

UNIVERSITY PHYSICIANS OF BROOKLYN, INC.

POLICY AND PROCEDURE

No: _____

Subject: BUSINESS ASSOCIATE AGREEMENTS **Page** 1 **of** 4

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Reviewed by: HIPAA Policy & Procedure Team **Supersedes Date:** NONE

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Approved by: HIPAA Oversight Committee **Distribution:**

Issued by:

- I. **Purpose:** To ensure that all business associates (BA) enter into an appropriate contract with UPB that will provide satisfactory assurance to UPB that the business associate will appropriately safeguard the protected health information (PHI), in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

II. **Definitions:**

Business Associate- A person who is not a member of UPB's workforce who:

1. On behalf of SUNY, performs or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information (IIHI), including claims processing or administration; data analysis, processing or administration; utilization review; quality assurance; billing; benefit management; practice management and repricing; or
2. Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services to UPB, where the provision of the service involved the disclosure of IIHI from UPB.

III. Policy

A. Business Associate Agreement Content- The contract between UPB and a BA must:

1. Establish the permitted and required uses and disclosures of the information. The contract may not authorize further use or disclosure in a manner that would violate the HIPAA standards, except that:
 - a. The contract may permit the BA to use or disclose PHI for the proper management and administration of the BA; and
 - b. The contract may permit the BA to provide data aggregation services relating to UPB's health care operations.
2. Provide that the BA will:
 - a. Not use or further disclose the information other than as stated in the contract or as required by law;
 - b. Use appropriate safeguards to prevent use and disclosure of information other than as provided in the contract;
 - c. Report to UPB any use or disclosure of information not provided for by the contract of which it becomes aware;
 - d. Ensure that any agents and subcontractors to whom it provided PHI received from, or created by the BA on behalf of, UPB agrees to the same restrictions and conditions provided in the contract;
 - e. Make available and provide access of PHI to a patient, when requested;
 - f. Make available PHI for amendment and incorporate any amendments to PHI, as necessary;
 - g. Make available the information required to provide an accounting of disclosures;
 - h. Make its internal practices, books and records relating to the use and disclosure of PHI received from, or created on behalf of, UPB available to the Secretary of the Department of Health and Human Services (HHS) for purposes of determining UPB's compliance with the HIPAA Privacy standards; and
 - i. If feasible, at termination of the contract, return or destroy all PHI received from, or created on behalf of, UPB that the BA still maintains in any form. The BA must not retain any copies of the information.
 - i. If not feasible, the BA must extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
3. Authorize UPB's termination of the contract if UPB determines that the BA has violated a material term of the contract.
 - a. If termination is not feasible, UPB is required to notify the Secretary of the Department of Health and Human Services (HHS) of the un-cured breach.

B. Permitted Uses & Disclosures

1. The contract may permit the BA to **use** the information, if necessary:
 - a. For the proper management and administration of the BA; or
 - b. To carry out the legal responsibilities of the BA.
2. The contract may permit the BA to **disclose** the information for the above purposes, if:
 - a. The disclosure is required by law; or
 - b. The BA obtains reasonable assurances from the recipient that:
 - i. The information will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient;

- ii. S/he will notify the BA of any breaches of confidentiality of which s/he becomes aware.

C. Treatment Relationships- A BA agreement is not needed for disclosures by UPB to a healthcare provider concerning the treatment of a patient.

D. Compliance- In order to ensure compliance, UPB will:

1. Investigate received complaints and other information containing substantial and credible evidence of violation(s) by a BA.
2. Take reasonable steps to cure the breach or violation of which it becomes aware. If such steps are unsuccessful, UPB will:
 - a. Terminate the contract; or
 - b. Report the problem to the Secretary of HHS, if termination is not feasible.

E. UPB as the BA- If UPB is a BA of another covered entity, it must comply with all the terms stated in the contract.

F. Documentation- All BA contracts must be documented and retained, as appropriate.

1. All new contracts after April 14, 2003 must have an appropriate business associate agreement.
2. All existing contracts that have been modified or renewed after October 15, 2002 must have an appropriate business associate agreement by April 14, 2003.
3. All existing contracts that have not been modified or renewed after October 15, 2002 must have an appropriate business associate agreement by April 14, 2004. However, the BA is still required to limit the use of protected health information to that which is permissible under HIPAA and make the protected health information available to UPB and the Department of Health and Human Services (HHS) upon request.

IV. Procedure

The development of the procedure section is the responsibility of the respective department. It is dependent upon the unique needs of each department's operating structure and shall be advanced and customized accordingly.

- V. Responsibilities:** It is the responsibility of all medical staff members and practice staff members to comply with this policy. Medical staff members include physicians as well as allied health professionals. Practice staff members include all employees, medical or other students, trainees, residents, interns, volunteers, consultants, contractors and subcontractors at the practice.

- VI. Reasons for Revision-** Regulatory changes

- VII. Attachments-** Business Associate Agreements: SUNY as Business Associate, SUNY as Covered Entity

- VIII. References-** Standards for Privacy of Individually Identifiable Health Information, 45 CFR §164.502(e), §164.504(e)