

HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES

Chapter 11	Patient Privacy Policies	Effective:	April 2003
Section 11.1	General Oversight Policies	Revised:	February 2006
Policy 11.1.3	Business Associates	Responsibility:	Assistant Vice President for Regulatory Affairs & Compliance

BUSINESS ASSOCIATES

Policy

This policy defines the guidelines and procedures that must be followed for business associates who come into contact with protected health information, to protect the confidentiality and integrity of health information as required by law, professional ethics, and Health Science Center policy.

Definitions

BUSINESS ASSOCIATES: A business associate is a person or entity who provides certain functions, activities, or services for or to the Health Science Center, involving the use and/or disclosure of protected health information. This includes, but is not limited to, lawyers, auditors, third party administrators, healthcare clearing houses, data processing firms, billing firms, and other covered entities. A business associate is not a Health Science Center employee. Disclosures of protected health information by the Health Science Center to a healthcare provider for treatment purposes are not considered a business associate function.

Procedures

All personnel must observe the following standards relating to business associates:

1. When the Health Science Center enters into business associate contracts, the contracts must contain specific language as provided by Legal Affairs.
 2. The contract must include language that provides that the business associate will:
 - a. Not use or further disclose the information 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 its contract;
 - c. Report to the Health Science Center any use or disclosure of the information not provided for by its contract of which it becomes aware;
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- d. Ensure that any agents, including a subcontractor, to whom it provides protected health information received from, or created by or on behalf of, the Health Science Center, agrees to the same restrictions and conditions that apply to the business associate with respect to such information;
 - e. Make available protected health information in accordance with [Section 11.3.6](#) of the *Handbook of Operating Procedures* (HOP), "Access of Individual to Protected Health Information";
 - f. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with [Section 11.3.2](#) of the HOP, "Patient Right to Amend Protected Health Information";
 - g. Make available the information required to provide an accounting of disclosures in accordance with the Health Science Center policy, [Section 11.3.1](#) of the HOP, "Accounting of Disclosures of Protected Health Information";
 - h. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created by or on behalf of the Health Science Center, available to Department of Health and Human Services (DHHS) for purposes of determining the Health Science Center's compliance; and,
 - i. At termination of the contract, if feasible, return or destroy all protected health information received from, or created by or on behalf of, the Health Science Center that the business associate still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

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Contract Violations

The Health Science Center is not liable for privacy violations of its business associates and is not required to actively monitor or oversee the means by which its business associates carry out safeguards, or the extent to which the business associates abide by the requirements of the contract.

If the Health Science Center becomes aware of a practice or pattern that constitutes a material breach of this policy or violation of the business associate's obligations under its contract, the Health Science Center must take reasonable steps to cure the breach or to end the violation.

In the event that the business associate cannot or will not remedy the practice or pattern, the Health Science Center must terminate the contract if feasible. If termination is not feasible, the individual or department involved must contact the Health Science Center Office of Regulatory Affairs & Compliance for reporting to DHHS as required.

Exceptions

Certain parties performing activities involving Health Science Center protected health information may not be required to sign a business associate agreement. Health Science Center personnel should consult with the Office of Legal Affairs to make this determination. Some examples of categories of persons who may not be required to sign a business associate agreement include:

1. Workers who are not employed by the Health Science Center, but work mostly on-site at the Health Science Center, and who are deemed to be part of the Health Science Center's workforce;
2. Entities participating in an "organized healthcare arrangement" with the Health Science Center;
3. Certain affiliates of the Health Science Center;
4. Persons performing legally required functions or activities on behalf of the Health Science Center, provided that the Health Science Center shall attempt to obtain satisfactory assurances that the protected health information shall be held confidential as required by 45 Code of Federal Register (C.F.R.) § 164.504(e),

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and, if no such assurance is obtained, the Health Science Center shall document its attempts and the reason that assurances could not be obtained.

Existing Contracts

The Office of Legal Affairs will review the Health Science Center contracts with outside vendors that involve use or disclosure of protected health information in order to determine whether such contracts need to be amended to include business associate agreement provisions. Health Science Center personnel shall forward each existing vendor contract to the Office of Legal Affairs for review if such contract (a) involves the use or disclosure of protected health information by the vendor and (b) has not already been reviewed and approved by the Office of Legal Affairs. In general, business associate agreements should be in place no later than April 14, 2003. However, the Health Science Center is not required to enter into business associate agreements with those entities or persons who qualify as business associates and have a current written agreement with the Health Science Center dated prior to October 16, 2002, if the agreement is not renewed or modified prior to April 14, 2003. For qualified contracts, there is a transition period that permits such contracts to be deemed compliant until April 14, 2004, or until the contract is renewed or modified according to the contract terms (whichever is sooner), but in no event later than April 14, 2004, or such later date as the DHHS may adopt by amending the federal privacy regulations.
