

Title: Administrative Policy Health Insurance Portability and Accountability Act Business Associates Contracting	Policy No. Part 5, Staff Policies Chapter 2, Health Information Privacy & Security Section 5
	Effective Date June 20, 2017
Policy Custodian County Attorney	Adoption/Revision Date June 20, 2017 / April 2, 2020

Adopting Resolution(s): CC17-188

References (Statutes /Resos/Policies): Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. Parts 160 and 164, as amended, Health Information Technology for Economic and Clinical Health Act (HITECH Act); Health Insurance Portability and Accountability Act Hybrid and Security and Privacy Officials Designation Policy; CC03-122, CC04-156, CC05-178, CC06-475, CC07-471

Purpose: To assure that the County’s “Health Care Components” (as identified in the Health Insurance Portability and Accountability Act Hybrid and Privacy and Security Officials Designation Policy) comply with the security and privacy requirements of HIPAA and the HITECH Act, specifically with regard to identification of, and contracting with, Business Associates.

Policy: Health Insurance Portability and Accountability Act Business Associates Contracting

- A. Definitions: Relevant HIPAA definitions may be found in 45 C.F.R. § 160.103 and 45 C.F.R. §§ 164.103, 164.304, 164.402 and 164.501. In the event any of the definitions below conflict with the definitions in the HIPAA regulations, the definitions in the HIPAA regulations are controlling.
1. Business Associate: An entity or person that on behalf of a Covered Entity:
 - a. Creates, receives, maintains or transmits Protected Health Information (PHI), as defined below, for a function or activity regulated by HIPAA; or
 - b. Conducts business that involves the disclosure of PHI from such Covered Entity to the Business Associate or from another Business Associate of such Covered Entity to the Business Associate.
 - c. An individual who receives PHI and to whom the PHI pertains is not a Business Associate.
 2. Business Associate Agreement: A contract or agreement between a Covered Entity and a Business Associate related to the Business Associate’s creation, receipt, maintenance or transmittal of PHI on behalf of the Covered Entity, which are required pursuant to 45 C.F.R. §§ 164.308(b) and 164.502(e).

3. Covered Entity: A health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA.
4. Hybrid Entity: A single legal entity that has designated itself as a Hybrid Entity because it is a Covered Entity that conducts business activities that include both covered and non-covered functions and has separate departments, offices, divisions, or employment units that would meet the definition of a Covered Entity or Business Associate if it were a separate legal entity (each a "Health Care Component").
5. Protected Health Information (PHI): Individually identifiable health information that relates to the individual's past, present, or future physical or mental health, provision of health care, or payment for the provision of health care.

B. Business Associate Agreements and Other Arrangements (45 C.F.R. §§ 164.308 and 164.502)

1. As a Hybrid Entity (see the Health Insurance Portability and Accountability Act Hybrid and Security and Privacy Officials Designation Policy), the Health Care Components of the county are obligated to ensure the confidentiality, integrity and availability of all electronic PHI those Health Care Components create, receive, maintain, or transmit. In addition, when using or disclosing PHI or when requesting PHI from another Covered Entity or Business Associate, those Health Care Components must make reasonable efforts to limit use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

The County's Health Care Components may permit a Business Associate to create, receive, maintain or transmit PHI on the Health Care Component's behalf only if the Health Care Component obtains satisfactory assurances, in accordance with 45 C.F.R. §§ 164.314(a) or 164.504(e), as applicable, that the Business Associate will appropriately safeguard the information. The Health Care Component shall document the satisfactory assurances through a Business Associate Agreement with the Business Associate.

2. Business Associate Agreements shall comply with all required federal, state, and local laws, rules, and regulations. All Business Associate Agreements, except those for Jefferson County Public Health, must be approved by the County Attorney's Office prior to execution.
3. In the event a County Health Care Component does not have the authority to enter into a Business Associate Agreement, the county will do so on behalf of the Health Care Component.
4. A Business Associate Agreement is not required in the following instances:
 - a. For the transmission of PHI by the county to a health care provider concerning the treatment of the individual to whom the PHI pertains.
 - b. For the transmission of PHI by a county group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to a plan sponsor, to the extent that the requirements of 45 C.F.R. §164.504(f) apply and are met.

- c. For the transmission of PHI to or from a government agency for purposes of 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.
- d. If a Business Associate is required by law to perform a function or activity on behalf of the County, or to provide a service described in the definition of Business Associate, the county may disclose PHI to the Business Associate to the extent necessary to comply with the legal mandate. The County will attempt in good faith to obtain satisfactory assurances as required by 45 C.F.R. §§ 164.504(e)(2) and 164.314(a)(1), if applicable, and, if such attempt fails, will document the attempt and the reasons that such assurances cannot be obtained.

C. Confidentiality Clause for Other Contractors

1. A basic confidentiality clause shall be included in all contracts between the county and any person or organization who may, in the course of performing contractual responsibilities, directly or incidentally come into contact with or have access to PHI

D. Employee and Business Associate Responsibility

1. No employee is permitted to disclose PHI to a contractor unless the contract requires that PHI for performance of the services specified and the County Health Care Component and said contractor have executed a contract containing a confidentiality clause as described in Section C.1. above.
2. No employee is permitted to disclose PHI to a Business Associate, or allow a Business Associate to obtain PHI on behalf of the County Health Care Component, unless a written contract or agreement has been executed between the County Health Care Component and the Business Associate.
3. No Business Associate is permitted to disclose PHI to another Business Associate unless a Business Associate Agreement has been executed between the County Health Care Component and each Business Associate.
4. Contract authorized representatives of the county must notify the County's Designated Privacy Official, as identified in the Health Insurance Portability and Accountability Act Hybrid and Security and Privacy Officials Designation Policy, and the County Attorney's Office if he/she learns that a Business Associate or contractor has violated any HIPAA regulations or confidentiality provisions respecting PHI. The authorized representative, County's Designated Privacy Official, and the County Attorney's Office shall determine appropriate remedial action to be taken to address the violation.