

## DATA SHARING AGREEMENT

This Data Sharing Agreement (“Agreement”) is entered into by and between the Center for Improving Value in Health Care, a Colorado nonprofit corporation, having an address of 950 S. Cherry St., Suite 208, Denver, Colorado 80246, (“CIVHC”) and [REDACTED] (“Plan”) (each individually a “Party” and collectively the “Parties”). The Effective Date of this Agreement shall be [REDACTED] (“Agreement Effective Date”).

### RECITALS

- A. The Colorado All Payer Claims Database (“APCD”) is organized and operated pursuant to C.R.S. § 25.5-1-204 (the “APCD Statute”) and its implementing regulations, as promulgated by the Colorado Department of Health Care Policy and Financing (“HCPF”), including 10 CCR 2505-5, § 1.200 (the “APCD Rules”), for the purpose of facilitating the collection of health care and health quality data that informs the transparent and public reporting of safety, quality, cost, and efficiency information at all levels of health care.
- B. Under the APCD Statute, the Executive Director of HCPF is authorized to appoint an administrator of the APCD, and has duly designated CIVHC as such administrator (the “APCD Administrator”). To ensure availability of comprehensive and system wide data on health care costs and quality, the APCD Statute directs the APCD Administrator to seek to establish data submission agreements with payers not currently subject to reporting requirements under the APCD Rules. C.R.S. § 25.5-1-204(5)(b).
- C. CIVHC and HCPF have entered into a Memorandum of Agreement that clarifies the respective roles and responsibilities of HCPF and CIVHC, in its capacity as APCD Administrator, regarding the creation, development, maintenance, and operation of the APCD, and under which agreement CIVHC is granted authority to act as a Public Health Authority and to conduct the health oversight activities specified in the APCD Statute and APCD Rules while serving as the APCD Administrator.
- D. Plan is a self-insured health plan that provides (mark all that apply)  Medical;  pharmacy;  dental and/or  other \_\_\_\_\_ benefits.
- E. To the extent that it is not subject to APCD reporting requirements under the current APCD Rules, Plan wishes to submit data to the APCD in support of the APCD’s statutory objectives and pursuant to the exception in the HIPAA regulations at 45 C.F.R. §§ 164.512(b) and 164.512(d), which permit Plan to use or disclose Protected Health Information without patient authorization.
- F. The Parties intend to protect the privacy and provide for the security of individually identifiable health information, all in compliance with the Health Insurance Portability and Accountability Act (“HIPAA”), the Health Information Technology for Economic and Clinical Health (HITECH) Act, the regulations promulgated thereunder and other applicable federal and state laws.

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**NOW, THEREFORE,** in consideration of the mutual promises below, the Parties agree as follows:

- a. Section 1. Definitions. Capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the HIPAA Rules. A regulatory reference in this Agreement means the section as in effect or as amended, and for which compliance is required. “APCD” means the Colorado All Payer Claims Database as authorized pursuant to C.R.S. § 25.5-1-204.
- b. “APCD Statute” means C.R.S. § 25.5-1-204 *et seq.*
- c. “APCD Rules” means the regulations and rules from time to time promulgated pursuant to the APCD Statute, including, but not limited to 10 CCR 2505-5, § 1.200.
- d. “Applicable Law” means the APCD Statute, the APCD Rules, HIPAA, the HITECH Act, the rules and regulations from time to time promulgated thereunder, as well as other applicable federal and state laws.
- e. “Breach Notification Rule” means the Breach Notification Standards at 45 CFR Parts 160 and 164.
- f. “Eligibility Data File(s)” shall have the same meaning as such term is defined in the APCD Rules.
- g. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191 (“HIPAA”) and any regulations from time to time promulgated thereunder.
- h. “HIPAA Rules” means the Privacy, Security, and Breach Notification Rules at 45 CFR Parts 160, 162 and 164, including the *Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule*, 78 Fed. Reg. 5566, January 25, 2013.
- i. “Historic Data” means Eligibility Data File(s), Medical Claims Data File(s), Pharmacy File(s) and Provider File(s) for the three previous three full calendar years and up to current submission in the current calendar year commencing from the effective date. “HITECH Act” means the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Public Law No. 111-005 and any regulations from time to time promulgated thereunder.
- j. “Medical Claims Data File(s)” shall have the same meaning as such term is defined in the APCD Rules.
- k. “Pharmacy File(s)” shall have the same meaning as such term is defined in the APCD Rules.
- l. “Public Health Authority” shall have the same meaning as such term is defined in the Privacy Rule at 45 CFR 164.501.
- m. “Protected Health Information” shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103

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- n. “Provider File(s)” shall have the same meaning as such term is defined in the APCD Rules.
- o. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 162 and Part 164, Subparts A and E.
- p. “Security Rule” means the Security Standards at 45 CFR Parts 160 and 162 and Parts 164, Subparts A and C.

