

Data Use Agreement Related to MNSure Access to SERFF Data Source

This Data Use Agreement ("Agreement") is entered into by and between the Minnesota Insurance Marketplace a/k/a MNSure ("MNSure") and the Minnesota Department of Commerce ("Commerce").

WHEREAS, MNSure is authorized under Minnesota Statutes, section 62V.05, subdivision 5 to certify and select health plans as qualified health plans ("QHPs") to be offered through the Minnesota Insurance Marketplace if certain certification requirements are met;

WHEREAS, Commerce has the responsibility to approve or disapprove health plans for offer or sale in Minnesota, both on and off MNSure, pursuant to Minnesota Statutes section 62A.02, and is the Minnesota contract authority with the National Association of Insurance Commissioners ("NAIC") for use of the System for Electronic Rate and Form Filing ("SERFF") in Minnesota;

WHEREAS, any data made available to MNSure via SERFF in accordance with this Agreement will retain the classification applicable as if it were maintained by Commerce according to Minnesota Statutes, section 13.03, subdivision 4(c) because both Commerce and MNSure are government entities, and MNSure agrees to prevent disclosure of nonpublic form and rate filing data it receives through SERFF until the effective date of the filing, unless otherwise authorized by consent or applicable state or federal law;

WHEREAS, MNSure and Commerce are authorized to enter into the Agreement by Minnesota Statutes, section 62V.05, subdivision 1(b)(5); and

WHEREAS, MNSure is authorized to enter into agreements with Commerce for services regarding review and enforcement of MNSure certification requirements for health and dental plans offered through MNSure and other services pursuant to Minnesota Statutes, section 62V.05, subdivision 7.

Agreement

1. Term of Agreement

- (a) **Effective date:** June 28, 2013, or the date the State obtains all required signatures, whichever is later.
- (b) **Expiration date:** June 30, 2015, unless otherwise terminated or extended in writing by the parties to this Agreement.

2. Information Covered by this Agreement.

"Protected information," for purposes of this Agreement, may include any or all of the following: form, rate and related information filed with the Commissioner of Commerce under section 62A.02 and classified as nonpublic data under Minnesota Statutes section 60A.08 subdivision 15 (b); nonpublic data (as defined Minn. Stat. § 13.02, subd. 9); and other not public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes Chapter 13.

3. Access to SERFF Nonpublic Data

- a. Commerce and MNSure agree that with the health carrier's written authorization, Commerce will (1) grant MNSure supervised access to certain nonpublic form and rate filing information of the health carrier on the Plan Management area of SERFF required for MNSure to complete the certification of the QHPs to be offered by the health carrier on MNSure, and (2) at the reasonable request of MNSure staff, transfer the nonpublic data elements needed to populate MNSure's information technology infrastructure, as authorized by the health carrier.
- b. Due to the complexity of the SERFF system, especially with respect to the data filed by health carriers in templates on the Plan Management area on SERFF, Commerce may need to provide MNSure access to or transfer of some commingled data filed by the health carrier for health plans to be offered both on and off the Minnesota Insurance Marketplace, some of which MNSure may not be authorized to access or receive. In such events, MNSure agrees it will not use the unauthorized data for any purpose and will not further disclose the nonpublic information it was not authorized to access or receive.

4. Duties

- a. MNSure shall:
 - i. Obtain signed written authorization forms from health carriers granting MNSure access to the health carrier's nonpublic data on the SERFF Plan Management area, and shall provide Commerce with a copy within five business days of the receipt of the signed authorization;
 - ii. Enter into an agreement with Commerce to establish procedures for MNSure's supervised access to the health carrier's nonpublic data, including scheduling mutually acceptable and reasonable times for MNSure to access the data on the Plan Management area on SERFF, and procedures for requesting the transfer of nonpublic data elements to MNSure as authorized by the health carrier.
 - iii. Use the nonpublic data only for the purposes stated in the applicable signed health carrier authorization, including the following, if stated in the authorization:
 - 1. To complete the final steps of QHP and issuer certification process;
 - 2. To facilitate internal analysis of the QHPs and provider networks to be offered on MNSure;
 - 3. To facilitate identification of second lowest cost silver plans in each service area;
 - 4. To facilitate internal planning by MNSure's Board, management team and Plan Management staff and consultants;
 - 5. To appropriately load Health Carrier's Filings data into the MNSure information technology infrastructure to populate the MNSure web portal;
 - 6. To facilitate both internal MNSure user acceptance testing and the Health Carrier's preview of its own issuer and QHP data; and
 - 7. In accordance with Minn. Stat. § 62V.05, subd. 5 (g), to carry out other MNSure functions related to the Health Carrier's participation in MNSure that would require access to this data of the Health Carrier prior to the effective date of the associated filing. This includes, but is not limited to, the production of a federally required Cost Sharing Reduction file.

