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DHH Business Associate Relationships

I. Purpose

The HIPAA Privacy Rule identifies a new category of business relationship, called a "Business Associate." The purpose of this policy is to define what a Business Associate is, specify the terms and conditions contained in DHH's Business Associate Agreement included in DHH contracts with Business Associates.

II. Applicability

DHH's HIPAA Privacy Policies are applicable to DHH's workforce and its Business Associates.

III. Implementation

The implementation date of these policies is April 14, 2003.

IV. Definitions

The definitions are included in the body of these policies.

V. Responsibilities

DHH's workforce and its Business Associates are responsible for assuring that DHH's HIPAA Privacy Policies are followed. The DHH Privacy Officer and the Program Privacy Officers are responsible for the implementation, resolution and enforcement of all aspects related to DHH HIPAA Privacy Policies.

VI. Exceptions

The exceptions are listed in the policies.

VII. Policy: Business Associate Relationships

A. DHH has many contractual and business relationships, and DHH has policies related to its contracts and business relationships. However, not all contractors or business partners are "Business Associates" of DHH per the HIPAA Privacy Rule. This policy only applies to contractors or business partners that come within the definition of a "Business Associate."

B. If a contractor or business partner is a "Business Associate," those contracts that define

the contractual relationship remain subject to all Federal and State laws and policies governing the contractual relationship. A "Business Associate" relationship also requires additional contract provisions. The additional contract requirements are described in "Contractual Requirements Applicable to Business Associates" below.

- C. With respect to DHH, "Business Associate" means (per 45 CFR 160.103) a person or entity who:
1. On behalf of DHH, but other than in the capacity of a member of DHH workforce, performs or assists in the performance of:
 - a) A function or activity involving the use or disclosure of II HI, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing benefit management, practice management, and re-pricing; or
 - b) Any other function or activity regulated by Federal regulations at 45 CFR Subtitle A, Subchapter C; or
 - c) Provides, other than in the capacity of a DHH workforce member, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for DHH, or for an organized health care arrangement in which DHH participates, where the provision of the service involves the disclosure of IIHI from DHH, or from another Business Associate of DHH, to the person.
 2. A covered entity participating in an organized health care arrangement that performs a function or activity as described in the definition of "Business Associate" or that provides a service as described in the definition of "Business Associate" to, or for such organized health care arrangements, does not, simply through the performance of such function or activity or the provision of such service, become a Business Associate of other covered entities participating in such organized health care arrangement.
 3. A covered entity may be a Business Associate of another covered entity.
- D. A Business Associate relationship is formed only if PHI is to be used, created, or disclosed in the relationship.
- E. The following are not Business Associates or Business Associate relationships:
1. DHH workforce, offices, and programs;
 2. Medical providers providing treatment to individuals;
 3. Enrollment or eligibility determinations, involving DHH clients, between government

agencies;

4. Payment relationships, such as when DHH is paying medical providers, child care providers, managed care organizations, or other entities for services to DHH clients or participants, when the entity is providing its own normal services that are not on behalf of DHH;
 5. When an individual's PHI is disclosed based solely on the authorization of a client or participant or his/her Personal Representative's authorization;
 6. When an individual's PHI is not being disclosed by DHH or created for DHH; or
 7. When the only information being disclosed is information that is de-identified in accordance with DHH Policy #20, "De-identification of Client or Participant Information and Use of Limited Data Sets."
- F. DHH may disclose an individual's PHI to a Business Associate and may allow a Business Associate to create or receive an individual's PHI on behalf of DHH if;
1. DHH first enters into a written contract, or other written agreement or arrangement, with the Business Associate before disclosing an individual's PHI to the Business Associate, in accordance with the requirements of "Contract Requirements Applicable to Business Associates" below.
 2. The written contract or agreement provides satisfactory assurance that the Business Associate will appropriately safeguard the information.
- G. Contract Requirements Applicable to Business Associates
1. A contract between DHH and a Business Associate must include terms and conditions, which may include reference to administrative rules, that establish the permitted and required uses and disclosures of PHI by the Business Associate. The contract may not authorize the Business Associate to further use or disclose health information obtained from DHH, except that the contract may permit the Business Associate to use and disclose PHI for the proper management and administration of the Business Associate and collect data relating to DHH operations.
 2. Provide that the Business Associate will:
 - a) Not use or further disclose PHI other than as permitted or required by the contract or as required by law;
 - b) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by the contract;

