

MEMORANDUM OF AGREEMENT

Between Wisconsin of Veterans Affairs and National Association of County Veteran Service Officers, Inc.

- 1) **Background.** This memorandum of agreement (MOA) memorializes an agreement of mutual benefit for and between the National Association of County Veterans Service Officers (NACVSO) and the Wisconsin Department of Veteran Affairs (WDVA). For this MOA NACVSO members must be employed by a county within WDVA's operational jurisdiction.
- 2) **Purpose.** The purpose of the MOA is to set forth the principles of the working relationship between the WDVA and the NACVSO to facilitate our common goal of service to veterans.
 - a) This MOA shall provide the WDVA with a trained, competent and accredited cadre of County Veterans Service Officers to complement the WDVA's Accredited Representatives or Power of Attorney (POA) for Department of Veterans Affairs (VA) purposes.
 - b) This MOA shall provide the NACVSO accredited members with access to VA's remote automated records for which the WDVA is the POA. In addition, this agreement shall provide NACVSO with advocate liaisons, via WDVA's Accredited Representatives, co-located within VA Regional Offices to assist in the development, presentation, prosecution, and appeals of veterans' claims.
- 3) **WDVA Accreditation.** Each NACVSO member seeking accreditation with WDVA shall be provided a copy of this MOA, along with the WDVA Accreditation Agreement, by the NACVSO state representative to NACVSO. The eligible NACVSO member must then submit a completed VA Form 21, Application for Accreditation Agreement, to WDVA's Bureau of Claims Supervisor through the designated NACVSO point of contact. In recommending a CVSO for accreditation NACVSO shall certify:
 - a) The CVSO is a paid employee of a specified county working for not less than 1,000 hours annually;
 - b) The CVSO has successfully completed, at a minimum, the NACVSO 32-hour course of training and successfully passed an examination approved by the VA;
 - c) The CVSO shall receive annual training to assure continued qualification as a representative in the claims process;
 - d) The CVSO is accredited by NACVSO;
 - e) NACVSO and CVSO agree to abide by the WDVA terms and limitations of CVSO accreditation (See paragraph 4)
- 3.1) **NACVSO Accreditation.** Each WDVA employee seeking NACVSO accreditation shall be provided a copy of this MOA, along with the NACVSO Accreditation Agreement, by the WDVA Supervisor. The eligible WDVA employee must then submit a completed VA Form 21, Application for Accreditation Agreement, to the NACVSO's National Service Director through the designated WDVA point of contact. In recommending a WDVA representative for accreditation of the NACVSO shall certify:

- a) The representative is a paid employee of WDVA working for not less than 1,000 hours annually;
 - b) The WDVA Bureau of Claims supervisor shall provide NACVSO with WDVA accreditation verification;
 - c) The WDVA claims staff shall receive annual training to assure continued qualification as a representative in the claims process; and
 - d) The WDVA representative shall not change NACVSO POA without notification to the originating CVSO.
- 4) **Terms and Limitations of CVSO Accreditation.** Parties shall abide by the following terms and limitations of accreditation:
- a) CVSOs agree to distribute WDVA's Statement of Policy for Representation to all clientele electing WDVA representation;
 - b) CVSOs submit VA form 21 and proof of NACVSO Accreditation to WDVA to successfully be accredited;
 - c) CVSOs shall process all client related information (i.e., correspondence, forms etc.) in a prompt and timely manner through the WDVA Claims Division for review prior to submission to the VA;
 - d) CVSOs shall not prepare appellate briefs (VA Form 646) on behalf of the WDVA clientele; and
 - e) CVSOs may be present but shall not represent WDVA clientele before administrative hearing personnel and/or panels (i.e., DRO, VARO, BVA, COWC, etc.).
 - f) WDVA employees representing NACVSO shall process all correspondence from CVSOs, regardless of avenue of submission (e.g. electronic submission, physical document submission) in a prompt and timely manner for submission to the VA.
- 5) **Revocation of Accreditation.** In addition to the circumstances described in 38 C.F.R - § 14.633, either party reserves the right to revoke accreditation for failure to uphold the terms of this MOA.
- 6) **Legal Obligation to Safeguard Veteran Data.** Each party is individually responsible for determining which laws apply to their respective organizations, and for ensuring compliance. A non-exhaustive list of current laws which apply to the type of data utilized by WDVA, include the following:
- a) Provisions of law directly related to VA Claims:
 - 1. 38 U.S.C. § 5701 Confidential Nature of Claims (USDVA claims confidentiality):
 - a. Provides for the confidentiality of all VA patient claimant information, with special protection for their names and home addresses.
 - b. Provides for the same for information about their dependents.

