

HIPAA Business Associate Agreement & Policy

This Agreement ("Agreement") is executed on the effective date of first monetary transaction between you ("covered entity") and Acquire Patients ("AP") and/or one or more of its affiliates who have a contractual relationship with the Business Associate, AP.

1. Policy Statement

AP discloses the minimum amount of protected health information necessary to business associates who provide a service to or perform a function on behalf of AP only after entering into a written agreement with the business associate.

2. Purpose

The purpose of this Policy is to support compliance with HIPAA and applicable state laws by documenting in an agreement the requirements relating to use and disclosure of protected health information created by a business associate or provided by, or on behalf of, AP to a business associate of AP.

3. Scope

This policy applies to all AP business associates who have access to protected health information.

Definitions

"Business Associate" means a person/entity who performs a function on behalf of AP or provides a service to AP involving the use or disclosure of protected health information.

"Business Associate Addendum" means an agreement that meets the implementation specifications of the HIPAA regulations and generally supplements an underlying agreement for services where protected health information is used or disclosed.

4. Procedure

General: If a person who is not a member of AP's workforce will create or receive protected health information from or on behalf of AP to perform a function on behalf of AP or to provide a service to AP, that person must sign a business associate agreement. AP will not disclose protected health information without a signed agreement.

Business Associate Agreements

- The agreement will be in the form of a Business Associate Addendum (see: Attachment A).
- Any material revision or departure from the terms of the Addendum must be approved by AP's legal counsel.
- The Addendum will be maintained as a separate document and will not be integrated into the underlying services agreement, if any.
- AP enters into business associate agreements with all new business associates prior to disclosing health information. Existing business associates will execute a Business Associate Addendum upon contract renewal.
- A business associate agreement is mandatory, unless the business associate is required by law to perform the service and AP is unable to obtain business associate agreement. AP will

disclose the minimum information necessary to comply with the legal mandate and document why it was unable to obtain a business associate agreement.

Business Associates Engaged for De-identification: AP may engage a business associate to create de-identified data or limited data sets, even if this data will not be used by AP. This business associate may in some cases be the ultimate recipient of the de-identified data or limited data set. For example, if a researcher requests a limited data set containing patient zip codes, AP may engage the researcher as a business associate to remove from the relevant patient records all geographical information other than the zip codes.

Minimum Necessary: Before disclosing protected health information to a business associate, review and determine the minimum amount necessary required to be disclosed for the business associate to perform under the agreement.

Violation by Business Associate:

- If AP receives a complaint or other information that contains substantial and credible evidence of a violation of the Business Associate Addendum, AP will promptly take steps to determine if the business associate can cure the breach. If the breach cannot be cured, AP will terminate the contract, if feasible.
- If it is not feasible to terminate the business associate arrangement because, for example, the business associate is the only entity that can perform the essential service for or on behalf of AP, AP will report the problem to the Secretary of the Department of Health and Human Services.
- Contact the Privacy Officer if a business associate advises that a violation of the terms of the Business Associate Addendum has occurred or in the event of a complaint or an identified breach of a material term of a Business Associate Addendum.
- If a business associate is also a covered entity under HIPAA, a violation of the business associate obligations is noncompliance with 45 C.F.R. § 164.502 and § 164.504 (e), and the business associate is subject to sanctions by the Department of Health and Human Services.

Record Retention: The Business Associate Addendum and documentation of any violation and resolution thereof must be retained for five (5) years from the date created or last in effect, whichever is later.

State Law Considerations: AP complies with state law when it is more stringent than the HIPAA regulations. At the time of this policy creation there were no more stringent state laws affecting this policy.

5. Attachments

Business Associate Addendum

6. Executive Approval

The AP Privacy Officer has reviewed and approved this Policy/Procedure.

Attachment A

Addendum to Agreement with Business Associate

- A. Coverd Entity, and AP and its other Business Associates, are parties to one or more agreements entered into from time to time between parties (collectively "Current Agreement(s)") pursuant to which Business Associate provides a service to, or performs a function on behalf of, AP and, in connection therewith, uses or discloses Protected Health Information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");
- B. Any entity which creates or receives PHI from or on behalf of AP is a business associate, as defined in the HIPAA implementing privacy regulations, 45 C.F.R. Parts 160 and 164 ("HIPAA Regulations");
- C. Pursuant to the HIPAA Regulations, all business associates of AP must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and
- D. The purpose of this Agreement is to satisfy the requirements of the HIPAA Regulations, including, but not limited to, business associate contract requirements set forth at 45 C.F.R. § 164.504 (e), as it may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- 1. **Definitions.** Unless otherwise provided in this Agreement, capitalized terms have the same meaning as set forth in the HIPAA Regulations, 45 C.F.R. Parts 160 and 164.
- 2. **Scope of Use and Disclosure of Protected Health Information.** Except as otherwise limited in this Agreement, Business Associate shall use and disclose PHI solely to provide the services, or perform the functions, described in the Current Agreement(s), provided that such use or disclosure would not violate the HIPAA Regulations if so used or disclosed by AP. Business Associate, to the full extent applicable, shall ensure that its directors, officers, employees, contractors and agents shall:
 - a. Not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law;
 - b. Implement all appropriate and reasonable administrative, physical and technical safeguards to prevent use or disclosure of PHI other than as provided by this Agreement;
 - c. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement;
 - d. Report promptly to AP's designated Privacy Officer any use or disclosure of PHI not provided by this Agreement of which Business Associate becomes aware;
 - e. Require contractors or agents to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of, AP, to agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI under this Agreement;
 - f. Provide to AP or, as directed by AP, to an Individual, in the time and manner designated by AP, any information necessary to allow AP to respond timely to a request by an Individual for a copy of the Individual's PHI pursuant to 45 C.F.R. § 164.524.