- c) Report to DHH any use or disclosure not allowed by the contract of which the Business Associate becomes aware;
- d) Ensure that any agents or subcontractors to whom it provides PHI agree to the same restrictions and conditions that apply to the Business Associate under the contract;
- e) Make PHI available to the individual in accordance with DHH HIPAA Privacy Policy #2, "Client Privacy Rights";
- f) Make PHI available for amendment and incorporate any amendments in accordance with DHH Policy #18, "Client Privacy Rights";
- g) Make available the information required to provide an accounting of disclosures in accordance with DHH Policy #18, "Client Privacy Rights";
- h) Make its internal practices, books, and records relating to the use and disclosure of PHI available to DHH and to the U.S. DHHS for the purpose of determining DHH compliance with Federal requirements;
- i) At termination of the contract, if reasonably feasible, return or destroy all PHI that the Business Associate still maintains in any form, and keep no copies thereof. If not feasible, the Business Associate will continue to protect the information;
- j) Request from DHH and other Business Associates of DHH only that Protected Health Information which is minimally necessary for the purpose of the request; and
- k) Provide for termination of the contract if DHH determines that the business associate has violated a material term of the contract.

2. If the Business Associate of DHH is another governmental entity:

- a) DHH may enter into a Memorandum of Understanding (MOU), rather than a contract, with the Business Associate if the MOU contains terms covering all objectives of this policy;
- b) The written contract, agreement, or memorandum does not need to contain specific provisions required above if other laws or regulations contain requirements applicable to the Business Associate that accomplish the same objective.

3. If a Business Associate is required by law to perform a function or activity on behalf of DHH, or to provide a service to DHH, DHH may disclose PHI to the Business Associate to the extent necessary to enable compliance with the legal requirement,

without a written contract or agreement, if:

- a) DHH attempts in good faith to obtain satisfactory assurances from the Business Associate that the Business Associate will protect health information to the extent specified above; and
- b) If such attempt fails, DHH documents the attempt and the reasons that such assurances cannot be obtained.

4. Other Requirements for Written Contracts or Agreements

The written contract or agreement between DHH and the Business Associate may permit the Business Associate to:

- a) Use information it receives in its capacity as a Business Associate of DHH, if necessary for proper management and administration of the Business Associate; or to carry out the legal responsibilities of the Business Associate.
- b) Disclose information it receives in its capacity as a Business Associate if:
 - 1) The disclosure is required by law; or
 - 2) The Business Associate receives assurances from the person to whom the information is disclosed that:
 - (a) It will be held or disclosed further only as required by law or for the purposes to which it was disclosed to such person, and
 - (b) The person notifies the Business Associate of any known instances in which the confidentiality of the information has been breached.

H. Responsibilities of DHH in Business Associate Relationships

DHH responsibilities in Business Associate relationships include, but are not limited to, the following:

1. Receiving and logging an individual's complaints regarding the uses and disclosures of PHI by the Business Associate or the Business Associate relationship;
2. Receiving and logging reports from the Business Associate of possible violations of the Business Associate contracts;
3. Implementation of corrective action plans, as needed; and
4. Mitigation, if necessary, of known violations up to and including contract

termination.

5. DHH will provide Business Associates with applicable contract requirements, and may provide consultation to Business Associates as needed on how to comply with contract requirements regarding PHI.

I. Business Associate Non-Compliance

1. If DHH knows of a pattern of activity or practice of a Business Associate that constitutes a material breach or violation of the Business Associate's obligation under the contract or other arrangement, DHH must take reasonable steps to cure the breach or end the violation, as applicable, including working with and providing consultation to the Business Associate.
2. If such steps are unsuccessful, DHH must:
 - a) Terminate the contract or arrangement, if feasible; or
 - b) If termination is not feasible, report the problem to the U.S. DHHS.
 - c) All such actions are subject to review by the DHH Privacy Officer.

Policies:

DHH Policy #17 - "General Privacy Policy"

DHH Policy #18 - "Client and Participant Privacy Rights"

DHH Policy #19 - "Use and Disclosures of Client or Participant
Information"

DHH Policy #20 - "De-identification of Client and Participant Information & Use of Limited Data Sets"

DHH Policy #21 - "Uses and Disclosures for External Research Requests, Internal Research Needs and
Waiver of Privacy Rights for Research Purposes"

DHH Policy #22 - "Minimum Necessary Information"

DHH Policy #24 - "Administrative, Technical, and Physical Safeguards"

DHH Policy #25 - "Enforcement, Sanctions, and Penalties for Violations of DHH
HIPAA Privacy Policies"

Form(s):

DHH HIPAA Privacy Business Associate Addendum to Purchasing Contract or Purchase Order

Reference(s):

45 CFR160

45 CFR 164

Contact(s):

State of Louisiana

Department of Health and Hospitals

Office of the Secretary

Privacy Office

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