CTeL DRAFT

PHYSICIAN CREDENTIALING AND PRIVILEGING AGREEMENT BETWEEN HOSPITALS

TEMPLATE
THIS PHYSICIAN CREDENTIALING AND PRIVILEGING AGREEMENT (Agreement) is entered into as of the ______ day of ____________, 2011 (Effective Date), by and between ABCD Originating Site Hospital (OS), and WXYZ Distant Site Hospital (DS) (collectively the Parties).

The parties hereby agree as follows:

1. **OS Relationship.** OS is an acute care hospital which participates in the Medicare program and desires to engage DS which also participates in the Medicare program, to provide certain clinical services from distance via electronic communications to patients physically located at OS (Contracted Services). For purposes of this Agreement, each physician affiliated with DS providing or anticipated to provide Contracted Services is a Physician (collectively Physicians). OS and DS shall agree on a process by which DS may obtain, or have access to, all the necessary patient records from OS.

2. **Compliance with Conditions of Participation.** The OS governing body shall ensure that the DS, acting as an independent contractor, is a Medicare-participating hospital and furnishes its services in a manner that enables the OS to comply with all applicable Medicare conditions of participation for Contracted Services. These areas of compliance shall include, but not be limited to, the requirements for the DS medical staff, governing body, and credentialing and privileging regarding DS physicians providing telemedicine services (42 CFR 482.12(a)(1) through (a)(7); 482.12(a)(1)-(2); 42 CFR 485.616(c)).

3. **Practice Credentialing and Privileging.** DS warrants that each Physician (i) will be credentialed and privileged according to the credentialing and privileging processes and standards, which meet or exceed the OS Standards; and (ii) shall render Contracted Services within the scope of the Physician’s respective privileges.

4. **State or Territorial Licensure.** At all times while providing Contracted Services to OS, each Physician will hold a license issued or recognized by the state in which OS is located.

5. **Decision of Governing Body.** OS’s governing body has chosen to rely on DS’s credentialing and privileging decisions for purposes of OS’s medical staff determining whether or not to recommend that privileges be granted to a Physician.

6. **DS to Provide Current List of Privileges.** DS has supplied OS with Schedule 1, a list identifying each Physician and the scope of privileges granted by DS. It is anticipated that this complement of physicians may change from time to time. In that event the following procedures shall apply:
(a) **Action by DS:** DS shall provide OS with a revised Schedule 1 indicating the name of any new Physicians and an accompanying delineation of privileges. If DS has removed a Physician from the roster of physicians anticipated to provide Contracted Services going forward or if the DS telemedicine entity physician loses privileges, DS will provide a revised Schedule 1.

(b) **Action by OS upon Receipt of New Schedule from DS:** OS shall confirm the physicians listed on Schedule 1 can provide Contracted Services by signing and faxing the updated Schedule to DS.

If the only changes were removals, OS agrees that DS may remove the Physician(s) without waiting for a signed Schedule 1 to be returned.

(c) **Action by OS to Initiate Removal of a Physician.** If OS no longer wishes to receive Contracted Services from a Physician for reasons not requiring a hearing, OS will request that DS remove the Physician from the roster, following which, DS will supply an updated Schedule 1 as described in Section 6(a).

7. **Credentialing-Related Materials.** DS shall provide electronic copies of credentialing materials and other reasonable evidence of DS’s compliance with the OS Standards. However, DS will not provide OS or its agent a copy of any information it receives from the National Practitioner Data Bank or Healthcare Integrity and Protection Data Bank.

8. **Provision and Confidentiality of Quality Related Data.**

(a) **OS Duties.** OS shall provide DS evidence of its internal review of each DS-affiliated physician’s performance of the privileges, for use in DS’s periodic appraisal of the physicians. The governing body of the OS shall, in its sole discretion, determine the frequency of such periodic assessments of DS telemedicine services hereunder. At a minimum, this information must include:

(i) all adverse events that result from a physician’s Contracted Services provided to OS patients, and

(ii) all complaints OS has received about the Physician.

If OS is a critical access hospital, OS is responsible for periodic evaluation and quality assurance reviews that comply with 42 CFR 485.641(b)(4)(v).

(b) As required by law, the OS shall make such periodic assessments available to the DS upon reasonable request, in a time and manner consistent with clinical quality and patient safety.
9. **Confidentiality.** The parties shall treat all credentialing information shared pursuant to Section 6 and all quality-related information shared pursuant to Section 8 as privileged and confidential. Such information is to be used for credentialing, quality improvement, and peer review activities only. Each party shall ensure that no portion of any materials or information received from the other party are disclosed by it or its agents to any employee or third party for reasons unrelated to evaluating the physician’s quality and credentials to provide Contracted Services, except as required by law. It is understood that disclosure of such OS peer review documents to DS does not waive any privileges or protections afforded such documents by law.

10. **Term and Termination.** This Agreement shall continue from the Effective Date until terminated by either party as provided, below:

   (a) **Upon Notice.** Either party may terminate without cause on at least 30 days prior written notice to the other party.

   (b) **Termination upon Material Breach.** A non-breaching party may terminate this Agreement for cause at any time upon 30 days’ written notice of intent to terminate. In the event the defaulting party cures such default within such 30 day notice period, the non-breaching party may elect, at its discretion, to rescind the termination notice in writing, in which case this Agreement shall continue in full force and effect.

