

BUSINESS ASSOCIATE POLICY

POLICY: To secure business associate contracts with all persons or entities that provide services for or on behalf of the Plan who will have access to or create an enrollee's health information. Business associate agreements are required by HIPAA to ensure that the business associate takes appropriate steps to safeguard an enrollee's health information.

PROCEDURE:

1. Identify business associates. Complete the appropriate fields of the model Business Associate Agreement for each business associate and obtain a signed agreement. If you are unsure whether a Business Associate Agreement is needed, contact the Privacy Officer for guidance. Examples of business associates include a collection agency, billing company, consultants, accrediting body, legal counsel, etc.
2. A Business Associate Agreement is NOT required for disclosures to:
 - a. Treatment providers involved in the enrollee's care are not considered business associates and therefore no business associate contract is necessary.
 - b. The departments/functions that are designated as part of the Plan's health care component.
 - c. Member of the Plan's workforce, janitorial and housekeeping staff (since they are not expected to have access to enrollee's health information as part of their job duties).
3. The model Business Associate Agreement contains statements that are required by law. Changes to the Agreement must be approved by the Plan's legal counsel.
4. Business Associate Agreements must be in place by April 14, 2003 except as follows:
 - a. If you have a written contract in place before October 15, 2002 it will be deemed in compliance until it is revised or until April 14, 2004, whichever is sooner.
 - b. Contracts with automatic renewals must be amended to include a Business Associate Agreement when revised, or by April 14, 2004, whichever is sooner.
5. In you learn that a business associate is misusing an enrollee's health information, you must report the violation to the Privacy Officer. The Privacy Officer will contact the business associate to take steps to cure the violation. If the steps are unsuccessful, the Privacy Officer will terminate the Business Associate Agreement or, if it cannot be terminated, contact the Secretary of HHS.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made on _____, by and between The Kent State University's health plan, which is a health care component of the Kent State University Hybrid Entity, and _____ ("Business Associate"). For purposes of this Agreement, the health plan(s) shall be referred to herein as the "University."

Introduction

The Business Associate is providing _____ services ("Services") for, or on behalf of, the University and will have access to Protected Health Information. This Agreement is intended to ensure that the Business Associate uses or discloses the Protected Health Information in accordance with the Privacy Rule.

Check this box if the Services are being provided pursuant to an underlying written contract between the parties. The underlying contract is entitled _____ and dated _____. If the terms of this Agreement conflict with the terms of the underlying contract dealing with the privacy of the enrollee's health information, the terms of this Agreement shall control.

Now therefore, in exchange of the mutual promises contained herein, the parties agree as follows:

1. Definitions

The "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164. Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the Privacy Rule.

2. Business Associate's Obligations

- a. The Business Associate may use or disclose Protected Health Information to provide the Services (as defined earlier in this Agreement) to the University, if such use or disclosure would not violate the Privacy Rule if done by the University or the minimum necessary policies and procedures of the University.
- b. The Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement, or as required by law.
- c. The Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the University.
- d. The Business Associate agrees to report to the University any use or disclosure of Protected Health Information, or any security incident, of which it becomes aware that is not provided for by this Agreement or permissible under the Privacy Rule.
- e. The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information created or received by the Business Associate on behalf of the University agrees to implement the same restrictions and conditions that apply to the Business Associate under this Agreement, including the

safeguards to protect the Protected Health Information required by Section 2(c) of this Agreement.

- f. The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- g. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, University available to the University or to the Secretary for purposes of the Secretary determining the University's compliance with the Privacy Rule.
- h. Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for the University to respond to a request by an Individual for an accounting of disclosures of Protected Health Information.
- i. Business Associate agrees to provide to the University or an Individual, in time and manner specified by the University, information collected in accordance to permit the University to respond to a request by an Individual for an accounting of disclosures of Protected Health Information.
- j. The Business Associate agrees to make available Protected Health Information for amendment and incorporate any amendments to the Protected Health Information.
- k. The Business Associate agrees to make available Protected Health Information when requested by the University to provide access to an Individual.
- l. [*Optional.*] The Business Associate agrees to indemnify and hold the University, its directors, officers, employees, and agents ("Indemnitee(s)") harmless from any and all claims, losses, damages, penalties, fines, or expenses (including attorneys' fees) incurred by an Indemnitee as a result of the Business Associate's breach of a term or condition of this Agreement, or violation of the Privacy Rule with respect to the Protected Health Information created or received by the Business Associate under this Agreement.

3. University's Obligations

- a. The University shall notify the Business Associate of any limitation(s) in its notice of privacy practices to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information.
- b. The University shall notify the Business Associate of any changes in, or revocation of permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information.
- c. The University shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that the University has agreed to under the Privacy Rule, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

4. Term and Termination

- a. Term. If there is an underlying written contract for Services between the parties identified in the "Introduction" section of this Agreement, the term of this Agreement shall coincide with the term of the underlying contract, unless otherwise terminated as provided for below. If no underlying written contract exists, this Agreement shall begin on the date first above written and shall expire when all of the Protected Health Information provided by the University to the Business Associate, or created or received by the Business Associate on behalf of the University, is returned to the University or destroyed, unless otherwise terminated as provided for below.
- b. Termination. The University may terminate this Agreement immediately upon written notice to the Business Associate if the University learns that the Business Associate has breached a material term of the Agreement. If termination is not feasible
- c. Returning or Destroying Documents. Upon expiration or termination of this Agreement, the Business Associate shall ensure that it has returned or destroyed all Protected Health Information received from the University or created or received by the Business Associate on behalf of the University. If returning or destroying the information is infeasible, it shall (i) provide the University with notice of the conditions that make return or destruction infeasible, (ii) extend the protections of this Agreement to such Protected Health Information, and (iii) limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.

This Agreement was signed by the parties and made effective on the date first above written.

University:

By: _____

Title: _____

Business Associate:

By: _____

Title: _____