



VOLUME 13: PRIVACY	Effective Date: 2/15/12
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13.9 BUSINESS ASSOCIATE USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION POLICY	Attachments: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

I. POLICY

California Correctional Health Care Services (CCHCS) may only disclose Protected Health Information (PHI) to a business associate when CCHCS enters into a written Business Associate Agreement (BAA) with the business associate. Alternate forms of BAAs must be approved by legal counsel.

II. PURPOSE

To specify when CCHCS may disclose a patient’s PHI to a business associate of CCHCS and to specify provisions that must be included in CCHCS contracts with business associates.

III. DEFINITIONS

Business Associate: An individual or corporate “person” who: performs on behalf of CCHCS or on behalf of another business associate of CCHCS any function or activity involving the use or disclosure of PHI for which CCHCS is responsible, and is not a member of the CCHCS’ workforce.

- The definition of “function or activity” includes but is not limited to: claims processing or administration, data analysis, utilization review, quality assurance, billing, legal, actuarial, accounting, consulting, data processing, management, administrative, accreditation, technology services, financial services and similar services for which CCHCS might contract, if access to PHI is involved.

The following are not business associates or business associate relationships, but may still require an agreement with CCHCS:

- When a patient’s PHI is disclosed based solely on a patient’s authorization.
- A health care provider, with respect to disclosures by CCHCS concerning the treatment of an individual.
- A plan sponsor, with respect to disclosures by CCHCS to the extent that CCHCS is acting in the capacity of a group health plan as defined in Health Insurance Portability and Accountability Act of 1996.
- A government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another government agency, or collecting protected health information for such purposes, to the extent such activities are authorized by law.
- A covered entity participating in an organized health care arrangement that performs the function or activity of a business associate to or for such organized health care arrangement by virtue of such activities or services.

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- When a health information organization, e-prescribing gateway, or other person that provides data transmission services with respect to PHI to CCHCS does not require access on a routine basis to such PHI.
- When a patient's PHI is not being disclosed.
- When the only health information being disclosed is completely de-identified in accordance with the Inmate Medical Services Policies and Procedures, Volume 13, Chapter 8, De-identification of Patient Information and Use of Limited Data Sets Policy.

Business Associate Agreement: A contract between CCHCS and a business associate concerning the information privacy and security obligations imposed on the business associate. A BAA is necessary for most disclosures of PHI to business associates.

Disclosure: The release, transfer, provision of access to, or divulging in any other manner, of information outside the entity holding the information.

Protected Health Information: Information created or received by CCHCS which identifies or can be used to identify an individual as it relates to past, present, or future health conditions; health care services provided to the individual; or health care related payments. This applies to information that is transmitted or maintained in verbal, paper, or electronic form.

Workforce: Employees, volunteers, trainees, and other persons whose conduct, in the performance of work for CCHCS or a business associate, is under the direct control of CCHCS or a business associate, whether or not they are paid by CCHCS or the business associate.

IV. RESPONSIBILITY

Oversight responsibility of the Privacy Office shall be vested in the Privacy Officer. The Privacy Officer is required to oversee privacy rights as required by laws, policies, and standards for respecting the rights of individuals with regard to the collection, use, and disclosure of personal information throughout CCHCS.

V. BUSINESS ASSOCIATE USE AND DISCLOSURE OF PHI

A. Exceptions

1. If a business associate is required by law to perform a function, activity, or service on behalf of CCHCS as described in the definition of business associate, CCHCS may disclose the minimum necessary PHI to the business associate to the extent necessary to comply with the legal mandate. This can be done without meeting the requirements of a business associate contract, provided that CCHCS attempts in good faith to obtain satisfactory assurances that the business associate shall protect health information to the extent required by a CCHCS BAA, and, if such attempt fails, CCHCS shall document the attempt and the reasons that such assurances cannot be obtained.
2. A business associate contract is not required between CCHCS and the subcontractors of a business associate where the business associate maintains a valid business associate contract with CCHCS.

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B. Responsibilities of CCHCS in Business Associate Relationships

CCHCS responsibilities in business associate relationships include, but are not limited to, the following:

1. Receiving, logging, and reporting a patient's complaints regarding the uses and disclosures of PHI by the business associate;
2. Receiving, logging, and reporting notices from the business associate of possible violations of the business associate contract;
3. Implementation of corrective action plans, as needed; and
4. Mitigation, if necessary, of known violations up to and including contract termination.

C. Business Associate Non-Compliance

If CCHCS becomes aware 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, CCHCS must take reasonable steps to mitigate the breach and/or end the violation. This may include working with and providing consultation to the business associate, terminating the contract and/or reporting the problem to the Secretary of the U.S. Department of Health and Human Services.

VI. TRAINING REQUIREMENTS AND CONTACT INFORMATION

- A.** Privacy training is required for new employees during New Employee Orientation and annually thereafter.
- B.** For questions or clarification, please contact: Privacy@cdcr.ca.gov or 1-877-974-4722.

VII. REFERENCES

- Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, Section 160.103 - Definitions
- Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 164, Subpart E, Section 164.502 - Uses and disclosures of protected health information: General rules
- Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 164, Subpart E, Section 164.504(e)
- California Correctional Health Care Services, Inmate Medical Services Policies and Procedures, Volume 13, Chapter 8, De-identification of Patient Protected Health Information and Use of Limited Data Sets Policy