder Rights Review Committee. The Committee shall be composed of no fewer than five members. The Secretary shall designate the Executive Office of Elder Affairs legal counsel as chairperson. The Committee's membership shall include:
1. Executive Office of Elder Affairs legal counsel;
  2. At least one other staff member for the Executive Office of Elder Affairs;
  3. One physician with a background in geriatrics and social service problems.
  4. One social scientist who may be an employee of the Executive Office of Elder Affairs;
  5. Three elders who are not employees of the Executive Office of Elder Affairs.
- (b) Whenever the Committee determines that its members do not possess the expertise required for the review of a proposal, it may consult with a person or persons who possess the requisite expertise and experience necessary for the review of a particular proposal at no additional cost to the Commonwealth. Such person may be an employee of the Executive Office of Elder Affairs.
- (c) The Secretary may appoint additional members to the Committee as (s)he deems necessary from time to time.

(d) No Committee member shall participate in the evaluation of a proposal in which he has either a direct or indirect professional involvement or financial interest.

(2) Function.

(a) The Committee shall review all proposals submitted pursuant to section 4.

(b) The Committee shall recommend to the Secretary approval, disapproval, or qualified approval of proposals.

(c) The Committee may request researchers/investigators that have submitted proposals, to submit any additional information that the Committee may reasonably require in order to make its determination.

(3) Meetings. The Committee shall meet as necessary to review proposals and to act upon complaints filed pursuant to section 9.

(4) Procedure at Meetings.

(a) A simple majority of the appointed members shall constitute a quorum.

#### 4. Proposals

(1) Researcher/Investigators shall submit a proposal in writing to the Secretary.

(2) Such proposals shall include, at a minimum the following information:

(a) identification of the person or persons directly responsible for the conduct of the proposal, together with the credentials of the persons to carry out the project;

(b) objectives of the proposal;

(c) source of support of the project and guidelines of the funding source;

(d) type of data sought and the methods of gaining access to said data;

(e) methods and procedures to be employed in carrying out the proposal;

(f) detailed enumeration of all foreseeable risks and benefits;

(g) procedures to be followed in the event of the occurrence of adverse effects to any subjects;

(h) method of recruiting participants, including number and required characteristics;

(i) a copy of the Informed Consent Form to be used, which shall include, at a minimum:

1. an explanation of the purpose of the proposal;

2. a fair explanation of the procedure and data collection methods to be followed, including identification of any procedure which is experimental

3. a description of any attendant discomfort and risks reasonably to be expected;

4. a description of any benefits reasonably to be expected;

5. an offer to answer any inquiries concerning the procedures;
6. an instruction that the subject is free to withdraw his consent and to discontinue participation in the research project at any time without affecting the services (s)he is receiving from the participating senior center;
7. an explanation of how to file a grievance;
8. safeguards for the maintenance of confidentiality, including the appropriate procedures set forth by the Privacy and Confidentiality Regulations of the Executive Office of Elder Affairs;
9. disposition of the data at the termination of the project;
- (j) type of final product to be expected, intended use and manner of dissemination or publication;
- (k) where applicable, disclosure of intent to establish copyright, patents, or any other rights to the product and disclosure of organization or persons in whom such rights are to be vested; and
- (l) safeguards for the protection of the health and physical safety of clients; protection of client confidentiality and privacy; preservation of clients' dignity; to insure that clients are free from undue discomfort, distress and deprivation; and to insure equal treatment of clients without discrimination.

## 5. Evaluation of Proposals

- (1) The Elder Rights Review Committee shall review all proposals submitted pursuant to section 4.
- (2) In evaluating proposals the Committee shall utilize:
  - (a) available research experience and expertise;
  - (b) existing knowledge of research findings that bear upon the particular project under consideration;
  - (c) standards and canons of professional conduct and ethics;
  - (d) existing state and federal statues, regulations and guidelines, and
  - (e) existing research methods and procedures that have been established through rigorous standardization procedures and prescribed by recognized professional agencies or societies.
- (3) The Committee may reject proposals for any of the following reasons:
  - (a) the proposal involves more than minimal physical or psychological risks;
  - (b) there is no reasonable expectations of either direct or indirect improvement in the health, safety or welfare of elders;
  - (c) the grantee, subgrantee, contractor or subcontractor through which the proposal seeks access to clients of the Executive Office of Elder Affairs, does not consent to the proposal; and

(d) the existence or risk thereof of undue pressure upon individuals to participate in the project, including the use of coercive measures, including, but not limited to, peer pressure and coaxing, to enlist the participation of clients of the Executive Office of Elder Affairs.