Data Use Agreement- Commerce and MNSure

- iv. Comply with Commerce supervision regarding MNSure's access to and the transfer of the nonpublic data elements from SERFF to MNSure, as authorized by the health carrier.
- v. Prevent disclosure of nonpublic form and rate filing data it receives through SERFF under the terms of this Agreement until the effective date of the filing, unless otherwise authorized by consent or applicable state or federal law;
- vi. Be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of Commerce. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 2, and having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic protected information at rest and in transit that it creates, receives, maintains, or transmits on behalf of Commerce.
- vii. Comply with the "minimum necessary" access and disclosure rule set forth in the MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government. Minn. Stat. § 13.05 subd. 3.
- viii. Report to Commerce any privacy or security incident regarding protected information within 24 hours of becoming aware of such incident. For purposes of this Agreement, "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Privacy incident" means violation of the MGDPA and/or the including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. MNSure agrees to promptly respond to and cooperate with any information requests of Commerce regarding investigations of such incidents.
- ix. If MNSure receives a request to release protected information referred to in this Agreement, MNSure will promptly notify Commerce and request instructions concerning the release of the data to the requesting party and will not release the protected information unless so authorized by Commerce.
- x. Not use or further disclose protected information created, collected, received, stored, used, maintained, or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this Agreement or hereafter.
- xi. Consistent with this Agreement, ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to the use or release of protected information covered by this Agreement, including compliance with the MGDPA.

Data Use Agreement- Commerce and MNSure

- xii. Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.
 - xiii. Comply with any and all other applicable provisions of the Final Exchange Privacy Rule at 45 C.F.R. § 155.260, including future amendments thereto.
- b. Commerce shall:
- i. Upon receipt of a signed authorization from a health carrier, provide to MNSure supervised access to the health carrier's nonpublic data on the Plan Management area of SERFF as specified in the signed authorization form within five business days of receiving a request from MNSure staff for such access. The data provided will remain nonpublic until the effective date of the filing except that it will be accessed by MNSure, MNSure information technology vendors, and MN.IT only to the degree necessary to perform critical MNSure functions as authorized in writing by the health carrier.
 - i. Enter into an agreement with MNSure to establish agreed upon procedures for MNSure's supervised access to the health carrier's nonpublic data, including scheduling mutually acceptable and reasonable times for MNSure to access the data on the Plan Management area on SERFF, and procedures for requesting the transfer of nonpublic data elements to MNSure as authorized by the health carrier.
 - ii. Notify MNSure of limitations, restrictions, changes, or revocation of permission by a health carrier to use or disclose protected information, to the extent that such limitations, restrictions, changes or revocation may affect MNSure's use or disclosure of protected information.
- 5. Disposition of Data upon Completion, Expiration, or Agreement Termination.**
Upon revocation of any authorization of access to data currently classified as nonpublic data or upon termination of this Agreement, MNSure will securely return to Commerce or destroy all protected information received or created on behalf of Commerce for purposes associated with this Agreement, as instructed by Commerce. A written certification of destruction or return to the State Authorized Representative is required. MNSure will retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if MNSure is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, MNSure will extend the protections of this Agreement to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as MNSure maintains the information.
- 6. Amendments**
Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by a duly authorized representative of MNSure or Commerce.

7. Liability

Each party will be responsible for its own acts and behavior and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other parties and the results thereof. The liability of each party shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.

8. Sanctions.

In addition to any liability under section 10 of this Agreement, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in termination of this Agreement, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties. MNSure agrees to promptly respond to and cooperate with any requests of Commerce regarding investigations of incidents that could result in any such sanctions.

9. Termination

Either party may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party.

10. Authorized Representatives

(a) Commerce's Authorized Representative is Tim Vande Hey, Deputy Commissioner, Minnesota Department of Commerce, tim.vandehey@state.mn.us, 85 7th Place East, Suite 500, St. Paul, MN 55101-2198, (651) 539-1728, or his successor.

(b) MNSure's Authorized Representative is Krista Fink, MNSure Privacy and Security Manager, krista.fink@state.mn.us, 81 7th Street East, Suite 300, St. Paul, MN 55101-2211, (651) 539-1322, or her successor.

Minnesota Department of Commerce

By: Tim Vande Hey
(With delegated authority)

Title: Deputy Commissioner

Date: 6/26/13

MNSure

By: [Signature]
(With delegated authority)

Title: Executive Director

Date: 6-27-13