

HIPAA Procedure 5033 PR.1
Disclosure of PHI to Business Associates

Revision date: 9/5/2013

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Identification of Business Associate

Any department requiring the services of an outside party must determine if the person or entity providing the service is considered a Business Associate prior to negotiating a contract.

A Business Associate is an entity or person who performs a function or activity involving the creation, receipt, maintenance, or transmission, of Protected Health Information (PHI) on behalf of a covered entity (such as claims processing, data analysis, data storage including cloud storage, case management, utilization review, quality assurance, billing, benefit management, practice management, and repricing;) or provides certain specified services where the provision of the service involves the use or disclosure of PHI (such as legal, actuarial, accounting, consulting, data aggregation, information technology, management, administrative, accreditation, or financial services) for a covered entity. Subcontractors that receive, maintain, or transmit PHI on behalf of the Business Associate are also required to execute a Business Associate Agreement.

The following examples are provided to assist departments in determining whether or not a business associate relationship exists.

Definition	Examples	Does a Business Associate Relationship Exist?
The person or entity provides certain functions, activities or services that would involve the use and/or disclosure of Protected Health Information (PHI) on behalf of Yale University.	Data analysis, case management services, benefit management, third party administration, administrative accreditation	Yes
The person or entity provides certain functions, activities or services that would allow them to access, create, receive, maintain, transmit or use Protected Health Information (PHI) on behalf of Yale University.	Paper recycling, shredder companies, transcription services, record copy services, offsite storage including cloud storage, information technology (IT) services where the confidentiality, integrity or availability of ePHI is at risk, including software/hardware support of computing or medical devices (e.g., repair, upgrade, or maintenance) and/or application services such as email, web or database services	Yes
The person or entity provides certain functions, activities or services that would involve incidental contact of Protected Health Information (PHI) on behalf of Yale University.	Janitorial services, waste disposal of sealed materials, equipment repair, upgrade or maintenance of PC's if access to PHI is incidental and not necessary to provide the service, courier services,	No

The person or entity is provided a Limited Data Set under a Data Use Agreement as described in HIPAA Policy 5039 for the purpose of healthcare operations	Quality improvement analysis involving limited identifiers,	No
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If, after using the above criteria, it is still unclear whether or not a business associate relationship exists, the department should contact the Privacy Office for further guidance prior to entering into any agreement.

Contracting with a Business Associate: Business Associate Agreements

There are two types of Business Associate Agreements:

- 1) **Business Associate of Yale** – Yale University identifies an outside party who performs a service for Yale which qualifies as a Business Associate arrangement. The Procurement Department or Grant and Contract Administration executes the Business Associate Agreement.
- 2) **Yale serving as a Business Associate of Another Party** – A covered entity identifies Yale University as provider of a service for that outside entity which qualifies as a Business Associate arrangement. The outside party sends the Business Associate Agreement to Yale University to sign and return.

In both instances, the Yale University HIPAA Privacy Office in collaboration with the Procurement Department will track and manage Business Associate Agreements. Go to [Tracking and Management of Business Associates](#) to view lists of Business Associate Agreements and their current status.

Processing of Business Associate Agreements

When it is determined that a Business Associate relationship exists, or when an agreement is received from an outside business, the department representative contracting with the Business Associate is responsible for ensuring that a Business Associate Agreement has been executed by the Yale University Procurement Department prior to the release or acceptance of Protected Health Information (PHI).

To request the execution of a Business Associate Agreement, departments must complete a [Business Associate Tracking Form](#). The completed form should be forwarded to the HIPAA Privacy Office via the fax number provided on the form. This form serves as the department's request to initiate the Business Associate Agreement contracting process including cataloging, tracking and reporting on the Business Associate. The HIPAA Privacy Office will review the documentation and coordinate with the Procurement Office and/or Grant and Contract Administration for the execution of the Business Associate Agreement.

If a Business Associate refuses to sign the required Business Associate Agreement, the Privacy Office may seek assistance from the Office of the VP and General Counsel to complete the agreement negotiation.

Managing a Business Associate

The Yale Privacy Office is responsible for maintaining a database of information on all business associates that have contracts with Yale University.

Once a relationship has been established with a business associate and a contract has been negotiated and signed by both parties, the department that initiated the relationship must ensure that a signed copy

of the Business Associate agreement is provided to the HIPAA Privacy Office who is responsible for notifying the Procurement Office of the new agreement.

The Privacy Officer is responsible to perform periodic assessments to ensure compliance University Business Associate related HIPAA requirements.

If an employee becomes aware of a business associate that has violated its contract with Yale University, the violation should be reported to the Privacy Office as soon as possible. The Privacy Office, and in some cases, the Office of Legal Counsel, will assist in ensuring that appropriate steps are taken to address the issue with the business associate.

If Yale is unsuccessful in getting the business associate to end the violation, the contract with the business associate will be terminated, if feasible; or if termination is not feasible, Yale Office of Legal Counsel will report the problem to the Secretary of HHS.

The official version of this information will only be maintained in an on-line web format. Any and all printed copies of this material are dated as of the print date. Please make certain to review the material on-line prior to placing reliance on a dated printed version.