11. **Legislative/Regulatory Modification.** If any law, regulation or standard is enacted, promulgated, or modified in a manner that, in the opinion of a party’s legal counsel (i) prohibits, restricts or in any way materially affects this Agreement; (ii) subjects either OS or DS to a fine or penalty in connection with its representations or responsibilities hereunder, or (iii) subjects either party to a loss of Medicare or Medicaid certification or other accreditation bodies because of the existence of this Agreement or the applicable party’s representations or performance of obligations hereunder, then within 30 days following notice from one party to the other, the parties shall complete the good faith negotiation of an amendment to this Agreement or a substitute agreement that will carry out the original intention of the parties to the extent possible in light of such law, regulation or standard and each party shall execute such amendment or new agreement.

   If the parties cannot reach agreement on new terms within 60 days following the notice provided hereunder or such earlier date as necessary to avoid substantial penalties or fines, then this Agreement shall immediately terminate, following written notice of termination from either party.

12. **Indemnification.** Each of the parties shall indemnify and hold the other harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitations, attorneys’ fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement by either of the Parties, or by their respective employees, subcontractors or agents.
13. **Notice.** Any notice required by this Agreement shall be in writing and shall be deemed to have been properly given to a party (i) if hand delivered, (ii) if delivered overnight by courier service, effective on the first business day following delivery to such carrier, or (iii) if sent certified mail, return receipt requested, effective three (3) days after deposit in the United States mail, addressed to the address below or as the parties may designate by giving notice pursuant to this Section:

<table>
<thead>
<tr>
<th>ABCD Originating Site Hospital</th>
<th>WXYZ Distant Site Hospital</th>
</tr>
</thead>
<tbody>
<tr>
<td>5555 First Street</td>
<td>1111 Main Avenue</td>
</tr>
<tr>
<td>Public City, ND 00000</td>
<td>Anytown, NY 00000</td>
</tr>
</tbody>
</table>

14. **Third-Party Beneficiaries.** This Agreement shall not confer any benefit or rights upon any person other than OS and DS, and no third party shall be entitled to enforce any obligation, responsibility or claim of any party to this Agreement.

15. **Other Agreements.** This Agreement, including all exhibits hereto, contains the entire understanding and agreement of the parties with respect to the credentialing and privileging of DS radiologists. In the event of a conflict between a provision contained in this Agreement and a provision contained in an agreement or arrangement that existed prior to the Effective Date of this Agreement, the terms of this Agreement shall control and govern the actions of the parties.

16. **Services Not Applicable.** This Agreement only applies to Contracted Services provided directly to the patient and does not apply to informal consultation among physicians or practitioners, by whatever communications media the physicians or practitioners choose to use.

17. **Counterparts.** This Agreement may be executed by facsimile signature or encrypted, digital signature, and by either of the parties in counterparts, each of which will be deemed to be an original, but all such counterparts will constitute a single instrument.

IN WITNESS WHEREOF, the undersigned parties hereto have executed this Physician Credentialing and Privileging Agreement effective as of the latter of the dates signed.

<table>
<thead>
<tr>
<th>ABCD Originating Site Hospital</th>
<th>WXYZ Distant Site Hospital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td>Signature</td>
</tr>
<tr>
<td>Print Name and Title</td>
<td>Print Name and Title</td>
</tr>
<tr>
<td>Date</td>
<td>Date</td>
</tr>
</tbody>
</table>
Instructions to OS:

If this is the first Schedule, all Physicians will be “A,” for added this Schedule. Please indicate that the Physicians may begin performing Contracted Services for OS by signing and dating and returning by fax to the fax number below. If strike outs are necessary, please make the change and initial it.

If this is a revised Schedule, note any added or removed physician, and, if the added Physician(s) may begin providing Contracted Services, sign and date the form and return it by fax to the fax number below. Previously listed Physicians will remain on the Schedule until they are removed.

When complete, please sign and fax back both pages to 555-555-5555.

DS has issued privileges to the following Physicians and requests confirmation from OS that each Physician has been issued OS privileges or is otherwise permitted to provide Contracted Services to OS. Each Physician’s delineation of privileges is attached and incorporated herein.
The undersigned accept, attach, and incorporate this Schedule 1 into the Credentialing Agreement executed between OS and DS. This Schedule 1 replaces the previous Schedule 1.

List of Physicians Privileged

<table>
<thead>
<tr>
<th>NAME</th>
<th>A—Added via this Schedule</th>
<th>NAME</th>
<th>A—Added via this Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>R- Removed via this Schedule</td>
<td></td>
<td>R- Removed via this Schedule</td>
</tr>
<tr>
<td>NAME</td>
<td>A—Added via this Schedule</td>
<td>R—Removed via this Schedule</td>
<td>NAME</td>
</tr>
<tr>
<td>------</td>
<td>---------------------------</td>
<td>-----------------------------</td>
<td>------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ABCD Originating Site Hospital

WXYZ Distant Site Hospital

Signature

Signature

Print Name and Title

Print Name and Title

Date

Date
Acknowledgements:

CTEL wishes to express its appreciation to Rene Quashie, CTEL Regulatory Attorney and Shawn Mathis, Research Associate at Loyola University Chicago Beazley Institute for Health Law and Policy for their assistance in preparing this sample agreement.

For more information, contact:

The Center for Telehealth and e-Health Law
1500 K Street, N.W., 11th Floor
Washington, DC 20005
Phone: 202-230-5090
Email: info@ctel.org
www.ctel.org

Disclaimer:

This template, materials and information contained on the CTeL web site are intended to provide information (not legal advice) about important new legislation or other legal developments. The great number of legal developments does not permit the issuing of an update for each one, nor does it allow the issuing of a follow-up on all subsequent developments. Internet subscribers and online readers should not act upon this information without consulting with legal counsel. Transmission and receipt of materials provided by the CTeL Web site is not intended to create an attorney-client relationship.

July 11, 2011