

Table of Contents

BUSINESS ASSOCIATES	1
WHAT IS A BUSINESS ASSOCIATE?	1
WHAT ARE SOME EXAMPLES OF THE FUNCTIONS AND /OR SERVICES THAT BUSINESS ASSOCIATES MAY PROVIDE?	1
IS EVERYONE WHO PROVIDES A FUNCTION OR SERVICE CONSIDERED A BUSINESS ASSOCIATE?	2
HOW DO I DETERMINE IF THE PROVIDER OF THE FUNCTION OR SERVICE IS A BUSINESS ASSOCIATE?	2
ARE ALL BUSINESS ASSOCIATES REQUIRED TO SIGN AGREEMENTS?	2
IF BA LANGUAGE IS INCLUDED IN A CONTRACT IS THERE MORE THAT I NEED TO DO?	3
MARKETING	3
WHAT IS MARKETING UNDER THE HIPAA PRIVACY RULE?	3
WHAT RESTRICTIONS DOES HIPAA PLACE ON MARKETING ACTIVITIES?	3
ARE THERE EXCEPTIONS TO THE COMMUNICATION DEFINITION OF MARKETING?	3
CAN A BUSINESS ASSOCIATE HANDLE THE MARKETING FOR THE YALE?	4
FUNDRAISING	4
CAN PATIENT PROTECTED HEALTH INFORMATION (PHI) BE USED FOR FUNDRAISING PURPOSES?	4
CAN DEVELOPMENT OFFICERS REVIEW LISTS OF PATIENTS WITH PHYSICIANS TO DETERMINE THE APPROPRIATENESS OF SENDING FUNDRAISING MATERIALS OR TO DESIGN A STRATEGY TO ENGAGE PATIENTS IN POTENTIAL GIFT CONVERSATIONS?	4
WHO CAN ACCESS THIS PATIENT PHI INFORMATION FOR FUNDRAISING PURPOSES?	5
IS AN OPT-OUT PROVISION REQUIRED IN ALL FUNDRAISING MATERIALS?	5
WHAT IF A PATIENT OPTS OUT OF RECEIVING FUNDRAISING MATERIALS?	5
CAN PATIENTS OPT BACK IN TO RECEIVE FUTURE FUNDRAISING MATERIALS?	5
ARE THERE OTHER REQUIREMENTS FOR THE DEVELOPMENT OFFICE RELATED TO THEIR USE OF PHI?	5
WHERE CAN I GET MORE INFORMATION?	6

BUSINESS ASSOCIATES

What is a Business Associate?

A Business Associate is an individual or company who is not employed by Yale but who performs or assists us in performing activities that require receiving, creating, storing, transmitting, accessing, using or disclosing PHI (protected health information).

What are some examples of the functions and /or services that Business Associates may provide?

Some examples of the functions and/or services provided by a Business Associate are:

- Claims processing, data analysis or case management services
- Benefit management

For a detailed explanation of HIPAA policies and procedures see: <http://www.hipaa.yale.edu>. The information provided here does not supersede or take the place of the official HIPAA policies and procedures. This is intended solely as a reference guide. Version August 2014

- Accreditation
- Paper recycling and shredder companies
- Transcription and record copy services
- Offsite storage
- Repair, upgrade or maintenance of PCs, computer equipment, or software where access to PHI is necessary to provide the service
- External auditors
- Third party administrators of benefit plans

Is everyone who provides a function or service considered a Business Associate?

Providers of certain services where access to PHI is incidental or are not related to our role as a health care provider/health plan are not considered business associates. Examples include:

- Janitorial services and waste disposal of sealed materials
- Repair, upgrade or maintenance of PCs where access to PHI is **not** necessary to provide the service
- Research collaborators and research related services
- State mandated registries such as the tumor registry

How do I determine if the provider of the function or service is a Business Associate?

Department staff should determine if PHI is received, transmitted, stored, created, accessed, used, disclosed or exchanged between Yale and the outside provider. If so, the next question is whether or not the service is performed on our behalf in our role as a health care provider or health plan. If it is determined that a business associate agreement is needed, a completed [Business Associate Tracking form](#), should be sent to the HIPAA Privacy Office to initiate the process. If you are unsure, you can consult with the HIPAA Privacy office in making the determination.

More detailed information is available in Yale HIPAA policy 5033 at: <http://hipaa.yale.edu/sites/default/files/files/5033.pdf>

Are all Business Associates required to sign agreements?

The covered components of Yale are required to comply with the Business Associate standard of HIPAA. This standard mandates that Business Associates who may receive, use, obtain, create, store, transmit, or have access to PHI be required to sign an agreement ensuring that the Business Associate will safeguard and protect the integrity, availability and confidentiality of the PHI.

Business associate language incorporated into signed contracts will fulfill the requirement of a signed Business Associate Agreement.

For a detailed explanation of HIPAA policies and procedures see: <http://www.hipaa.yale.edu>. The information provided here does not supersede or take the place of the official HIPAA policies and procedures. This is intended solely as a reference guide. Version August 2014

For additional information and forms go to: <http://hipaa.yale.edu/policies-procedures/tracking-management-business-associates>

If BA language is included in a contract is there more that I need to do?

