University of California Policy

HIPAA Business Associates

Responsible Officer: Senior Vice President/Chief Compliance and Audit Officer

Responsible Office: Ethics, Compliance and Audit Services

Effective Date: September 13, 2010

Next Review Date: September 1, 2013

Who is Covered: All UC HIPAA workforce members

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Policy Summary

The University of California's Single Health Care Component (SHCC) may disclose Protected Health Information (PHI) to a business associate (BA) and may allow such individual or organization to create or receive such information on its behalf if UC obtains satisfactory assurances that the BA will appropriately safeguard the information. The HIPAA privacy regulations require satisfactory assurances to be provided in the form of a business associate agreement (BAA) that contains certain elements specifically enumerated in the regulations. It is the purpose of this policy to identify the process by which PHI can be appropriately released to business associates, and the mechanism for developing and maintaining contractual agreements with business associates regarding their responsibilities under the HIPAA privacy regulations.

Policy Definitions

Refer to the document entitled “UC HIPAA Glossary”.

Policy Text

Prior to allowing a HIPAA Business Associate (BA) access to the University of California’s (UC’s) Protected Health Information (PHI), UC must execute a Business Associate Agreement (BAA) with the BA. The Office of General Counsel, Health Law group, has developed a standard systemwide BAA that must be used. An annotated version of the BAA is available that provides guidance when using the BAA. Changes to the BAA, beyond those allowed in the annotated version, must be reviewed and approved by a UC Health Lawyer.

No BAA is required when SHCC workforce members perform BA-type functions for the SHCC in their capacity as an SHCC workforce member.

Where the SHCC knows of a material breach or violation of the BAA by the BA, the SHCC is required to take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, to terminate the contract. If termination is not feasible, the SHCC is required to report the problem to DHHS, Office for Civil Rights.

Members of the SHCC workforce must report suspected violations of the BAA by the BA to the appropriate persons within the SHCC, including the University’s Office of General Counsel, UC HIPAA Privacy Official, or a local Privacy Officer.

A. Activities That Require a Business Associate Agreement

A person or entity performing any of the following activities for or on behalf of UC requires a BAA if PHI is being used or disclosed for:

- claims processing or administration,
- repricing,
- benefit management,
- data analysis, processing or administration,
- utilization review,
- billing,
- practice management,
- accreditation services,
- financial services,
- legal services, or
- quality assurance.

Additionally, a person or entity performing any of the activities listed below, other than as part of the SHCC's workforce, requires a business associate agreement:

- accounting,
- legal,
- accreditation,
- consulting,
- administrative,
- financial,
- actuarial,
- management, or
- data aggregation.

B. Circumstances When a Business Associate Agreement Is Not Required

1. Components of UC's SHCC, their affiliated covered entities, and members of their organized health care arrangements do not require BAAs with each other.
2. BAAs are not required with members of UC's workforce.
3. Disclosures for treatment purposes between the SHCC and healthcare providers including unaffiliated health care providers do not require a BAA.
4. Disclosure between the SHCC and a financial institution for purposes of processing certain consumer financial transactions (such as generally routing banking transactions or processing or collecting a payment made by an individual to the SHCC) do not require a BAA. Note that if the SHCC initiates such payment activities it must meet the minimum necessary disclosure requirements.
5. If a specific law requires a BA to perform a function or activity on behalf of the SHCC, the SHCC is permitted to disclose PHI to the BA to the extent necessary to comply with the legal mandate without a BAA, if the SHCC makes a good faith effort to obtain satisfactory assurances that the BA will appropriately safeguard the information. (If these attempts fail, the SHCC must document the attempts and reasons it could not obtain the assurances.) Before disclosing PHI pursuant to this exception, the SHCC workforce member should make sure such assurances have been obtained by contacting Counsel or the appropriate Privacy Official.
6. When outside researchers receive PHI for research purposes and in accordance with UC policies and procedures, a BAA is not required. Certain disclosures, even if made solely in the general context of research, will nonetheless require a BAA if the recipient of the information is using or disclosing the information to perform a function or activity regulated by the Privacy Rule.

C. Governmental Entities
UC is a governmental entity. If the SHCC has a BA relationship with another governmental entity for purposes other than treatment (no BAA is required for treatment purposes), the requirements of the BAA may be met by:

- Entering into a Memorandum of Understanding (MOU) with the governmental entity provided that it contains terms that accomplish the objectives of the BAA; or
- Determining if current state or federal law requires that the governmental entity/business associate comply with regulations that meet the objectives of the HIPAA Privacy Rule Business Associate Standard.

The University's Office of the General Counsel will provide the SHCC with a legal opinion as to whether an MOU is necessary in those situations where UC has a BA relationship with another governmental entity or whether a BAA is required.

Approval Authority

Implementation of the Policy: Senior Vice President/Chief Compliance and Audit Officer

Revisions to the Policy: Senior Vice President/Chief Compliance and Audit Officer

Approval of Actions: not applicable

Compliance and Reporting

N/A

Implementation Procedures

UC Organizational Units subject to HIPAA are responsible for implementation.

Related Documents

45 CFR 164.502(e), 164.504(e), 164.532 (d)(e)

UC standard systemwide Business Associate Agreement (BAA)

Frequently Asked Questions

FAQs may be found on the UC HIPAA website.

Revision History

HIPAA Privacy Rule: University of California Systemwide Standards and Implementation Policies (System Standards), April 2003.