

**Nebraska Methodist Hospital  
BUSINESS ASSOCIATE RELATIONSHIPS  
Explanation and Instructions**

**Purpose:** Document consideration of all key elements of business associate relationships in compliance with the HIPAA Privacy regulations

**INSTRUCTIONS:** *Complete and retain in the contract file the attached worksheet each time you are responsible for negotiating or revising a business associate agreement. The worksheet is important for all business associate relationships, even those that have not required written contracts in the past.*

**EXPLANATION:**

1. **Identifying Business Associates.** A business associate is a third party who –

a. **First Test:** *On behalf of the covered entity performs or assists in the performance of a function of the covered entity and has access to protected health information (“PHI”) when doing so. Examples would include:*

Claims Processing	Practice Management	Billing
Data Analysis	Utilization Review	Benefit Management
Data Processing	Quality Assurance	Repricing

b. **Second Test:** Provides one of several listed services for a covered entity where its services involve access to PHI. The regulations list these services:

Legal	Consulting	Administrative
Actuarial	Data Aggregation	Accreditation
Accounting	Management	Financial Services

2. **The Business Associate Contract.**

a. In order for the covered entity to meet its obligation to obtain “satisfactory assurances” from a business associate, the business associate contract must include the following terms:

- Establish the permitted and required uses and disclosures of PHI by the business associate.
- Not authorize the BA to use or further disclose PHI in a way that would violate HIPAA if the covered entity itself did the same thing.
- Provide that the BA will not use or further disclose PHI other than as permitted or required in the BA contract or as required by law.
- Require the BA to use appropriate *safeguards* to prevent improper use or disclosure.
- Self-report to the covered entity’s Privacy Officer within seven days any use or disclosure of PHI not provided for in the contract of which it becomes aware.

- Ensure that any agents and subcontractors to whom it furnishes PHI will agree to the same restrictions.
- Comply with the patient rights conferred by HIPAA – specifically, the right of the individual to access his or her own PHI, to request amendment, to obtain an accounting of certain disclosures.
- Make its internal practices, books and records relating to the use and disclosure of PHI received from or created or received by the BA on behalf of the covered entity available to the Secretary of HHS for purposes of determining the covered entity's compliance
- At termination of the contract, or at shorter intervals, if feasible, return or destroy all PHI received from or created by the BA on behalf of the covered entity. If not feasible, make alternate provision for the safeguarding of the information. If the business associate will retain PHI after termination, the BA contract "must state that the privacy protections continue after the contract ends."
- Authorize termination of the BA contract if the covered entity determines that the BA has violated a material term.
- Require the BA to retain records for a period at least coextensive with the covered entity's retention obligation. The BA contract should require the BA to maintain records for 6 years following termination of the contract. In the case of a long term master contract with regular exchanges, the period of retention could probably be measured in the same fashion as for the covered entity – 6 years from the encounter, transaction, event or creation of the record.

b. Additionally, the BA agreement may –

- Require specific assurances, covered entity access, reports and other safeguards.
- Require the BA to permit access and inspection of records and procedures by the covered entity.
- Require specific controls over the use of subcontractors by the BA including satisfactory assurances from subcontractors.

c. Note also that the "minimum necessary" standard applies to BA relationships so that PHI furnished to BAs should be tailored to the function, to the extent feasible.

d. Finally, BA contracts are not required where the BA function is limited to "treatment", but are needed for medical director or administrative service agreements.