

HIPAA Business Associate Agreements  
Recognition of Business Associate Relationships

HIPAA (Health Insurance Portability and Accountability Act) Privacy Regulations authorize covered entities, such as the Department of Health, to disclose protected health information to its “business associates,” provided it has a HIPAA compliant “Business Associate Agreement” with the other person or organization. Many, if not most, Department vendors or providers are not HIPAA “Business Associates.”

HIPAA Privacy Regulations generally define a “Business Associate” as a vendor or provider that on its own behalf performs a function, activity, or service on behalf of a covered entity that involves the use or disclosure of individually identifiable health information (IIHI) created by or belonging to the covered entity. (For Department purposes, that would include IIHI collected by the Department pursuant to its public health and health professional licensing function.) Those functions, activities or services performed on the behalf of the Department by a vendor or provider that may require a business associate agreement include:

- Claims Processing or Administration
- Data Analysis
- Processing or Administration
- Utilization Review
- Quality Assurance
- Billing
- Benefit Management
- Practice Management
- Repricing
- Legal
- Actuarial
- Accounting
- Consulting
- Data Aggregation
- Management
- Administrative
- Accreditation
- Financial

It is helpful and equally important to recognize when a HIPAA Business Associate Agreement is not required with a vendor or provider:

- The contracted function, activity, or service does not require the use or disclosure of IIHI created by or belonging to the covered entity.
- When disclosure of IIHI is for purposes of treatment.
- When the covered entity contracts with and pays for health care providers to deliver health care services.
- When covered entities must disclose IIHI to the Department as required by law pursuant to the Department’s public health and health professional regulatory functions.
- When a health plan that is a government program providing public benefits uses or discloses IIHI to another government agency for purposes of eligibility determinations and enrollment.

Consult with legal counsel if in any doubt whether a Business Associate Agreement is necessary. Sometimes even apparently minor factual and legal distinctions can affect the final conclusion.

## HIPAA BUSINESS ASSOCIATE AGREEMENT

The Florida Department of Health and its \_\_\_\_\_ (CMS or CHD), hereinafter Covered Entity, and \_\_\_\_\_, hereinafter Business Associate, agree to the following terms and conditions in addition to an existing agreement to perform services that involve the temporary possession of protected health information to develop a product for the use and possession of Business Associate. After completion of the contracted work all protected health information is returned to the Covered Entity or destroyed as directed by the Covered Entity.

### ***Obligations and Activities of Business Associate***

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to these same restrictions and conditions.
- (e) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary of HHS, in a time and manner designated by the Covered Entity or the Secretary of HHS, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (f) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information.
- (g) Business Associate agrees to provide to Covered Entity as disclosures of protected health information occurs information collected in accordance with Section (f) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information.

### ***Obligations of Covered Entity***

Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

### ***Permissible Requests by Covered Entity***

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

### ***Term and Termination***

The Term of this Agreement shall be effective April 14, 2003, or upon the date of signature of the undersigned principles for the respective parties and shall terminate when all existing contracts related to protected health information between the parties have terminated.

\_\_\_\_\_  
Date  
CEO, Pres or whatever  
Business Associate

\_\_\_\_\_  
Date  
Director  
\_\_\_\_\_  
County Health Department or  
Children's Medical Service Region

Approved as to form and legality:

\_\_\_\_\_  
Date  
Rodney M. Johnson, Chief Counsel, Northwest Law Office, Florida Department of Health