- c. Prohibits disclosure of these names and addresses except as authorized by the statute.
 - d. Does not apply to employee information.
2. VHA Handbook 1605.1, Privacy and Release of Information, establishes guidance on privacy use and disclosure of PI. This handbook (link below) provides guidance as to the legal obligations relative to federal law, applicable to the Claims Staff:

http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=1423

- b) The following provisions of law may also protect veterans' personal data. All parties must follow appropriate procedures to safeguard the privacy of Veterans' personal data.

1. **State Law.**

- a. Wis. Stats. § 19.80(3)(a);
- b. Wis. Stats. § 45.04;
- c. Wis. Stats. § 106.01;
- d. Wis. Stats. § 134.97;
- e. Wis. Admin. Code § 296.01; and
- f. Wis. Admin. Code § VA 1.10.

2. **Federal Law and Guidance.**

- a. 38 CFR § 1.500;
- b. 38 U.S.C. § 7332;
- c. 38 CFR. §§ 14.626-14.637;
- d. 38 C.F.R. §§ 75.111-119;
- e. 38 CFR 14.628(a)(2)(iv);
- f. 38 U.S.C. § 5721 et seq.;
- g. 38 U.S.C. § 3672;
- h. Privacy Act of 1974, 5 U.S.C. § 552a;
- i. To the extent parties are subject to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191 and its implementing regulations at 45 C.F.R. parts 160 and 164; and HIPAA/HITECH Act Omnibus Final Rule, 78 Fed. Reg. 5566 (Jan. 25, 2013) and section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act (codified at 42 U.S.C. § 17932) Breach Notification Rule at 45 C.F.R. §§ 164.400-414 as independently determined in consultation with corporation counsel Office of Management and Budget (OMB) Memorandum 07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information;
- j. VA Directive and Handbook 0710, Personnel Suitability and Security Program;
- k. VA Directive 6500, Manage Information Security Risk: VA Information Security Program;
- l. VA Handbook 6500, Risk Management Framework for VA Information Systems, Tier 3: VA Information Security Program;
- m. VA Handbook 6500.2, Management of Breaches Involving Sensitive Personal Information;
- n. VA Directive 6502, VA Enterprise Privacy Program;
- o. VA Handbook 6502.1, Privacy Violation Tracking System (PVTS), the Formal Event Reporting and Evaluation Tool (FERET) guidebook;
- p. VHA Directive 1605, VHA Privacy Program;
- q. VHA Handbook 1605.1, Privacy and Release of Information;
- r. VHA Handbook 1605.02, Minimum Necessary Standard for Protected Health Information; and

- s. Memorandum from Office of General Counsel (02) to Under Secretary for Health (10), "Request for Advisory Opinion – Department Information Ownership," dated December 31, 2007.

