



POLICY TITLE: 204.00 Business Associate Agreements - Entering Into Agreements with Third Party Contractors

Responsible Department: Corporate Privacy Office

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SUMMARY & PURPOSE:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule sets out how and with whom PHI may be shared.

The business associate provisions of the HIPAA Privacy Rule seek to ensure that third parties who gain access to protected health information as part of their business relationship with a covered entity are under the obligation to safeguard the privacy and confidentiality of this information.

POLICY:

It is the policy of Baptist Health South Florida, Inc. ("BHSF" or "Baptist Health") to comply with applicable state and federal laws, including those protecting the confidentiality of patient health information and safeguarding of patient information. It is our policy to implement these laws in a way that supports our primary mission to the community regarding the delivery of quality health care in an efficient manner. The purpose of this policy is to provide guidelines for compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the HIPAA Privacy Regulations relating to Business Associates.

SCOPE/APPLICABILITY:

This policy applies to Baptist Health, its affiliates, all workforce members, and others as described below.

- **Workforce members.** Workforce members means employees, volunteers, trainees, temporary staff, and contractors/consultants who are not independent contractors under *Human Resources Policy 1150 - Independent Contractors*.

- **Medical staff members.** Medical staff members are treated as members of an organized health care arrangement with Baptist Health South Florida and must comply with this policy as if they are workforce members pursuant to their applicable medical staff bylaws.
- **Students.** Employed students are treated as workforce members. Non-employed students (fellows, residents, students) must comply with this policy as if they are workforce members pursuant to the terms of their applicable academic agreements.
- **Independent Contractors and Others.** Independent Contractors and others who have agreed to comply with Baptist Health's policies and procedures as a condition of receiving access to Protected Health Information (PHI) must comply with this policy as if they are workforce members.
- Those listed above whose job includes entering into agreements with third party contractors.

PROCEDURES TO ENSURE COMPLIANCE:

Business Associates include any person or entity that creates, receives, maintains, or transmits PHI on behalf of any of the Baptist Health affiliates that are Covered Entities ("CE") in performing certain functions or activities on behalf of the CE that involve the use or disclosure of PHI in providing services to a CE. Subcontractors of Business Associates are also considered business associates and are bound by the same HIPAA privacy and security requirements.

1. Each BHSF facility and BHSF Executive is responsible for:
 - a. Reviewing their existing and future relationships with third parties to identify each relationship that involves the contractor's creation, receipt, maintenance, or transmission of protected health information; and
 - b. Ensuring that an appropriate and approved Business Associate Agreement is entered into with such third-party contractors, as required.
2. All third party contractors that create, receive, maintain or transmit protected health information in order to perform a function or activity on behalf of Baptist Health (e.g., billing and collection services, utilization review) or provide any of the below mentioned services to Baptist Health are considered Business Associates (BA's) and required to enter into a business associate agreement (BAA) with Baptist Health
 - a. claims processing or administration;
 - b. data analysis, processing or administration;
 - c. utilization review;
 - d. quality assurance;
 - e. billing;
 - f. benefit management;
 - g. practice management, re-pricing, accounting;
 - h. accreditation;
 - i. actuarial;
 - j. administrative;
 - k. consulting;
 - l. data aggregation;
 - m. financial services;
 - n. legal; or
 - o. management services.
3. A Business Associate Agreement, for disclosures of PHI, is not required with third party contractors in the following circumstances:
 - a. that are inadvertent disclosures to the third party;
 - b. between a Baptist Health facility and its medical staff or separately owned and operated departments, if for activities related to the joint activities of the BHSF facility and its medical staff and departments;
 - c. for research purposes;
 - d. for treatment purposes;
 - e. for processing claims for services by health plans; and