- g. Maintain for a period of five (5) years all Designated Record Sets relating to PHI received from, or created or received by Business Associate on behalf of, AP;
- h. Maintain for a period of five (5) years records of all disclosures of PHI, other than for the purpose(s) set forth in this Agreement, including the date, name of recipient, description of PHI disclosed and purpose of disclosure;
- i. Provide to AP or, as directed by AP, to an Individual, in the time and manner designated by AP any necessary information collected in accordance with Section 2 (H) of this Agreement in order to allow AP to respond timely to a request by an Individual for an accounting of the disclosures of the Individual's PHI pursuant to 45 C.F.R. § 164.528;
- j. Make any amendments to PHI that AP directs or agrees to pursuant 45 C.F.R. § 164.526 at the request of AP or an Individual in the time and manner designated by AP;
- k. Make Business Associate's internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, AP available to AP or, at the request of AP to the Department of Health and Human Services ("DHHS"), in a time and manner designated by AP or DHHS, for purposes of determining AP's compliance with the HIPAA Regulations; provided that, in all events, Business Associate shall immediately notify AP upon receipt by Business Associate of any request received from DHHS relating to AP's compliance with the HIPAA Regulations and shall provide AP with copies of any materials provided to DHHS.
- l. Upon termination of the Current Agreement(s), return or destroy all PHI received from, or created or received by Business Associate on behalf of, AP that Business Associate still maintains, or which is maintained by any contractor or agents of Business Associate, in any form and shall retain no copies of such PHI; provided that if such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. A senior officer of Business Associate shall certify in writing to AP, within five (5) days after termination, that all PHI has been returned or destroyed as provided above and that Business Associate retains no copies of PHI in any form; and
- m. Allow AP, upon reasonable notice, to inspect Business Associate's procedures and practices with respect to compliance with the terms of this Agreement; provided, however, that AP has no duty to inspect and its decision not to inspect does not relieve Business Associate of its compliance responsibility.

3. **Obligations of AP.** To assist Business Associate in proper use and disclosure of PHI, AP shall:

- a. Provide Business Associate with the notice of privacy practices that AP produces in accordance with 45 C.F.R. §164.520, as well as any changes to such notice;
- b. Provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures;
- c. Notify Business Associate of any restriction on the use or disclosure of PHI, that AP has agreed to in accordance with 45 C.F.R. §164.522; and
- d. Not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if the PHI were to be so used or disclosed by AP

4. **Standard Transactions.** To the extent Business Associate conducts Standard Transactions(s) on behalf of AP, Business Associate shall without limitation, comply with the HIPAA Regulations, "Administrative Requirements for Transactions," 45 C.F.R. § 162.100 et seq., by the compliance date of October 16, 2003, and shall not: (a) Change the definition, data condition or use of a data element or segment in a standard; (b) Add any data elements or segments to the maximum defined data set; (c) Use any code or data elements that are either marked "not used" in the

standard's implementation specification or are not in the standard's implementation specification(s); or (d) Change the meaning or intent of the standard's implementation specifications.

5. **Termination for Breach.** AP shall have the right to terminate the Current Agreement(s) upon written notice if AP determines that Business Associate has breached a material term of the provisions of this Agreement; provided that AP remedies under this Agreement and the section(s) of the Current Agreement(s) related to termination, if any, shall be cumulative.
6. **Survival of Terms.** The obligations of Business Associate under Sections 2(F), 2(G), 2(H), 2(I) and 2 (L) of this Agreement shall survive the termination of the Current Agreement(s), and any of them.
7. **Injunctive Relief.** Business Associate agrees that the remedies at law for any breach by it of the terms of this Agreement shall be inadequate and that monetary damages resulting from such breach are not readily measured. Accordingly, in the event of a breach or threatened breach by Business Associate of the terms of this Agreement, AP shall be entitled to immediate injunctive relief. Nothing herein shall prohibit AP from pursuing any other remedies available to it for such breach, and AP's rights under this Agreement and the sections of the Current Agreement(s) related to injunctive relief, if any, shall be cumulative.
8. **Amendment of Agreement.** In the event of a material change in the HIPAA Regulations or state law affecting the use or disclosure of PHI, AP may amend this Agreement and the Current Agreement(s) as necessary to comply with the change in the law or regulation and such amendment shall become effective sixty (60) days after receipt by Business Associate. AP's rights under this Agreement and the section(s) of the Current Agreement(s) related to amendments, if any, shall be cumulative.
9. **Notice of Investigation of Lawsuit and Indemnification.** Business Associate shall notify AP immediately upon receipt of notice of an investigation or of a lawsuit filed against Business Associate related to or arising from the use or disclosure of PHI by Business Associate pursuant to this Agreement. Any indemnification provision in the Current Agreement(s) shall apply to Business Associate's and AP's use and disclosure of PHI under this Agreement; provided, however, that the limits of liability and limits on consequential type damages, if any provided in the Current Agreement(s) shall not apply in the event of a breach of this Agreement or with respect to Business Associate's obligations for indemnification.
10. **Confidentiality.** Notwithstanding the foregoing, PHI shall not be included within the definition of "confidential information" in the section(s) of the Current Agreement(s) related to protection of confidential information, if any, as Business Associate's obligations with respect to PHI are set forth in this Agreement.
11. **State Law Requirements.** To the extent that state law is more stringent than the HIPAA Regulations, any use or disclosure of PHI by Business Associate shall be made in accordance with state law.
12. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits AP to comply with the HIPAA Regulations.
13. **Effective Date Order of Precedence.** IN WITNESS WHEREOF, the parties hereto, through their duly authorized officers, have executed this Agreement as of the Effective Date designated above.