BAs must be tracked by the HIPAA Privacy Office. If the HIPAA Privacy Office has not been involved in reviewing the BA terms, a tracking form should be sent to the HIPAA Privacy Office to ensure that the arrangement is appropriately monitored.

MARKETING

What is marketing under the HIPAA Privacy Rule?

The HIPAA privacy rule defines marketing as a communication, in any form, about a product or service that encourages recipients to purchase or use the product or service. The definition also includes when a third party pays a covered entity, such as Yale University, to disclose PHI that enables the third party to use the information for its own marketing purposes.

For example, providing a list of diabetic patients to a company that sells glucose monitoring kits would be considered marketing.

What restrictions does HIPAA place on marketing activities?

If the activity qualifies as marketing under the HIPAA definition and is not one of the exceptions, a signed patient authorization is required. The authorization must be specific to the marketing activity and list any payment involved.

For detailed information see [HIPAA Policy 5034](#).

Are there exceptions to the communication definition of marketing?

HIPAA does carve out a few exceptions to the definition of marketing. Yale can communicate to patients about various goods and services essential for quality health care when it:

- relates to Yale's own products or services, such as sending information to our patients about a new service we are providing.
- is made for treatment of the individual, such as recommending over the counter remedies.
- is made for case management or care coordination for the individual, including directing or recommending alternative treatments, therapies, health care providers, or settings of care to the individual.
- is in the form of a face to face communication made by a clinician to the patient.

For a detailed explanation of HIPAA policies and procedures see: <http://www.hipaa.yale.edu>. The information provided here does not supersede or take the place of the official HIPAA policies and procedures. This is intended solely as a reference guide. Version August 2014

- is a promotional gift of nominal value.

Can a business associate handle the marketing for the Yale?

If the communication is permissible under the HIPAA privacy rule Yale may use a business associate to relate some of the communication. As with any disclosure of PHI to a business associate, a business associate agreement must be signed, protecting the use of PHI for communication activities.

For additional information see: [HIPAA Policy 5034](#).

FUNDRAISING

Can patient protected health information (PHI) be used for fundraising purposes?

Yes. Yale's Notice of Privacy Practices states that patient demographic, health status data and dates of service information may be used for fundraising purposes without first obtaining patient authorization. As of March 26, 2013, these types of PHI were expanded to include the following:

- Patient Name
- Address and other contact information
- Gender and age (including date of birth)
- Dates of health care services provided to the patient
- Department of service
- Treating physician
- Outcome information
- Health insurance status

If **any other types of patient information** are to be used in fund raising, we **must** first obtain a specific Authorization from the patient. Diagnosis information or subspecialty information may not be used. Our HIPAA authorization form can be found at:

<http://hipaa.yale.edu/sites/default/files/files/5031-FR.pdf>

Can development officers review lists of patients with physicians to determine the appropriateness of sending fundraising materials or to design a strategy to engage patients in potential gift conversations?

Yes. Physicians can assist the development office by considering whether a given patient is appropriate to contact given their treatment outcomes.

For a detailed explanation of HIPAA policies and procedures see: <http://www.hipaa.yale.edu>. The information provided here does not supersede or take the place of the official HIPAA policies and procedures. This is intended solely as a reference guide. Version August 2014

Who can access this patient PHI information for fundraising purposes?

Fundraising information can be used by the Yale School of Medicine development office staff; all staff members are trained in HIPAA Privacy and Security Rule requirements and comply with the University HIPAA policies, including data security requirements. In addition, this patient PHI information may be disclosed to an external entity under contract as a HIPAA Business Associate. Information on whether a company is a Yale HIPAA Business Associate is available at: <http://hipaa.yale.edu/sites/default/files/files/BAStatusExtract-YalePHIShared-w-Company.pdf>

Is an Opt-Out Provision required in all fundraising materials?

Yes. All Yale School of Medicine solicitations must include, in a clear and conspicuous manner, the opportunity for the recipient to “opt out” of receiving any future fundraising communications. The method of opting out may not require the patient to endure an undue burden such as sending a letter. All Yale School of Medicine solicitations will provide local and toll free phone numbers, a mailing address and an email address so patients will have multiple methods to request to “opt out”.

What if a patient opts out of receiving fundraising materials?

When an individual elects not to receive any further fundraising communications that individual will be removed from the fundraising communication list and no future fundraising communications may be sent to the patient. The Yale School of Medicine development office will maintain a list of those patients who request removal from fund raising lists. This information will also be maintained in the patient’s medical record.

Can patients opt back in to receive future fundraising materials?

Yes; but receipt of a gift is not an automatic “opt back in”. In these cases, development officers will contact the patient donors and determine their willingness to “opt back in”. When a patient changes his or her mind and requests to begin receiving fundraising communications, that patient will be asked to sign an Authorization. Once the Authorization is received, they will be added to the list of patients who receive fundraising solicitations.

Are there other requirements for the Development Office related to their use of PHI?

Handling PHI on behalf of a HIPAA Covered Entity requires that the Development Office staff be trained in HIPAA Privacy and Security Rule requirements and comply with the University HIPAA policies, including data security requirements.

Where can I get more information?

For more information please contact the HIPAA Privacy Office at 432-5919 or YSM Development at 436-8560.