

**Office of Compliance Programs**  
**PRIVACY POLICY AND PROCEDURES**

Policy #: 2100.22

LSU Health Sciences Center New Orleans

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Date Effective: April 14, 2003

Date Revised: September 23, 2013

**Patient Information Policy**

Use and Disclosure of Protected Health Information to Business Associates

**SCOPE:**

All Louisiana State University (LSU) System health care facilities and providers including, but not limited to hospitals, physician practices, clinics, schools, etc. on the LSU Health Sciences Center New Orleans Academic Campus.

**Note Bene:** All LSU System health care facilities and providers including, but not limited to hospitals, physician clinics, schools, etc. on the LSU Health Sciences Center New Orleans Academic Campus, are referred to in this policy as LSUHSC-NO.

**PURPOSE:**

To provide guidance to the health care facilities and providers affiliated with LSUHSC-NO on the requirements of the Health Insurance Portability and Accountability Act (HIPAA), Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 ("HIPAA Rules") that relate to the disclosure of a patient's Protected Health Information to a Business Associate (BA) of LSUHSC-NO.

**POLICY:**

All LSUHSC-NO health care facilities and providers must enter into a business associate agreement with any Business Associates when the contracted services require the use and/or disclosure of PHI as provided in this policy. All business associate agreements, whether LSUHSC-NO is acting as the Covered Entity or the Business Associate must be reviewed and approved by the Privacy Officer prior to execution.

**DEFINITIONS:**

Any capitalized terms not defined in this section have the same meaning as the identical terms in the HIPAA Rules.

**Business Associate** – For purposes of this policy, a Business Associate is a person or entity that is contracted by LSUHSC-NO to perform certain functions, or activities on behalf of LSUHSC-NO or provides certain services to LSUHSC-NO that involve the use or disclosure of Protected Health Information from LSUHSC-NO.

Examples of Business Associate functions and activities include but are not limited to:

- claims processing or administration;
- data analysis;
- processing or administration;
- utilization review;
- quality assurance;
- billing;

- benefit management;
- practice management; and
- re-pricing.

Examples of Business Associate services include but are not limited to:

- legal services (e.g. malpractice case);
- actuarial services;
- accounting services (e.g. if PHI is disclosed to CPA);
- consulting services;
- data aggregation;
- management services;
- administrative services;
- accreditation; and
- financial services.

The following are NOT Business Associates for purposes of this policy:

- A member of LSUHSC-NO's work force;
- A third-party payer (e.g. HMO, Medicare) that LSUHSC-NO discloses PHI to obtain payment for services to its insured;
- A health care provider, with respect to disclosures by a covered entity to the health care provider concerning the treatment of the individual;
- A government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another government agency, or collecting protected health information for such purposes, to the extent such activities are authorized by law; or
- A covered entity participating in an organized health care arrangement that performs a function or activity for or on behalf of such organized health care arrangement, or that provides a service to or for such organized health care arrangement by virtue of such activities or services.

**Protected Health Information** (sometimes referred to as "PHI") – for the purpose of this policy means individually identifiable health information that relates to past, present or future health care services provided to an individual. Examples of Protected Health Information include medical and billing records of a patient.

**PROCEDURE:**

1.0 General. LSUHSC-NO may disclose PHI to a Business Associate and may allow a Business Associate to create or receive PHI on its behalf, if LSUHSC-NO enters into a business associate agreement regarding the use and disclosure of PHI. The business associate agreement must provide that the business associate will appropriately safeguard the information. The following are examples of when a business associate contract may be needed:

1.1 A third party administrator (TPA) assists LSUHSC-NO with claims processing.

1.2 Certified Public Accountant (CPA) whose accounting services to LSUHSC-NO involve access to PHI.

1.3 A consultant who performs utilization reviews for LSUHSC-NO.

1.4 A health care clearinghouse that translates a claim from a non-standard format into a standard transaction on behalf of LSUHSC-NO and forwards the processed transaction to a payer.