#### 6. Recommendations to Secretary

Upon reaching a decision on a proposal, the chairperson of the Committee shall forward the Committee's decision to the Secretary for his final decision.

#### 7. Notification and Reconsideration

(1) The Secretary shall send written notice of the decision to the researcher/investigator submitting the proposal. If a proposal is disapproved, given approval subject to conditions, or partially approved, the Secretary shall include the written notification of his decision, the reasons for the decision.

(2) Any researcher/investigator wishing to do so may seek reconsideration in writing within ten days of the receipt of the original decision. The Secretary may remand the proposal to the Committee for its reconsideration.

#### 8. Confidentiality

No grantee, subgrantee, contractor, or subcontractor shall furnish names and other data concerning clients of the Executive Office of Elder Affairs to researcher/investigators without the client's consent in writing given pursuant to applicable Privacy and Confidentiality Regulations, 801 CMR 3.00 et seq., and EOEI PI-97-55.

#### 9. Complaints

(1) Any client, grantee, subgrantee, contractor or subcontractor, aggrieved by the actions of any researcher/investigator may file a complaint with the Committee, through the ERRC Chair. Complaints shall set forth the underlying facts that give rise to the complaint.

(2) Upon receipt of a complaint, the Committee shall notify the researcher/investigator that a complaint has been received by the Committee.

(3) If the Committee determines that the complaint sets forth facts that amount to a violation of this Program Instruction or the terms of the researcher/investigator's approved proposal, it shall undertake an investigation. As part of its investigation the Committee shall afford the person filing the

complaint and the researcher/investigator the opportunity to present any relevant information to the Committee.

- (4) If the Committee determines that there has been a violation of the provisions of this Program Instruction or the terms of the approved proposal, it may:
  - (a) recommend that the Secretary impose additional conditions on the project;
  - (b) recommend that the Secretary suspend approval of the project pending further appropriate action; or
  - (c) recommend that the Secretary rescind approval of the project.
  
- (5) If the grievance sets forth facts alleging that conditions exist that threaten the health or physical or mental well-being of clients, the Secretary may order the immediate cessation of the project until the Committee has acted upon the complaint.
  
- (6) The Committee shall promptly notify the person filing the complaint and the researcher/investigator in writing of its decision and the reasons for the decision.

#### 10. Monitoring

- (1) The Executive Office of Elder Affairs may, in its discretion, monitor ongoing projects.
  
- (2) Executive Office of Elder Affairs monitoring activities may include:
  - (a) interviewing responsible project staff or grantee, subgrantee, contractor or subcontractor staff;
  - (b) review of written reports and supporting documents; and
  - (c) on-site inspections and reviews including interviews with project participants.

## SPRINGWELL

### HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT (HIPAA) BUSINESS ASSOCIATE AGREEMENT

This agreement is made effective the 1st day of October, 2016 by and between Springwell, Inc. located at 307 Waverley Oaks Road, Suite 205, Waltham, MA 02452 (hereinafter referred to as “the Covered Entity”) and [Vendor Name & Address](#) (hereinafter referred to as “the Business Associate”) for the purpose of providing services.

To perform this function, the Business Associate is in need of specific consumer information, all of which constitutes Protected Health Information (PHI). The Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to the Business Associate pursuant to the purpose of providing services in compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended through March 26, 2013 and the regulations promulgated thereunder by the U. S. Department of Health and Human Services (the “HIPAA Rules”) and other applicable laws.

