



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: PRIVACY: BUSINESS ASSOCIATES	Policy Number	Page Number: Page 1 of 3
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BACKGROUND:

The Health Insurance Portability and Accountability Act (“HIPAA”) requires El Dorado County to execute a written contract or Memorandum of Understanding when protected health information (“PHI”) is disclosed to a business associate. This policy provides guidelines and the required provisions when a business associate agreement or Memorandum of Understanding is necessary.

NOTE: HIPAA will not supercede any contrary State law that imposes more stringent privacy protections.

POLICY:

1. General

- a. A business associate is an individual or organization that is not part of the El Dorado County’s workforce and acts on behalf of the County. The business associate performs functions or activities involving the use or disclosure of individually identifiable health information or protected health information.
- b. El Dorado County may disclose protected health information to a business associate and allow a business associate to create or receive PHI on its behalf if the County obtains satisfactory assurance that the business associate will safeguard the information through a written contract.
- c. El Dorado County is not required to monitor or oversee how the business associate carries out privacy safeguards nor liable for actions of the business associate. However, El Dorado County is responsible for taking reasonable steps to cure breaches or end violations, and if unsuccessful, terminate the contract.

2. Business Associate

- a. A business associate is a person or organization not part of El Dorado County’s workforce who performs or assists in the performance of:
 - i. A function or activity involving the use or disclosure of PHI including claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing, or



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- ii. Any other function or activity regulated by HIPAA involving the use or disclosure of PHI including legal, accounting, accreditation, or consulting services [45 CFR § 160.103(a)(ii)].
- b. A covered entity participating in an organized health care arrangement (“OHCA”) that performs a function or activity as described above, does not through the performance of such function or activity or the provision of such service become a business associate of other covered entities participating in such OHCA.
- c. A covered entity may be a business associate of another covered entity.

3. Business Associate Agreement

- a. The agreement between El Dorado County and the business associate will establish the permitted and required uses and disclosures of PHI. The business associate agrees to:
 - i. Not use or further disclose PHI other than as permitted or required by the agreement or as required by law;
 - ii. Use appropriate safeguards to prevent the use or disclosure of the information other than as provided for by the agreement;
 - iii. Report to El Dorado County any use or disclosure not provided for by the agreement or otherwise in violation of the Privacy Rule;
 - iv. Ensure any agent or subcontractor to whom the business associate provides PHI, also agrees to the same restrictions and conditions that apply to the business associate under the agreement;
 - v. Provide access to PHI in a designated record set to the County, or to an individual as directed by the County in accordance with 45 CFR § 164.524.
 - vi. Make any amendment(s) to PHI in a designated record set as directed by the County in accordance with 45 CFR § 164.526;
 - vii. Document such disclosures of PHI and the information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528;
 - viii. Make records available related to the use, disclosure, and privacy protection of PHI received from El Dorado County, or PHI created or received by the business associate on behalf of El Dorado County, or to the Secretary of the United States Department of Health and Human



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Services for the purposes of investigating or auditing El Dorado County's compliance in the time and manner designated by El Dorado County or the Secretary;

- ix. Upon termination of the agreement for any reason, the business associate shall:
 - A. Return all PHI received from El Dorado County, or PHI created or received by the business associate on behalf of El Dorado County, and required to be retained by the Privacy Rule;
 - B. Return or destroy all other PHI received from El Dorado County or created or received by the business associate on behalf of El Dorado County;
 - C. Retain no copies of the PHI.
- x. In the event the business associate determines that returning or destroying the PHI is not feasible, the business associate shall provide El Dorado County notification of the conditions that make return of the PHI not feasible. If El Dorado County agrees the return of the PHI is not feasible, the business associate shall extend the protections of the agreement to such PHI and limit further use and disclosure of such PHI for so long as the business associate or any of its agents or subcontractors maintains such PHI.
- b. If the business associate is another governmental entity, El Dorado County may enter into a memorandum of understanding rather than a contract which meets the same requirements as this policy.

4. Business Associate Non-Compliance

- a. If the County is aware of a pattern of activity or practice of a business associate that constitutes a material breach or violation of the agreement, the County must take reasonable steps to cure the breach or end the violation.
- b. If such steps are unsuccessful, the County must:
 - i. Terminate the contract or arrangement if feasible, or
 - ii. Report the problem to the Department of Health and Human Services Office for Civil Rights.

Primary Department: Privacy Compliance Office

References: 45 CFR § 160-164