



## South Dakota Department of Health Administrative Policies and Procedures Manual

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### GENERAL ADMINISTRATION

**TITLE:** HIPAA – Business Associates

**ISSUED:** November 1, 2006

**STATEMENT NO.:** GA-13

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HIPAA privacy rules identify a category of business relationship called a "business associate". This policy specifies when the Department of Health (DOH) may disclose an individual's protected health information (PHI) to a business associate of the DOH and specifies provisions that shall be incorporated into all contracts between the DOH and a business associate.

### A. Definitions

1. *Business Associate:* Means (per 45 CFR §160.103):
  - a. With respect to the DOH, a person who:
    - (1) On behalf of the DOH, but other than in the capacity of a DOH employee, performs or assists in the performance of:
      - (a) A function or activity involving the use or disclosure of PHI, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing benefit management, practice management, and repricing; or
      - (b) Any other function or activity regulated by federal regulations at 45 CFR Subtitle A, Subchapter C; or
    - (2) Provides, other than in the capacity of a DOH employee, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the DOH, or for an organized health care arrangement in which the DOH participates, where the provision of the service involves the disclosure of individually identifiable health information from the DOH, or from another business associate of the DOH, to the person.
  - b. A covered entity participating in activities or providing services as described in (a)(1) or (a)(2) of this definition to or for such organized health care arrangement, 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.
  - c. A covered entity may be a business associate of another covered entity.
  - d. The following are NOT business associates or business associate relationships:
    - (1) DOH employees, offices, and programs;
    - (2) Medical providers providing treatment to individuals;
    - (3) Enrollment or eligibility determinations involving DOH clients between government agencies;
    - (4) Payment relationships, such as when the DOH is paying medical providers, child care providers, managed care organizations, or other entities for services to DOH clients or participants when the entity is providing its own normal services that are not on behalf of the DOH;
    - (5) When an individual's PHI is disclosed based solely on an individual's authorization;

- (6) When an individual's PHI is not being disclosed y, or created for, the DOH; and
  - (7) When the only information being disclosed is information that is de-identified.
2. *Protected Health Information (PHI)*: Individually identifiable health information, including demographic information, such as age, address, and account numbers, and information that relates to a program participant's past, present, or future physical or mental health or condition or related health care services.

## B. Policy

### 1. General

- a. The DOH 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 the DOH, if the business associate has first entered into a contract with the DOH which incorporates this policy into the terms of such contract.
- b. A business associate relationship is formed only if PHI is to be used, created, or disclosed in the relationship.
- c. If a contractor or business partner is a business associate, the contract that defines the contractual relationships remains subject to all federal and state laws and policies governing the contractual relationship, in addition to the requirements of this policy which are incorporated into such contract as additional contract provisions.

### 2. Requirements Applicable to Business Associates

- a. All business associates shall:
  - (1) Not use or further disclose PHI other than as specifically permitted or required by the contract or as required by law;
  - (2) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by the contract;
  - (3) Report to the DOH any use or disclosure not allowed by the contract of which the business associate becomes aware;
  - (4) Ensure that any agents or subcontractors to whom it provides PHI agrees to the same restrictions and conditions that apply to the business associate under the contract;
  - (5) Make PHI available to the individual in accordance with *Administrative Policy Statement No. GA-12*;
  - (6) Makes its internal practices, books, and records relating to the use and disclosure of PHI available to the DOH and to the U.S. Department of Health and Human Services for the purpose of determining the DOH's compliance with federal requirements; and
  - (7) 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. Of not feasible, the business associate will continue to protect the information.
- b. The DOH may authorize termination of the contract if the DOH determines that the business associate has violated a material term of the contract.
- c. If the business associate of the DOH is another governmental entity:

- (1) The DOH may enter into a memorandum of understanding (federal) or a joint powers agreement (state) rather than a contract with the business associate if the memorandum of understanding or joint powers agreement contains terms covering all objectives of B.2.a., above, of this policy;
  - (2) The memorandum or agreement does not need to contain specific provisions required under B.2.a., above, if other law or regulations contain requirements applicable to the business associate that accomplish the same objective.
- d. If a business associate is required by law to perform a function or activity on behalf of the DOH, or to provide a service to the DOH, the DOH may disclose PHI to the business associate to the extent necessary to enable compliance with the legal requirements, without a written contract or agreement, if:
  - (1) The DOH attempts in good faith to obtain satisfactory assurances from the business associate that the business associate will protect health information to the extent specified in B.2.a., above; and
  - (2) If such attempt fails, the DOH documents the attempt and the reasons such assurances cannot be obtained.
- e. Other requirements: If specifically authorized in the written contract or agreement between the DOH and the business associate, the business associate may:
  - (1) Use information it receives in its capacity as a business associate to the DOH, if necessary;
  - (2) Disclose information it receives in its capacity as a business associate if:
    - (a) The disclosure is required by law; or
    - (b) The business associate receives assurances from the person to whom the information is disclosed that:
      - (i) 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
      - (ii) The person will notify the business associate of any known instances in which the confidentiality of the information has been breached.
3. Responsibilities of the DOH in Business Associate Relationships
  - a. The DOH's responsibilities in business associate relationships include, but are not limited to, the following:
    - (1) Receiving and logging an individual's complaint 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.
  - b. The DOH will provide business associates with this policy or any subsequent modifications, and may provide consultation to business associates as needed on how to comply with contract requirements and this policy regarding PHI.