The purpose of this Agreement is to satisfy certain standards and requirements of the HIPAA Privacy Rule, including, but not limited to, Title 45, Section 164.504 (e) of the Code of Federal Regulations (“C.F.R.”), as the same may be amended from time to time.

#### Definition of Terms:

For the purpose of this agreement the following definitions of terms apply:

- “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, shall mean (name of Business Associate)
- “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, shall mean ASAP, Inc.
- “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- “Disclosure,” with respect to Protected Health Information (PHI), shall mean the release, transfer, provision of access to, or divulging in any manner of PHI outside the entity holding the PHI.
- “Consumer” shall mean the person who is the subject of the Protected Health Information.
- “Protected Health Information” or “PHI” shall mean any information, whether oral or recorded in any form or medium that relates to the past, present or future physical or mental health condition of a consumer; the provision of health care to a consumer; or the past, present or future payment for the provision of health care to a consumer.

- Under this agreement, PHI is any information that identifies the consumer or, with respect to which, there is reasonable basis to believe the information can be used to identify the consumer.

**Privacy Protection:**

To protect privacy and provide for the security of PHI the Business Associate agrees to the following:

1. The consumer information being provided is to be used for the purpose of providing services for the Covered Entity. This information is not to be used for any other purpose than that which is listed in this agreement. The Business Associate agrees not to use or disclose information other than as permitted by this agreement or as required by law.
2. The Business Associate is permitted to use and disclose protected health information for proper management and administration or to carry out its legal responsibilities if the disclosure is required by law, or if the Business Associate 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. Furthermore, the person must notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
3. All uses, disclosures, and requests for PHI must be made in accordance with the “minimum necessary rule;” that is, limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
4. The Business Associate may not use or disclose protected health information in a manner that would violate HIPAA rules if done by the Covered Entity.
5. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent the use or disclosure of PHI other than as provided for by the Agreement.
6. Report to the Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware.
7. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.



8. The Business Associate agrees to develop and implement a system of sanctions for any employee, subcontractor, or agent who violates this agreement or the Privacy Rule.
9. Should any consumer, who is the subject of the healthcare information, request to view the information, the information is to be provided to the Individual by the Business Associate in accordance with the provisions of the HIPAA Privacy Rule, 45 CFR § 164.524, with same day notification to the Covered Entity.
10. The Business Associate must make available PHI to an Individual for amendment and incorporate any amendments to PHI in accordance with the HIPAA Privacy Rule, 45 CFR § 164.526.
11. The Business Associate must make available the information required to provide an accounting of unauthorized disclosures in accordance with the HIPAA Privacy Rule, 45 CFR § 164.528.
12. Upon request, the Business Associate shall make available to the Covered Entity any and all documentation relevant to the safeguarding of information including but not limited to current policies and procedures, operational manuals and/or instructions, and/or employment and/or third party agreements.
13. The Business Associate must make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Covered Entity available to the Secretary of Health and Human Services for purposes of determining the Covered Entity's compliance with HIPAA.
14. Upon termination of this agreement, the Business Associate will, if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. If the Business Associate must continue to maintain healthcare information after the termination of this agreement, the information is to be maintained as confidential for as long as the business associate possesses the information.
15. The Covered Entity reserves the right to terminate any existing contract for the purpose of providing services if it has been determined that the Business Associate is in violation of any material terms of this agreement. The Covered Entity will conduct an investigation should a complaint be filed or other information provided that identifies substantial and credible evidence of a violation by the Business Associate. The Covered Entity reserves the right to act upon any information about a violation and take reasonable steps to cure the breach or end

the violation. If such steps are unsuccessful, the Covered Entity shall terminate the agreement, if feasible, or report the problem to the Secretary of Health and Human Services, if not feasible.