1.5 An independent medical transcriptionist who provides transcription services to LSUHSC-NO.

1.6 An attorney whose legal advice depends upon reviewing PHI.

1.7 An individual performing a review as part of an accreditation process.

1.8 A health care provider evaluating students or residents.

2.0 A contract between LSUHSC-NO and a business associate must:

2.1 Establish the permitted and required uses and disclosures of protected health information by the business associate. The contract may not authorize the business associate to use or further disclose the information in a manner that would violate the requirements of the HIPAA Rules, if done by LSUHSC-NO, except that:

2.1.1 The contract may permit the business associate to use and disclose protected health information for the proper management and administration of the business associate, and

2.1.2 The contract may permit the business associate to provide data aggregation services relating to the health care operations of LSUHSC-NO.

2.2 Provide that the business associate will:

2.2.1 Not use or further disclose the information other than as permitted or required by the contract or as required by law;

2.2.2 Use appropriate safeguards with respect to protected health information, to prevent use or disclosure of the information other than as provided for by its contract;

2.2.3 Report to LSUHSC-NO any use or disclosure of the information not provided for by its contract of which it becomes aware, including breaches of unsecured protected health information;

2.2.4 Ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions and conditions that apply to the business associate with respect to such information;

2.2.5 Make available protected health information to LSUHSC-NO in response to a patient's request to view or copy their PHI;

2.2.6 Make available protected health information for amendment and incorporate any amendments to protected health information;

2.2.7 Make available to LSUHSC-NO, the information required to provide an accounting of disclosures;

2.2.8 To the extent the business associate is to carry out a covered entity's obligation under the HIPAA Rules, comply with the requirements of the HIPAA Rules to LSUHSC-NO in the performance of such obligation.

2.2.9 Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the business associate on behalf of, LSUHSC-NO available to the Secretary for purposes of determining LSUHSC-NO's compliance with the HIPAA Rules; and

2.2.10 At termination of the contract, if feasible, return or destroy all protected health information received from, or created or received by the business associate on behalf of, LSUHSC-NO that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, 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.

2.2.11 Authorize termination of the contract by LSUHSC-NO, if LSUHSC-NO determines that the business associate has violated a material term of the contract.

2.2.12 Report to LSUHSC-NO any security incident of which it becomes aware, including breaches of unsecured protected health information.

### 3.0 Government entities

3.1 If the business associate of LSUHSC-NO is a government entity:

3.1.1 LSUHSC-NO may enter into a memorandum of understanding with the business associate that contains terms that accomplish the objectives of this policy.

3.1.2 LSUHSC-NO does not require a business associate agreement if other law contains requirements applicable to the business associate that accomplish the objectives of this policy.

### 4.0 Required by Law

4.1 If a business associate is required by law to perform a function or activity on behalf of LSUHSC-NO or to provide a service described above to a LSUHSC-NO, LSUHSC-NO may disclose protected health information to the business associate to the extent necessary to comply with the legal mandate without a business associate agreement, provided that LSUHSC-NO attempts in good faith to obtain satisfactory assurances, and, if such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.

4.2 LSUHSC-NO may omit from its other arrangements the termination authorization required by 2.2.10 and 2.2.11 above, if such authorization is inconsistent with the statutory obligations of LSUHSC-NO or its business associate.

5.0 LSUHSC-NO does not need a business associate contract in the following situations:

5.1 Disclosures to a health care provider concerning the treatment of the individual. For example:

5.1.1 A hospital is not required to have a business associate contract with the specialist to whom it refers a patient and transmits the patient's medical chart for treatment purposes.

5.1.2 A physician is not required to have a business associate contract with a laboratory as a condition of disclosing PHI for the treatment of an individual.

5.1.3 A hospital laboratory is not required to have a business associate contract to disclose PHI to a reference laboratory for treatment of the individual.

5.2 Disclosures to a researcher for research purposes. This is true even when LSUHSC-NO has hired the researcher to perform research on LSUHSC-NO own behalf because research is not a covered function or activity. However, LSUHSC-NO must enter into a data use agreement prior to disclosing a limited data set for research purposes to a researcher.

6.0 Attachment A is the Business Associate Agreement form that should be used with contracts with LSUHSC-NO Business Associates.

### REFERENCES:

45 CFR § 164.502

45 CFR § 164.504

45 CFR §164.314