

 HAWAII HEALTH SYSTEMS C O R P O R A T I O N "Quality Healthcare for All" POLICY	Quality Through Compliance	Policy No.: CMP 0031A
		Revision No.:
Subject: HIPAA Business Associate Disclosure	Issued by: Audit and Compliance Committee	Effective Date: October 17, 2013
	Approved by:  HHSC Board of Directors By: Carol A. VanCamp Its: Secretary/Treasurer	Supersedes Policy: Page: 1 of 6

Last Reviewed: August 9, 2013; Next Review: August 9, 2016

I. **PURPOSE:** This Policy establishes the requirements that govern contracts between Hawaii Health Systems Corporation (HHSC) and its business associates.

II. **DEFINITIONS:**

Business Associate: A person or entity who creates, receives, maintains or transmits PHI for a function or activity regulated by the HIPAA Rules, including claims processing or administration, data analysis, processing, or administration, utilization review, quality assurance, patient safety activities listed at 42 C.F.R. 3.20, billing, benefit management, practice management and repricing or:

1. Provides, other than in the capacity of a member of the workforce of such HHSC facility, legal, actuarial, accounting, consulting, data aggregation (as defined in 45 CFR § 164.501), management, administrative, accreditation, or financial services to or for such HHSC facility, or to or for an organized health care arrangement in which the HHSC facility participates, where the provision of the service involves the disclosure of PHI from such HHSC facility or arrangement, or from another business associate of such HHSC facility or arrangement, to the person or entity.

"Business Associate" includes:

- i. A Health Information Organization, E-prescribing gateway, or other person that provides data transmission services with respect to PHI to a covered facility and that requires access on a routine basis to such PHI.
- ii. A person that offers a personal health record to one or more individuals on behalf of a covered entity.
- iii. A subcontractor that creates, receives, maintains or transmits PHI on behalf of the business associate.

"Business Associate" does not include:

- i. A health care provider, with respect to disclosures by a HHSC facility to the health care provider concerning the treatment of the individual.
- ii. A plan sponsor, with respect to disclosures by a group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to the plan sponsor, to the extent that the requirements of 45 CFR § 164.504(f) apply and are met.
- iii. A government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another

government agency, or collecting PHI for such purposes, to the extent such activities are authorized by law.

- iv. A HHSC facility participating in an organized health care arrangement that performs a function or activity, as described in this definition, for or on behalf of such organized health care arrangement, or that provides a service as described in this definition to or for such organized health care arrangement by virtue of such activities or services.

Potential Business Associates: (NOTE: This is not a complete or exhaustive list of potential business associates):

General:

Computer software vendors
Computer hardware vendors
Document destruction vendors
Data Aggregate Vendors
Accreditation Contracts
Cleaning Companies
Maintenance Contracts
Information Technology contracts
Legal services contracts
Practice Management Contracts
Accounting services contracts
Revenue management services contracts
Actuarial Services
Risk management consulting vendors
Insurance companies (liability/employee health/etc.)
Temporary staffing agencies
Medical Device Reps
Medical Equipment Reps
Pharmaceutical Companies
Pastoral care services
Laboratory services
Pharmacy Services
Home Care Services
Kapiolani Medical Center for Women and Children
Ambulance Services
Radiology Services
Other hospitals

Medical Records:

Microfilming/Scanning Vendors
Transcription Vendors
Coding Contract workers and/or vendors
Audit vendors
Release of Information vendors
Financial Auditors

Medical Staff:

Medical staff who participate in functions other than treatment for the facility

Billing:

Clearinghouse Vendors
Claims Administration
Collection Agencies
Billing Services Contracts
Application Service Providers

Compliance Officer: Refers to either the Corporate Chief Compliance and Privacy Officer and/or the Regional Compliance Officer.

Covered entity: A health care provider, health plan or health care clearinghouse which receives and transmits PHI. HHSC facilities are covered entities.

Data aggregation: The combining by a business associate of PHI created or received as a business associate of one entity with PHI received as a business associate of another entity to permit data analyses relating to the healthcare operations of the respective entities.

Disclose: The release, transfer, provision of access to, or divulging in any other manner the PHI held by the covered entity.

Use: The sharing, employment, application, utilization, examination or analysis of the protected health information held by the covered entity.

III. POLICY:

- A. Business Association Contracts: HHSC will enter into a written contract or agreement with any business associate (as defined above) where the function, activity, or service provided by the business associate involves the use or disclosure of the protected health information (PHI) held by HHSC.
- B. The following functions and activities are considered exceptions from the requirement for a business associate contract or agreement:
 - 1. Disclosures to a health care provider related to treatment.
 - 2. Uses and disclosures by a member of the HHSC workforce.
 - 3. Disclosures to a financial institution for processing of consumer - conducted financial transactions in payment for health care.
 - 4. Disclosures by a group health plan to a plan sponsor.
 - 5. Entities that are merely conduits for information.
 - 6. Disclosures to providers participating in an organized healthcare arrangement
 - 7. Disclosures by a health plan that is a government program providing public benefits if an individual's eligibility or enrollment in the health plan is determined by another entity authorized by law.