16. The obligations of the Business Associate under this Section shall survive the termination of this Agreement.
17. Neither party shall be liable to the other for any special, incidental, exemplary, punitive or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any information pursuant to this Agreement, even if the other Party has been advised of the possibility of such damages.
18. The Parties agree that any part of this Agreement that is revoked or amended by legislative action or invalidated by judicial decision in a court of general competence and authority over this Agreement shall cease to be effective on the date of revocation, amendment or invalidation, without change to the remainder of the Agreement wheresoever possible. The Parties agree to discuss and amend this Agreement as necessary to maintain compliance with current legislative, regulatory and judicial requirements to meet the spirit and purpose of enhanced confidentiality of Protected Health Information. No new or additional legislative, regulatory or judicial requirement related to confidentiality of PHI shall take effect under this Agreement until the appropriate amendment is signed by the parties, except by operation of law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Covered Entity  
Springwell, Inc.

Business Associate  
*Vendor Name*

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Ruth Beckerman-Rodau, CEO

\_\_\_\_\_  
(Name and Title of Authorized Signer)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Hold Harmless Agreement

The Provider hereby shall release, defend, indemnify, and hold harmless Springwell, Inc. (ASAP), its employees, officers, directors, agents, and contractors, from and against any loss, liability, claims, damages, reasonable costs, and expenses, including without limitation attorney's fees, asserted by any third party for claims or actions solely arising out of or as result of the Providers negligence.

Springwell, Inc. (ASAP) shall likewise release, defend, indemnify and hold harmless the Provider, its employees, officers, directors, agents, and contractors, from and against any loss, liability, claims, damages, reasonable costs, and expenses, including without limitation attorneys' fees, asserted by any their-party for claims or actions arising out of or as the result of Springwell, Inc.'s (ASAP's) negligence.

Springwell, Inc.

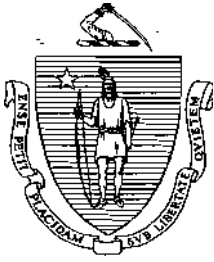
*Vendor Name*

\_\_\_\_\_  
Ruth Beckerman-Rodau, CEO

\_\_\_\_\_  
Provider Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



OFFICE OF THE GOVERNOR  
COMMONWEALTH OF MASSACHUSETTS  
STATE HOUSE • BOSTON, MA 02133  
(617) 725-4000

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

By His Excellency

DEVAL L. PATRICK  
GOVERNOR

EXECUTIVE ORDER NO. 504 \_\_\_\_\_

ORDER REGARDING THE SECURITY AND  
CONFIDENTIALITY OF PERSONAL INFORMATION

(Revoking and Superseding Executive Order 412)

WHEREAS, identity theft is a serious crime that, according to current Federal Trade Commission statistics, affects as many as 9 million Americans each year and costs consumers and businesses approximately \$52 billion annually;

WHEREAS, the Commonwealth of Massachusetts has recognized the growing threat of identity theft and taken steps to safeguard the personal information of its residents by, among other things, enacting Massachusetts General Laws Chapter 93H ("Chapter 93H");

WHEREAS, pursuant to Chapter 93H, the Massachusetts Office of Consumer Affairs and Business Regulation has promulgated regulations, effective January 1, 2009, defining security standards that must be met by persons, other than state entities, who own, license, store or maintain personal information about residents of the Commonwealth;

WHEREAS, also pursuant to Chapter 93H, the Secretary of the Commonwealth, through his Supervisor of Public Records, is charged

SECRETARY OF STATE  
REGULATORY DIVISION  
2008 SEP 19 PM 1:41

with establishing rules or regulations designed to safeguard personal information that is owned or licensed by state executive offices and authorities;

WHEREAS, the Executive Department recognizes the importance of developing and implementing uniform policies and standards across state government to safeguard the security, confidentiality and integrity of personal information maintained by state agencies; and

WHEREAS, the implementation of such policies and standards will further the objectives of Chapter 93H and will demonstrate the Commonwealth's commitment to adhere to standards equal to or higher than those that govern the private sector.

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § I, Art. I, do hereby revoke Executive Order 412 and order as follows:

Section 1. This Executive Order shall apply to all state agencies in the Executive Department. As used in this Order, "state agencies" (or "agencies") shall include all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established.