**Section 2. Data Submission.** Plan shall submit, or shall direct any Plan administrator or other party it designates to act on its behalf to submit, Historic Data to the APCD within 90 days of the effective date and then shall submit Eligibility Data File(s), Medical Claims Data File(s), Pharmacy File(s) and Provider File(s) on a monthly basis thereafter, according to the Reporting Requirements set forth in the APCD Rules at 10 CCR 2505-5, § 1.200.2 (the “Data Submissions”), including the Data Submission Guide incorporated therein (current version, subject to change under the APCD Rules, is available online at <http://www.civhc.org/wp-content/uploads/2017/09/Data-Submission-Guide-V9-FINAL.pdf/>). The Parties shall each be responsible for their own costs associated with such Data Submissions.

Plan acknowledges and agrees that Data Submissions are provided to CIVHC solely in its capacity as APCD Administrator and pursuant to the authority granted by HCPF to CIVHC to act as a Public Health Authority or Health Oversight Agency while serving as the APCD Administrator.

**Section 3. Permitted Data Uses and Disclosures.** Unless otherwise agreed by the Parties, in writing, CIVHC, in its capacity as APCD Administrator, may use and disclose such data as are provided by Plan via the Data Submissions only in a manner that (i) is consistent with the uses, disclosures, and restrictions as defined in the APCD Statute and APCD Rules; and (ii) complies with Applicable Law.

**Section 4. Data Safeguards.**

- a. **Appropriate Safeguards.** CIVHC, in its capacity as APCD Administrator, shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of such data as are provided by the Plan’s Data Submissions and that are consistent with the safeguards utilized to protect data received by the APCD Administrator as a result of reporting requirements under the APCD Rules, in compliance with Applicable Law. CIVHC shall comply with the requirements of the Security Rule in 45 C.F.R. Sections 164.308, 164.312, and 164.316.
- b. **Subcontractors.** If CIVHC uses one or more Subcontractors or agents to fulfill any of its statutory duties as the Administrator of the CO APCD, and such Subcontractors or agents receive or have access to Plan’s Data Submissions, each Subcontractor or agent shall sign an agreement with CIVHC containing substantially the same privacy and data security provisions as this Agreement. CIVHC shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and shall mitigate the effects of any such violation.
- c. **Minimum Necessary.** CIVHC (and its agents or Subcontractors) shall only request, use, and disclose the minimum amount of Protected Health Information necessary to accomplish

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the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the HIPAA Regulations including, but not limited to, 45 C.F.R. Sections 164.502(b) and 164.514(d).

- d. **Reporting Requirements.** During the term of this Agreement, CIVHC shall notify Plan without unreasonable delay and in no event more than fifteen (15) business days of any breach of security, intrusion, or unauthorized use or disclosure of Plan's Protected Health Information and/or any use or disclosure of data in violation of any applicable federal or state laws or regulations or this Agreement. Such notice shall include the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed to have been accessed, acquired, or disclosed during the breach. CIVHC shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- e. **Safeguards During Transmission.** CIVHC shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy, and security of Protected Health Information in Plan's Data Submissions transmitted to third parties in accordance with the standards and requirements of the HIPAA Regulations.

**Section 5. Compliance with Applicable Law.** The Parties shall each comply with all of their respective obligations and requirements to protect the privacy and provide for the security of individually identifiable health information under Applicable Law.

**Section 6. Term.** This Agreement shall remain in effect from the Agreement Effective Date until terminated. Either Party may terminate this Agreement by providing thirty (30) days written notice to the other Party.

**Section 7. Effect of Termination.** Upon termination of this Agreement for any reason, the rights and obligations of CIVHC, in its capacity as APCD Administrator, under Sections 3 (Permitted Data Uses and Disclosures) and 4 (Data Safeguards) will survive with respect to Data Submissions received prior to the date of termination for such time as CIVHC is designated by HCPF to be the APCD Administrator, unless Plan directs CIVHC in writing to return or destroy all of Plan's Data Submissions that CIVHC or its Subcontractors maintain in any form. If Plan requests that CIVHC destroy its Data Submissions and if CIVHC believes that returning or destroying Plan's Data Submissions is not feasible, then CIVHC shall promptly provide notice to Plan of the conditions making return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Data Submissions is infeasible, CIVHC shall continue to extend the protections of Sections 3 and 4 of this Agreement to such information.

**Section 8. Amendment.** The Parties agree to take such action to amend this Agreement from time to time as is necessary for the Parties to comply with Applicable Law. Such amendment shall be in writing and signed by both the Parties.

**Section 9. Miscellaneous Provisions.**

- a. **Assignment.** Either Party may assign its rights or delegate its duties hereunder without the consent of the other Party, provided that the assignee or transferee assumes all obligations of

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such party under this Agreement. Notwithstanding the foregoing, CIVHC may only assign its rights, and delegate its duties, under this Agreement to an entity, if any, that is designated as the APCD Administrator by the Executive Director of HCPF, pursuant to the authority conveyed by the APCD Statute.

- b. Entire Agreement. This Agreement is the complete agreement between the Parties and supersedes all previous agreements or representations, written or oral, with respect to the herein subject matter.
- c. Independent Contractors. The relationship between the Parties is that of independent contractors. This Agreement will not create any agency, joint venture, or partnership relationship between the Parties.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with Applicable Law.
- e. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- f. Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement shall continue in effect.
- g. Waiver. No delay or omission by either of the Parties to exercise any right or remedy under this Agreement will be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

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IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Agreement Effective Date.

**CIVHC**

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

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

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

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

**[PLAN]**

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

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

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

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

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