7) Information Disclosure and Data Sharing:

- a) NACVSO shall provide annual certification of continued employment as a CVSO and accredited member of NACVSO via complete listing of those eligible for WDVA accreditation. In addition, NACVSO shall promptly notify WDVA of those holding WDVA accreditation and who are no longer members of the NACVSO for any reason.
- b) WDVA shall provide annual certification of continued employment as a WDVA employee and accredited member of the WDVA via complete listing of those eligible for NACVSO accreditation. In addition, WDVA shall promptly notify NACVSO of those holding NACVSO accreditation and who are no longer employees of WDVA for any reason.
- c) **"Confidential, Sensitive and/or Protected Information (collectively hereinafter referred to as 'PI')"** shall include all forms of personally or individually identifiable information, personally identifiable health information, sensitive information, information whose improper use or disclosure could adversely affect the ability of an agency to accomplish its mission, proprietary information, and records about individuals requiring protection, and all information related to the Veteran as further defined by VA DIRECTIVES 6509, Provision 5 and VA Handbook 6500, and successor directives and handbooks pertaining to these definitions published by the U.S. Department of Veterans Affairs. PI shall also mean all information with respect to the Veteran regardless of whether it is written, oral, contained on various storage media, or human or machine-readable documents.
- d) **Annual Review.** Each party shall annually review applicable privacy and security safeguards that are in place to protect PI. Each party in consultation with each party's respective legal counsel shall maintain PI in a manner that shall ensure legal compliance with federal and state statute, laws, rules and guidelines as determined appropriate.
- e) **PI shall be kept confidential.** In accordance with 5 U.S.C. 552a, 38 U.S.C. §§ 5701, 5705, and 7332, and other applicable federal privacy laws and regulations, as appropriate, parties shall ensure that all PI that is maintained in any medium, is kept confidential, except when disclosure is permitted or compelled under law.
- f) **PI shall be properly controlled.** All PI in the custody and control of each party shall be used and disclosed only as permitted or required by law.
- g) **Contractor-controlled PI shall be properly maintained.** Parties shall ensure that all contracts in which any data containing PI or Veteran PI maintained by contractors shall contain the appropriate security and protection clauses as may be required by law.
- h) **Data shall be protected.** The physical input and output products of WDVA information and systems that contain PI, such as disks, paper, flash drives or any other data storage devices, shall be protected against misuse and unauthorized access, unauthorized disruption, unauthorized disclosure, or unauthorized modification or destruction. No technology utilized to collect, use, or disclose PI shall erode privacy protections afforded by applicable state or federal law.
- c) **PI shall be kept secure.** Security plans shall be continually developed and security controls implemented on all networks and filing systems that maintain PI in any form by both parties. These controls shall be implemented, as required by applicable law or policy, to, among other things, protect the security and privacy of all operating or filing systems used to access or

store protected health information (PHI), application software used to access or store PHI, and data in WDVA information systems. The purpose of these plans is to prevent the accidental or malicious disclosure, alteration or destruction of PI, and to provide assurances to the user of the quality, integrity, and confidentiality of such information maintained by the parties. Technologies used to maintain this information should allow for continuous auditing of compliance with this Agreement.

1. **Privacy and data breaches shall be reported.** Parties shall report all breaches by their personnel and authorized users involving PI in a timely and complete manner, to the other party within 5 business days of discovery. The party at fault shall resolve all such breaches with privacy implications in a timely fashion in accordance with applicable law and policy. For further guidance, see VA Handbook 6502.1, Privacy Violation Tracking System (PVTs), the Formal Event Reporting and Evaluation Tool (FERET) guidebook, and VA Handbook 6500.2, Management of Breaches Involving Sensitive Personal Information.
2. **A data breach process shall be sustained.** Each Party shall maintain a process for the tracking and reporting of suspected or actual breaches involving PI incompliance with the references above.

d) **Rules for Electronic Communications:**

1. Parties acknowledge email messages sent by or to their offices may be read by someone other than the person to whom they are sent and may have to be disclosed to outside parties or in court in connection with a lawsuit. Accordingly, each party must take care to ensure that their messages are courteous, professional, and that the tone and words they use would not cause embarrassment to themselves or their organization if the message were made public.
 - a. Any email sent outside each party's network or information system should be considered non-secure.
 - b. Email is subject to applicable privacy, security, and records retention laws and guidelines for the information that particular message contains. As such, email records must be appropriately secured and retained.
2. Each party is responsible for the content of all text, audio or images that they place or send on the state's email, or Internet systems.
3. No party may email PI unless using approved methods.
4. All emails between parties that contain or transmit PI must be encrypted before transmission.