Section 2. It shall be the policy of the Executive Department of the Commonwealth of Massachusetts to adopt and implement the maximum feasible measures reasonably needed to ensure the security, confidentiality and integrity of personal information, as defined in Chapter 93H, and personal data, as defined in Massachusetts General Laws Chapter 66A, maintained by state agencies (hereafter, collectively, "personal information"). Each executive officer and agency head serving under the Governor, and all state employees, shall take immediate, affirmative steps to ensure compliance with this policy and with applicable federal and state privacy and information security laws and regulations.

Section 3. All state agencies shall develop, implement and maintain written information security programs governing their collection, use,

dissemination, storage, retention and destruction of personal information. The programs shall ensure that agencies collect the minimum quantity of personal information reasonably needed to accomplish the legitimate purpose for which the information is collected; securely store and protect the information against unauthorized access, destruction, use, modification, disclosure or loss; provide access to and disseminate the information only to those persons and entities who reasonably require the information to perform their duties; and destroy the information as soon as it is no longer needed or required to be maintained by state or federal record retention requirements. The security programs shall address, without limitation, administrative, technical and physical safeguards, and shall comply with all federal and state privacy and information security laws and regulations, including but not limited to all applicable rules and regulations issued by the Secretary of State's Supervisor of Public Records under Chapter 93H.

Section 4. Each agency's written information security program shall include provisions that relate to the protection of information stored or maintained in electronic form (hereafter, "electronic security plans"). The Commonwealth's Chief Information Officer ("CIO") shall have the authority to:

- Issue detailed guidelines, standards, and policies governing agencies' development, implementation and maintenance of electronic security plans;
- Require that agencies submit their electronic security plans to ITD for review, following which ITD shall either approve the plans, return them for amendment, or reject them and mandate the preparation of a new plan;
- Issue guidelines specifying when agencies will be required to prepare and submit supplemental or updated electronic security plans to ITD for approval;
- Establish periodic reporting requirements pursuant to which all agencies shall conduct and submit self-audits to ITD no less than annually, assessing the state of their implementation and compliance with their electronic security plans, guidelines, standards, and policies issued by ITD, and with all applicable federal and state privacy and information security laws and regulations;

- Conduct reviews to assess agency compliance with the governing plans, guidelines, standards, policies, laws and regulations. At the discretion of ITD, reviews may be conducted on site or electronically, and may be announced or unannounced;
- Issue policies requiring that incidents involving a breach of security or unauthorized acquisition or use of personal information be immediately reported to ITD and to such other entities as required by the notice provisions of Chapter 93H; and
- Where necessary and appropriate, and with the approval of the Secretary for Administration and Finance, determine and implement remedial courses of action to assist non-compliant agencies in achieving compliance with the governing plans, guidelines, standards, policies, laws and regulations. Such actions may include, without limitation, the imposition of terms and conditions relating to an agency's information technology ("IT")-related expenditures and use of IT capital funding.

Section 5. Each agency shall appoint an Information Security Officer ("ISO"), who may also hold another position within the agency. ISOs shall report directly to their respective Agency heads and shall coordinate their agency's compliance with the requirements of this Order, applicable federal and state laws and regulations, and ITD security standards and policies. All agency security programs, plans, self-audits, and reports required by this Order shall contain certifications signed by the responsible ISO and the responsible agency head attesting to the accuracy and completeness of the submissions.

Section 6. All agency heads, managers, supervisors, and employees (including contract employees) shall attend mandatory information security training within one year of the effective date of this Order. For future employees, such training shall be part of the standardized orientation provided at the time they commence work. Such training shall include, without limitation, guidance to employees regarding **maintaining and safeguarding records and data** that contain personal information.

Section 7. The Enterprise Security Board ("ESB"), as presently established, shall advise the CIO in developing the guidelines, standards, and policies required by Section 4 of this Order. Consistent with the ESB's current framework, the precise members and make-up of the ESB shall be determined by the CIO, but its membership shall be drawn from state employees across the Executive Department with knowledge and experience in the fields of information technology, privacy and security, together with such additional representatives from the Judicial and Legislative Branches, other constitutional offices, and quasi-public authorities who accept an invitation from the CIO to participate. The ESB shall function as a consultative body to advise the CIO in developing and promulgating guidelines, standards, and policies that reflect best practices to ensure the security, confidentiality and integrity of the electronic personal information collected, stored, used, and disseminated by the Commonwealth's IT resources.

