

Policy Title:	DHS Business Associate Relationships				
Policy Number:	DHS-100-008	Version:	2.0	Effective Date:	Upon Approval

Signature on File in the office of the Chief Administrative Officer

Approved: Jeremy Emerson, Interim CAO

Date: July 20, 2009

Overview

Purpose/Rationale:

The HIPAA Privacy rules identify a category of business relationship, called a “business associate.” The purpose of this policy is to specify when DHS may disclose an individual’s protected health information to a business associate of DHS, and to specify provisions that must be included in DHS contracts with business associates.

Policy

1. General

- a. DHS has many contractual and business relationships, as well as related policies. However, not all contractors or business partners are “business associates” of DHS. This policy only applies to contractors or business partners that are defined as a “business associate” under section 1c. of this policy.
- 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 Section 2 below.
- c. “Business Associate” means (per 45 CFR 160.103):
 - A. With respect to DHS, a person or entity, who is not a DHS employee, volunteer, intern or other member of the DHS workforce, and who:
 - i. On behalf of DHS, performs or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, utilization review, quality assurance, billing benefit management, practice management, and re-pricing; or
 - ii. Provides, other than in the capacity of a DHS employee, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for DHS; for an organized health care arrangement in which DHS participates, where the provision of the service

involves the disclosure of individually identifiable health information from DHS, or from another business associate of DHS, to the person.

Examples of business associate relationships include: Area Agencies on Aging, the Office of Administrative Hearings, and the Department of Justice (DOJ) in connection with the receipt of protected health information covered by HIPAA Privacy Rules. Thus, giving legal advice to the Department does not create a business associate relationship unless PHI is provided to DOJ in connection with the provision of legal services.

- d. A business associate relationship is formed only if protected health information is to be used, created, or disclosed in connection with carrying out a function described in paragraph (c).
- e. The following are **not** business associates or business associate relationships:
 - A. DHS employees, offices, and programs;
 - B. Medical providers providing treatment to individuals;
 - C. Enrollment or eligibility determinations, involving DHS clients, between government agencies;
 - D. Payment relationships, such as when DHS is paying medical providers, child care providers, OHP managed care organizations, or other entities for services to DHS clients or participants, when the entity is providing its own normal services that are not on behalf of DHS;
 - E. When an individual's protected health information is disclosed based solely on an individual's authorization;
 - F. When an individual's protected health information is not being disclosed by DHS or created for DHS; and
 - G. When the only information being disclosed is information that is de-identified in accordance with **DHS Policy DHS-100-007**, "De-identification of Client or Participant Information and Use of Limited Data Sets."
- f. DHS may disclose an individual's protected health information to a business associate and may allow a business associate to create or receive an individual's protected health information on behalf of DHS, if:
 - A. DHS first enters into a written contract, or other written agreement or arrangement, with the business associate before disclosing an individual's protected health information to the business associate, in accordance with the requirements of Section 2 of this policy.
 - B. The written contract or agreement provides satisfactory assurance that the business associate will appropriately safeguard the information.

2. Contract Requirements applicable to Business Associates

The contract requirements applicable to business associate agreements are set out in OAR 125-055-0100 to 125-055-0130. The Office of Contracts and Procurements can provide appropriate contract language upon request.

3. Responsibilities of DHS in Business Associate relationships

- a. DHS responsibilities in business associate relationships include, but are not limited to, the following:
 - A. Receiving and logging an individual's complaints regarding the uses and disclosures of protected health information by the business associate or the business associate relationship;
 - B. Receiving and logging reports from the business associate of possible violations of the business associate contracts;
 - C. Implementation of corrective action plans, as needed; and
 - D. Mitigation, if necessary, of known violations up to and including contract termination.
- b. DHS 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 protected health information.

4. Business Associate Non-compliance

- a. If DHS 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, DHS must take reasonable steps to cure the breach or end the violation, as applicable, including working with and providing consultation to the business associate.
- b. If such steps are unsuccessful, DHS must:
 - A. Terminate the contract or arrangement, if feasible; or
 - B. If termination is not feasible, report the problem to the U.S. Department of Health and Human Services.

References

- 45 CFR 160 & 164
- OAR 125-055-0100 to 125-055-0130
- [Privacy/Security Glossary of Common Terms](#)

Policy(ies) that apply:

[DHS-100-007](#) De-identification of Client Information and Use of Limited Data Sets

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Policy History:

- **Version 2.0:**
07/01/09: This policy originated in March 2003 in order to meet compliance with the federal HIPAA Privacy Rule. The 2009 revisions do not impact the policy's compliance with HIPAA. The revisions are implemented to improve clarity and to bring some of the language in line with other more familiar program-specific privacy language.
- **Version 1.0:**
03/31/2003: Initial Release