

# Stark County Board of Developmental Disabilities

HIPAA Procedure 26: HIPAA Designation of Business Associates	Effective: 4/14/2003
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## **Subject: HIPAA Designation of Business Associates**

A Business Associate is a person or entity who provides certain functions, activities, or services to or for the Board, involving the use or disclosure of protected health information ("PHI"). Thus, the Business Associate may itself be a healthcare provider, health plan, or other entity covered under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Privacy Rule, but a Business Associate may not be a member of the Board's workforce. In other words, the Board's own employees are not Business Associates, but other entities, contractors, or organizations may be Business Associates of the Board.

If there is a Business Associate relationship, the Board may disclose the PHI once the Board obtains satisfactory assurances that the Business Associate will use the information only for the purposes for which they were engaged by the Board, will safeguard the information from misuse, and will help the Board comply with the Board's duties to provide individuals with access to health information about them and a history of certain disclosures.

When it is determined that a Business Associate relationship exists, the required satisfactory assurances will be made by a contract. The contract must contain certain minimum assurances as follows:

1. The Business Associate contract must authorize the Board to terminate the contract if the Board determines that the Business Associate has violated a material term of the contract. The Privacy Rule states that a covered entity must have the ability to terminate the contract if steps to cure any such material breach fail, however, the covered entity is not required to terminate the contract if it is not feasible. If the covered entity believes that termination is not feasible after a material breach by a Business Associate, the covered entity must notify the Secretary. 45 CFR 164.504(e)(1) (ii) (A) and (B); (e) (2) (iii).
2. The Business Associate contract must also provide that the Business Associate will not use or further disclose the information other than as permitted or required by the contract or as required by law. 45 CFR 164.504(e)(2) (ii)(A).
3. A Business Associate contract may not authorize a Business Associate to use or further disclose PHI in a manner that would violate the requirements of the Privacy Rule if the disclosure was made by the Board. The government has recognized two exceptions to this provision. First, a Business Associate may disclose or use the information for its own proper management and administration and to carry out its legal responsibilities.

Thus, the Business Associate may use or further disclose the information to those that are required by law and to those for which the Business

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Associate obtains reasonable assurances that the PHI will be held confidentially and that it will be notified by the person to whom it discloses the PHI of any breaches of confidentiality. Secondly, a Business Associate may be authorized to provide data aggregation services to a covered entity. 45 CFR 164.504(e)(2)(i)(A) and (B).

4. The Business Associate contract must require the Business Associate to make available the PHI for amendment and to incorporate such amendments into the PHI. The Business Associate must also make available to the Board the information required by the Board to meet the Board's requirement to provide an accounting of the disclosures. 45 CFR 164.504(e)(2)(ii)(F) and (G).
5. The Business Associate must make the PHI available to the individual pursuant to 45 CFR 164.524, and make its internal practices, books and records which relate to its use or disclosure of the information available to the Secretary for use in determining the Board's compliance with HIPAA. 45 CFR 164.504(e) (2) (ii) (E) and (H).
6. The Business Associate contract must require the Business Associate to use appropriate safeguards to prevent the use or disclosure of information other than as provided by the contract, and require the Business Associate to report any unauthorized or improper use or disclosure of which the Business Associate becomes aware. 45 CFR 164.504(e) (2) (ii) (B) and (C).
7. The Business Associate contract must stipulate that, if feasible, the PHI will be destroyed or returned at the end of the contract. If there are reasons that the return or destruction of the information is not feasible, then the information must be retained only for specific reasons and uses, such as for future audits, and privacy protections must continue after the contract ends for as long as the Business Associate retains the information. The Business Associate contract must also state that the uses of information after a termination of the contract must be limited to the specific set of uses or disclosures that made it necessary to retain the information in the first place. 45 CFR 164.504(e) (2) (ii) (I).
8. A Business Associate contract must make the Business Associate responsible for insuring that any person or entity to whom it delegates a function, activity, or service which is within its Business Associate contract, agrees to abide by the restrictions and conditions that apply to the Business Associate under the contract. 45 CFR 164.504(e) (2) (ii) (D).