Section 8. The CIO shall develop mandatory standards and procedures for agencies to follow before entering into contracts that will provide third parties with access to electronic personal information or information technology systems containing such information. Such standards must require that appropriate measures be taken to verify the competency and integrity of contractors and subcontractors, minimize the data and systems to which they will be given access, and ensure the security, confidentiality and integrity of such data and systems.

Section 9. All contracts entered into by state agencies after January 1, 2009 shall contain provisions requiring contractors to certify that they have read this Executive Order, that they have reviewed and will comply with all information security programs, plans, guidelines, standards and policies that apply to the work they will be performing for their contracting agency, that they will communicate these provisions to and enforce them against their subcontractors, and that they will implement and maintain any other reasonable and appropriate security procedures and practices necessary to protect personal information to which they are given access as part of the contract from unauthorized access, destruction, use, modification, disclosure or loss. The foregoing contractual provisions shall be drafted by ITD, the Office of the Comptroller, and the Operational



Services Division, which shall develop and implement uniform language to be incorporated into all contracts that are executed by state agencies. The provisions shall be enforced through the contracting agency and the Operational Services Division. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

Section 10. In performing their responsibilities under this Order, ITD, the CIO and the Operational Services Division shall have the full cooperation of all state agencies, including compliance with all requests for information.

Section 11. This Executive Order shall take effect immediately and shall continue in effect until amended, superseded or revoked by subsequent Executive Order.



Given at the Executive Chamber in Boston this 19th day of September in the year of our Lord two thousand and eight, and of the Independence of the United States of America two hundred and thirty-two.

A handwritten signature in black ink, appearing to read "Deval Patrick", written over a horizontal line.

DEVAL L. PATRICK GOVERNOR  
Commonwealth of Massachusetts

A handwritten signature in black ink, appearing to read "William Francis Galvin", written over a horizontal line.

WILLIAM FRANCIS GALVIN  
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

## **Executive Order 504 Provider Certification and Data Security Addendum**

For all Agreements involving the Provider's access to personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A, owned or controlled by the Executive Office of Elder Affairs or any other Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), the Provider certifies under the pains and penalties of perjury that the Provider (1) has read Commonwealth of Massachusetts [Executive Order 504](#) and agrees to protect any and all personal information; and (2) has reviewed all of the [Commonwealth of Massachusetts Information Technology Division's Security Policies](#).

Notwithstanding any contractual provision to the contrary, in connection with the Provider's performance under this Agreement, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Provider shall:

(1) obtain a copy, review, and comply with the Information Security Program (ISP) of the Executive Office of Elder Affairs upon its release and any pertinent security guidelines, standards and policies and comply with all of the [Commonwealth of Massachusetts Information Technology Division's Security Policies](#) ("Security Policies");

(2) communicate to its workforce the ISP of the Executive Office of Elder Affairs upon its release and such Security Policies and require compliance by all employees (whether such employees are direct or contracted) and subcontractors;

(3) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Provider is given access by the Corporation or the Executive Office of Elder Affairs from the unauthorized access, destruction, use, modification, disclosure or loss;

(4) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Agreement, and any breach of these terms may be regarded as a material breach of this Agreement;

(5) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Provider becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the Corporation, the Executive Office of Elder Affairs and the Provider to fulfill any notification requirements.

(6) comply with all state and federal laws and regulations related to data security, privacy, and confidentiality, including without limitation HIPAA, MGL c. 66A, MGL c. 93H, and (effective January 1, 2010) 201 CMR 17.00 et seq.

Breach of these terms may be regarded as a material breach of this Agreement. In addition, the Provider may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to M.G.L. c. 93H and under M.G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

Provider Name: \_\_\_\_\_

Provider Authorized Signature: \_\_\_\_\_

Print Name and Title of Authorized  
Signatory: \_\_\_\_\_

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

This Addendum may be signed once and photocopied to be attached to any Provider Agreement and shall be interpreted to be incorporated by reference into any applicable contract or agreement for this Provider.