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- f. for a financial institution engaged in processing consumer-conducted transactions, transferring funds, or facilitating the compensation of health care.
4. When a relationship is identified that requires a Business Associate Agreement with a third party contractor, any agreements and information regarding such relationship must be forwarded to the Supply Chain Services Department or in the case of a service agreement that is not processed by Supply Chain Services, the executive with responsibility over the BHSF service area.
 - a. Upon receipt of information from a BHSF facility regarding a potential business associate relationship, the BHSF Supply Chain Services department or responsible executive shall confirm that a Business Associate Agreement is required, pursuant to the applicable HIPAA Privacy Policy.
 - b. If a Business Associate Agreement is required, the Supply Chain Services department or responsible executive shall enter into a pre approved form of Business Associate Agreement on behalf of Baptist Health.
5. Any changes or revisions to the Business Associate Agreement form must be forwarded to the Office of General Counsel for review and approval.
6. No changes to the Baptist Health Business Associate Agreement are effective unless and until approved by the Office of General Counsel.
7. If a third party contractor forwards its own version of a Business Associate Agreement to a BHSF facility, the BHSF facility shall forward the agreement to the Supply Chain Services department or responsible executive for evaluation.
 - a. If the Supply Chain Services department or responsible executive determines that a Business Associate Agreement is required with such third party contractor, they shall forward the agreement to the Office of General Counsel for review.
 - b. If the Office of General Counsel approves such form of agreement, the Office of General Counsel shall return the agreement to the Supply Chain Services department or responsible executive to enter into the agreement on behalf of Baptist Health.
 - c. If the Office of General Counsel does not approve such form agreement, the Office of General Counsel shall notify the Supply Chain Services department or responsible executive and they shall negotiate an appropriate agreement, approved by the Office of General Counsel, with such third party contractor.
8. A third party contractor may not create or receive protected health information for or on behalf of Baptist Health until Baptist Health and such third party contractor enter into an approved Business Associate Agreement.
9. Any questions regarding whether a Business Associate Agreement is required with a third party contractor shall be forwarded to the Supply Chain Services department, the Corporate Privacy Office, the Office of General Counsel or the executive with responsibility over the service area.
10. A copy of the executed Business Associate Agreement should be forwarded to the appropriate department.
 - a. Office of General Counsel: attention office manager;
 - b. Supply Chain Services department; and
 - c. Retain a copy for departmental records.
11. Business Associates:
 - a. Shall not Use or Disclose PHI other than as permitted or required by the Business Associate. Agreement or as Required by Law;
 - b. Are directly responsible for compliance with specific requirements of HIPAA, and directly responsible for non-compliance;
 - c. Include persons or entities that create, receive, maintain, or transmit PHI on behalf of a Covered Entity;
 - d. Are identified as health information organizations, e-prescribing gateways, entities offering personal health records on behalf of a Covered Entity, and other persons or entities providing data transmission services to a Covered Entity requiring access to PHI on a routine basis; and
 - e. Are required to have agreements in place with any subcontractors and making subcontractors subject to HIPAA.
12. Examples of Business Associate Services include, but are not limited to:
 - a. A Software-as-a-Service electronic health record (EHR) system provider;
 - b. A third party administrator that assists a health plan with claims processing;
 - c. A CPA firm whose accounting services to a health care provider involves access to PHI;
 - d. An attorney whose legal services to a health plan or provider involve access to PHI;

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- e. A consultant that performs utilization reviews for a hospital;
- f. A health care clearinghouse that translates a claim from a non-standard format into a standard transaction on behalf of a healthcare provider and forwards the processed transaction to a payer;
- g. An independent medical transcriptionist that provides transcription services to a physician;
- h. A pharmacy benefits manager that manages a health plan's pharmacist network;
- i. Patient safety organizations;
- j. Health Information Organizations (HIO), E-Prescribing Gateways, and Other Persons That Facilitate Data Transmission; Vendors of Personal Health Records; and
- k. Subcontractors of Business Associates.

SUPPORTING/REFERENCE DOCUMENTATION:

- Health Insurance Portability and Accountability Act of 1996 as amended from time to time and including any regulations promulgated thereunder (collectively, "HIPAA")
- Applicable Florida State Laws

RELATED POLICIES, PROCEDURES AND ASSOCIATED FORMS:

- Corporate HIPAA Privacy Policies
Attachment – 10000-74220-68755 Business Associate Agreement

ENFORCEMENT & SANCTIONS:

1. Reference: Corporate HIPAA Privacy Policy 10000-74220-605.20 Sanctions for Privacy Violations.
2. Violations of this policy will be determined by the Chief Privacy Officer in consultation with the appropriate levels of department leadership and appropriate Human Resources management level. Reference: HR policies 5250 Employee Conduct and 5300 Corrective Action.
3. Violations of this policy may lead to disciplinary action up to and including termination.
4. Enforcement of this policy will be performed by Baptist Health South Florida's Privacy Office in conjunction with Human Resources, as circumstances may dictate.