e) **Internal Security Controls with Communications to CVSOs/TVSOs:**

1. **Release of Veteran-Claimant Information.** In alignment with USDVA procedures, the WDVA Bureau of Claims shall only release PI to those CVSO/TVSO and CVSO/TVSO staff who are officially "accredited" for USDVA purposes. If a CVSO office does not have an accredited representative, the WDVA Claims Officer shall not discuss or provide any information specific to a pending claim unless authorized by the claimant during that specific communication. If the claimant is present in the CVSO/TVSO office at the initiation of such contact, the WDVA Claims Officer can speak directly to the claimant (after proper verification of identity using established USDVA protocol) to gain such authorization.

2. **Fax Messages**. The parties shall accept fax messages; however, neither party shall fax PI to unauthorized third parties without the written consent of the Veteran or the Veteran's duly appointed representative.
3. **Encrypted Messages Other than VA**. Parties to this Agreement when communicating with the WDVA Claims office must register for an email account through VA.Gov and utilize VA.Gov access and Personal Identification Verification Cards (PIV Cards) to ensure data security to accomplish any communication of PI with the WDVA Claims Office.
4. **Release of Veteran-PI by WDVA**. The WDVA Divisions of Veteran Benefits, Services and Homes, shall only release information by U.S. Mail, telephone or encrypted emails.
- 8) **Points of Contact**. Principal points –of -contact for accreditation processing and MOA accountability.

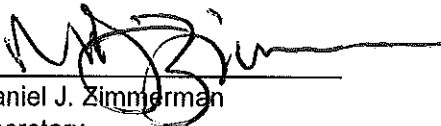
WDVA
Kenneth G. Grant
Administrator Veterans Services
Wisconsin Department of Veterans Affairs
(608) 267-7207
Ken.grant@dva.wi.gov

NACVSO
Michael Roof
National Service Director
National Association of County Veteran Service
Officers
(815) 263-2027
mroof@nacvso.org

- 9) **Effective Date and Termination of Agreement**. This MOA shall become effective upon the date of signature of both approving parties. Either party may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party's point of MOA.
- 10) **Dues**. Neither party shall be subject to paying dues or fees as a part of this MOA.
- 11) **Non-Assignable**. This Agreement shall be non-assignable.
- 12) **Governing Law**. This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the state of Wisconsin.
- 13) **Binding Nature of Agreement and Term**. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, with a term of five (5) years from the date of the last signature below. In the event of substantial changes in the applicable law(s), parties may amend this Agreement or enter into a new Agreement to ensure compliance. All signatories represent that he or she has authority to bind the parties to this Agreement, and that the Executive head of the Party has approved this Agreement for execution.
- 14) **Umbrella Provision**. This Agreement constitutes an umbrella agreement to the employees of each party's office, so long as any person accessing data who is accredited by the United States Department of Veterans Affairs, possesses a PIV Card, and is authorized by the Receiving Party to do so.
- 15) **Entire Agreement**. This Agreement sets forth all of the covenants, promises, Agreements, conditions and understandings between the parties and there are no covenants, promises, Agreements or conditions, either oral or written, between them other than herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced in writing and signed by them.

16) Approvals.

Approved and accepted on behalf of Wisconsin Department of Veterans Affairs:



Daniel J. Zimmerman
Secretary
Wisconsin Department of Veteran Affairs

30 AUG 2017

Date

Approved and Accepted on behalf of National Association of County Veterans Service Officers:



Ed Zackery
President
National Association of County Veterans Service Officers, Inc.

8/30/17

Date