**Commonwealth of Massachusetts**  
**Executive Office of Health and Human Services**  
**Office of Medicaid**  
600 Washington Street  
Boston, MA 02111  
[www.mass.gov/masshealth](http://www.mass.gov/masshealth)



**MassHealth**  
**All Provider Bulletin 196**  
**October 2009**

**TO:** All Providers Participating in MassHealth

**FROM:** Terence G. Dougherty, Interim Medicaid Director *TGD*

**RE:** Provider Obligation to Screen Employees and Contractors for Exclusion from Participation in Federal Health Care Programs

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**Background**

This bulletin advises providers of their obligation to screen their employees and contractors, both individuals and entities, to determine if they have been excluded from participation in federal health care programs, including state Medicaid programs such as MassHealth.

Under various laws, including Sections 1128, 1128A, and 1156 of the Social Security Act, the U.S. Department of Health and Human Services, Office of Inspector General (OIG) may exclude individuals and entities from participation in federal health care programs, such as MassHealth, if such individuals and entities have engaged in certain program-related misconduct or have been convicted of certain crimes, including patient abuse or fraudulent submission of claims.

Once an individual or entity is excluded by OIG, federal regulations at 42 CFR 1001.1901(b) prohibit MassHealth from paying for any items or services furnished, ordered, or prescribed by the excluded individual or entity. (Details about the scope and effect of this prohibition may be found at 42 CFR 1001.1901(a), (b), and (c)).

The payment prohibition bars

- direct payment to excluded individuals and entities;
- payment to individuals or entities that employ or contract with excluded individuals or entities; and
- payment for administrative and management services furnished by excluded individuals or entities that are not directly related to patient care, but are a necessary component of providing items and services to MassHealth members.

The payment prohibition applies regardless of who submits the claim and applies to all methods of reimbursement.

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*(continued on next page)*

**Background**  
(cont.)

The following examples, taken from a 1999 OIG Special Advisory Bulletin entitled the Effect of Exclusion from Participation in Federal Health Care Programs, illustrate some of the situations where payment is barred:

- services performed by excluded nurses, technicians, or other excluded individuals who work for a hospital, nursing home, home health agency or physician practice, where such services are related to administrative duties, preparation of surgical trays or review of treatment plans if such services are reimbursed directly or indirectly (such as through a pay per service or a bundled payment) by a Medicaid program, even if the individuals do not furnish direct care to Medicaid recipients;
- services performed by excluded pharmacists or other excluded individuals who input prescription information for pharmacy billing or who are involved in any way in filling prescriptions for drugs reimbursed, directly or indirectly, by a Medicaid program;
- services performed by an excluded administrator, billing agent, accountant, claims processor or utilization reviewer that are related to and reimbursed, directly or indirectly, by a Medicaid program; and
- items or equipment sold by an excluded manufacturer or supplier, used in the care or treatment of recipients and reimbursed, directly or indirectly, by a Medicaid program.

In addition to barring payment, federal regulations at 42 CFR 1003.102(a)(2) authorize OIG to impose civil money penalties directly upon individuals or entities that, by employment or otherwise, arrange or contract with an excluded individual or entity for the provision of items or services to enrollees within a federal health care program such as MassHealth.

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**What You Must Do**

To protect against payments for items or services furnished, ordered, or prescribed by excluded individuals or entities, you must

- use OIG's List of Excluded Individuals/Entities, described below, to screen all employees and contractors to determine if OIG has excluded them from participation in federal health care programs, both upon initial hiring or contracting and on an ongoing monthly basis; and
- immediately report any discovered exclusion of an employee or contractor to the EOHHS Compliance Office by telephone at 617-348-5202, by fax at 617-210-5474, via e-mail at [Compliance.Office@ehs.state.ma.us](mailto:Compliance.Office@ehs.state.ma.us), or by U.S. mail addressed to Compliance Office, 600 Washington Street, #5276, Boston, MA 02111.