- C. Requirements of the Business Associate Contract or Agreement: The formal specifics of the business associate contract or agreement will be developed and approved by HHSC Legal Department. Such contracts will incorporate the legal requirements relating to business associate contracts as promulgated in 45 CFR §164.502(e) and §164.504(e).
- D. Any deviations from the standard business associate contract will need to be approved by both Legal Department and the Compliance Officer.
- E. Breach and/or termination of the business associate contract:
 - 1. Should HHSC become aware of a pattern of activity or practice of the business associate that constitutes a material breach or violation of the business associate's obligation under the contract, the HHSC will take reasonable steps to cure the breach or end the violation.
 - 2. If such steps are unsuccessful HHSC will:
 - a. Terminate the contract if feasible, or;
 - b. If not feasible, report the problem to the Secretary of DHHS.
- F. Requirements for Business Associate Contracts under the HIPAA Privacy Rule. (For exact standards refer to 45 CFR §§164.502 & 164.504)
 - 1. The contract must establish the permitted and required uses and disclosures of protected health information (PHI) by the business associate including (i) the purposes of the disclosure and (ii) the reasons and types of persons to whom the business associate may make further disclosures.
 - 2. The contract may not authorize the business associate to use or further disclose PHI in a manner that the entity itself may not use or disclose the PHI under federal and state law except that:
 - a) The contract may permit the business associate to use the PHI received by the business associate in its capacity as a business associate if necessary:
 - i. For the proper management and administration of the business associate, or;
 - ii. To carry out the legal responsibilities of the business associate.
 - 3. The contract may permit the business associate to disclose the PHI received by the business associate in its capacity as a business associate:
 - a) If the disclosure is required by law, or;
 - b) If the business associate obtains reasonable assurances from the person to whom the information is disclosed that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed and the person notifies the business associate of any instances where it is aware in which the confidentiality of the information has been breached.
 - 4. The contract may permit a business associate to provide data aggregation services relating to the health care operations of HHSC.
 - 5. The contract may permit a business associate to use PHI to create information that is not individually identifiable health information.
 - 6. The contract shall provide that the business associate will:

- a) Not use or disclose PHI other than as permitted or required by the contract or required by law;
 - b) Use appropriate safeguards and comply, where applicable, with subpart C of this part with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided in the contract;
 - c) Report to HHSC any use or disclosure of PHI it becomes aware of which is not permitted by the contract., including breaches of unsecured PHI as required by §164.410;
 - d) In accordance with § 164.502(e)(1)(ii), ensure that any agents or subcontractors that create, received, maintain, or transmit PHI on behalf of the business associate agrees to the same restrictions and conditions that apply to the business associate with respect to such information;
 - e) Make available PHI as necessary for compliance with the individual's rights to access.
 - f) Make available PHI as necessary for compliance with the individual's right to request an amendment and incorporate any amendments to PHI held.
 - g) Make available the information required to provide an accounting of disclosures of an individual's PHI.
 - h) To the extent the business associate is to carry out the covered entity's obligation under this subpart, comply with the requirements of this subpart that apply to the covered entity in the performance of such obligation.
 - i) Make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of DHHS for the purposes of determining compliance with the law.
 - j) Return or destroy PHI at contract termination and retain no copies of such information if feasible. If not possible:
 - i. The protections of the agreement must apply until such time that the PHI is returned or destroyed and:
 - ii. Limit further uses or disclosures of the PHI to those purposes that made the return or destruction of the information infeasible.
7. The contract must authorize the termination of the contract by HHSC if HHSC either determines that the business associate has violated a material term of the contract.

G. Business Associate Contracts or Agreements between Governmental Entities: If both parties to the contract or agreement are governmental agencies:

- 1. The HHSC Facility may comply with the business associate requirements by entering into a memorandum of understanding with the business associate that contains terms covering the elements of the business associates contract, or;
- 2. The HHSC facility may comply with the business associate requirements if other laws (including regulations adopted by the facility or its business associate) contain requirements applicable to the business associate which accomplish the objectives of the business associate contract.

- H. Functions or Activities Performed by a Business Associate as Required by Law:
1. A HHSC facility may disclose protected health information to a business associate who is required by law to perform a function or activity on behalf of the entity to the extent necessary to comply with the legal mandate. A business associate contract is not required provided that the HHSC Facility:
 - a) Attempts in good faith to obtain satisfactory assurances through a memorandum of agreement as outlined above, and;
 - b) If such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.
 2. The termination authorization required in the business associate contract may be omitted from the above agreement if such authorization is inconsistent with the statutory obligations of the entity or its business associate.
 3. A HHSC facility may comply with this Policy if the covered entity discloses only a limited data set to a business associate for the business associate to carry out a health care operations function and the HHSC facility has a data use agreement with the business associate that complies with 45 CFR§164.514(e)(4) and 45 CFR§ 164.314(a)(1), if applicable.
- I. HHSC Facilities will implement procedures to operationalize this Policy.

IV. APPLICABILITY: This Policy applies to all HHSC Facilities.

V. AUTHORITY: Standards for Privacy of Individually Identifiable Health Information (HIPAA), 45 CFR § 164.502 (a)(3) and 164.502 (e)(1).

VI. ATTACHMENTS: None.