

**SAMPLE QUALIFIED SERVICE ORGANIZATION/BUSINESS ASSOCIATE AGREEMENT
(QSO/BA AGREEMENT)**

XYZ Service Center ("the Center") and the

(Name of the alcohol/drug program)

(the "Program") hereby enter into an agreement whereby the Center agrees to provide

(Nature of services to be provided to the program)

Furthermore, the Center:

(1) acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received from the Program identifying or otherwise relating to the patients in the Program ("protected information"), it is fully bound by the provisions of the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; and the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 142, 160, 162 and 164, and may not use or disclose the information except as permitted or required by this Agreement or by law;

(2) agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(3) agrees to use appropriate safeguards (*can define with more specificity*) to prevent the unauthorized use or disclosure of the protected information;

(4) agrees to report to the Program any use or disclosure of the protected information not provided for by this Agreement of which it becomes aware (*insert negotiated time & manner terms*);

(5) [*agrees to ensure that any agent, including a subcontractor, to whom the Center provides the protected information received from the Program, or created or received by the Center on behalf of the Program, agrees to the same restrictions and conditions that apply through this agreement to the Center with respect to such information.*];*

(6) agrees to provide access to the protected information at the request of the Program, or to an individual as directed by the Program, in order to meet the requirements of 45 C.F.R. ' 164.524 which provides patients with the right to access and copy their own protected information (*insert negotiated time & manner terms*);

(7) agrees to make any amendments to the protected information as directed or agreed to by the program pursuant to 45 C.F.R. § 164.526 (*insert negotiated time & manner terms*);

(8) agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the Program, or created or received by the Center on behalf of the Program, to the Program or to the Secretary of the Department of Health and Human Services for purposes of the Secretary determining the Program's compliance with HIPAA (*insert negotiated time & manner terms*);

(9) [*agrees to document disclosures of protected information, and information related to such disclosures, as would be required for the Program to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 (insert negotiated time & manner terms).*];*

(10) agrees to provide the Program or an individual information in accordance with paragraph (9) of this agreement to permit the Program to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 (*insert negotiated time & manner terms*);

Termination

(1) The program may terminate this agreement if it determines that the Center has violated any material term;

(2) Upon termination of this agreement for any reason, the Center shall return or destroy all protected information received from the Program, or created or received by the Center on behalf of the Program. This provision shall apply to protected information that is in the possession of subcontractors or agents of the Center. The Center shall retain no copies of the protected information.

(3) In the event that the Center determines that returning or destroying the protected information is infeasible, the Center shall notify the Program of the conditions that make return or destruction infeasible (*insert negotiated time & manner terms*).

Upon notification that the return or destruction of the protected information is infeasible, the Center shall extend the protections of this Agreement to such protected information and limit further uses and disclosures of the information to those purposes that make the return or destruction infeasible, as long as the Center maintains the information.

Executed this _____ day of _____, 200 _____.

President
XYZ Service Center
[address]

Program Director
[Name of the Program]
[address]

*Although HIPAA requires these paragraphs to be included in Business Associate agreements, 42 C.F.R. § 2.11 requires qualified service organizations to abide by the federal drug and alcohol regulations which prohibit such organizations from redisclosing any patient identifying information even to an agent or subcontractor. Legal Action Center has asked HHS for an opinion on this issue.