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***Recommended Actions***

In order to establish sound compliance practices with this federally mandated requirement we recommend that you:

- develop policies and procedures for regular review of OIG's List of Excluded Individuals/Entities, described below, at time of hire and contracting and on a monthly basis;
- develop reliable, auditable documentation of when these procedures are performed; and
- periodically conduct self-audits of internal documentation and compliance with this requirement.

For additional information, please refer to CMS State Medicaid Director Letter (SMDL) #09-001, dated January 16, 2009.

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***OIG's List of Excluded Individuals and Entities***

OIG's List of Excluded Individuals/Entities (LEIE) is a public, Web-based, searchable database that provides information about currently excluded individuals and entities.

Web users can determine whether an individual or entity is currently excluded by entering the individual's or entity's name. If the entered name matches with the exclusion list, LEIE permits users to verify the uniqueness of the match with social security numbers, employer identification numbers, or tax identification numbers. OIG updates LEIE monthly, adding newly excluded individuals and entities and removing reinstated individuals and entities.

OIG also publishes a downloadable version of LEIE that varies in certain respects from the Web version.

The LEIE Web site is located at: [www.oig.hhs.gov/fraud/exclusions.asp](http://www.oig.hhs.gov/fraud/exclusions.asp).

More detailed information about LEIE, its use, differences between the Web and downloadable versions, and additional links to other federal Web sites explaining OIG's exclusion program can be obtained at that Web site.

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***Questions***

If you have any questions about the information in this bulletin, please contact the EOHHS Compliance Office by telephone at 617-348-5202, by fax at 617-210-5474, by e-mail at [Compliance.Office@ehs.state.ma.us](mailto:Compliance.Office@ehs.state.ma.us), or by U.S. mail addressed to Compliance Office, 600 Washington Street, #5276, Boston, MA 02111.

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## **Provider Obligation to Screen Employees and Contractors for Exclusion from Participation in Federal Health Care Programs**

### **MassHealth All Provider Bulletin 196 October 2009**

Providers are now required to screen employees to determine if they have been excluded from participation in Federal Health Care Programs, including MassHealth. Per MassHealth All Provider Bulletin 196, the Office of the Inspector General (OIG) may exclude individuals who have engaged in certain program-related misconduct or have been convicted of certain crimes, including patient abuse or fraudulent submission of claims. This means that any staff person that you employ or wish to employ to provide services to a Springwell consumer cannot be on this exclusion list. If they are on the list the individual may not provide services to a Springwell consumer.

The requirements for completing this obligation are included in the All Provider Bulletin 196, which is attached. Steps that providers must take based on the requirements in the All Provider Bulletin 196 include:

- Providers will use the OIG List of Excluded Individuals/Entities to screen all employees and contractors to determine if OIG has excluded them from participation in federal health care programs **both upon initial hiring or contracting and on an ongoing monthly basis.**
- Providers will search the OIG List of Excluded Individuals/Entities (LEIE) to determine whether an individual or entity is currently excluded by entering the individual's or entity's name. If the entered name matches with the exclusion list, LEIE permits users to verify the uniqueness of the match with social security numbers, employer identification numbers or tax identification numbers.

Springwell has added compliance to the OIG exclusion requirement as part of its ongoing Quality Assurance activities. Provider agencies that contract with Springwell will

- Develop policies and procedures for regular review of OIG's List of Excluded Individuals/Entities at the time of hire and contracting and on a monthly basis
- Develop reliable, auditable documentation of when these procedures are performed
- Periodically conduct self-audits on internal documentation and compliance with this requirement

Please note that the OIG requirements are in addition to the CORI requirements that have been an ongoing part of your contract with Springwell.

Please return a signed copy of this notification indicating that you have read MassHealth All Provider Bulletin 196 and that your agency will comply with the requirements set forth in the document.

Provider Name: \_\_\_\_\_

Provider Authorized Signature: \_\_\_\_\_

Print Name and Title of Authorized Signatory:

\_\_\_\_\_

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