

## COUNTY OF EL DORADO HIPAA - BUSINESS ASSOCIATE TOOL

**Instructions:** Fill out this form for each contract that may require a review for HIPAA Business Associate status. Sign at the bottom and forward to the Contracts Unit Supervisor for review and final legal determination.

Contractor Name:	Contract Number:
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**QUESTION 1:** Does this contractor provide services on behalf of a HIPAA covered program\* listed on the following pages? \*See definitions on the following pages.

YES=Proceed to QUESTION 2     
  NO=STOP. This contractor is NOT a business associate

**QUESTION 2:** Does this contractor create, receive, maintain, or transmit protected health information (PHI) from any of the County of El Dorado's HIPAA covered programs?

YES=Proceed to QUESTION 3     
  NO=STOP. This contractor is NOT a business associate

**QUESTION 3:** Does this contractor provide, perform, or assist in the performance **for or on behalf** of the County's HIPAA covered program?

- a. Services such as one of the functions or activities below, **and**  
 b. Create, receive, maintain, or transmit protected health information that is obtained from one of the County's HIPAA covered programs?

- |   |   |  |
|---|---|--|
| <ul style="list-style-type: none"> <li>Accreditation</li> <li>Actuarial</li> <li>Administration</li> <li>Benefits Management</li> <li>Billing</li> <li>Claims processing or Administration</li> </ul> | <ul style="list-style-type: none"> <li>Consulting</li> <li>Data Aggregation</li> <li>Data Analysis</li> <li>Document/Data Destruction</li> <li>Document/Data Storage</li> <li>Financial Service</li> <li>Legal</li> </ul> | <ul style="list-style-type: none"> <li>Management</li> <li>Patient Safety Activities</li> <li>Practice Management</li> <li>Quality Assurance</li> <li>Repricing</li> <li>Utilization Review</li> </ul> |
|---|---|--|

**Check one of the following:**

YES=this contractor **IS** a business associate     
  NO=This contractor is NOT a business associate

Program/Contact (Print Name)	Program/Contact (Signature)	Date		
County Counsel (Print Name)	County Counsel (Signature)	Date		
<input type="checkbox"/>	Agree	<input type="checkbox"/>	Disagree	Comments:

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## **Definitions**

### **Protected Health Information:**

Protected health information means any information, whether oral or recorded in any form or medium, that a covered entity creates or receives which identifies an individual and relates to the individual's past, present, or future physical or mental health or condition. This includes medical records, case notes, and billing information.

### **Business Associate includes (45 CFR §160.103)**

- A Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to protected health information to a covered entity and that requires access on a routine basis to such protected health information.
- A person that offers a personal health record to one or more individuals on behalf of a covered entity.
- A subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate.

### **Business Associate does not include:**

- A health care provider, with respect to disclosures by a covered entity to the health care provider concerning the treatment of the individual.
- A plan sponsor, with respect to disclosures by a group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to the plan sponsor, to the extent that the requirements of §164.504(f) apply and are met.
- 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.

### **Covered Entity (Program):**

1. A health plan: An entity whose primary purpose is to pay for medical services.
2. A health care clearinghouse: An entity that processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction. Also includes an entity that receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.
3. A health care provider: A provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business, and transmits any health information in electronic form in connection with a transaction covered by this subchapter.

## **County of El Dorado HIPAA Covered Programs**

### **1. Covered Healthcare Direct Service Providers**

- a. HHS Mental Health Division - Mental Health Treatment Center
- b. HHS Mental Health Division - Child Case Management Services
- c. HHS Mental Health Division - Children and Adolescent Psychiatric Clinic
- d. HHS Mental Health Division - Adult Psychiatric Support Services
- e. HHS Public Health Division - Pharmacy
- f. HHS Public Health Division - Homeless Program
- g. HHS Public Health Division - Clinic Services: Dental Clinic, Chest Clinic, Primary Care Clinic, Radiology Clinic, Refugee Clinic

### **2. Covered Healthcare Indirect Service Providers (no client contact):**

- a. HHS Public Health Division - Public Health Laboratory

### **3. Covered Health Plan:**

- a. HHS Mental Health Division - Mental Health Plan
- b. HHS Mental Health Division - Alcohol and Drug Treatment Program
- c. HHS Public Health Division - California Children's Services
- d. HHS Public Health Division - County Medically Indigent Services Program (CMISP) Case Management
- e. HHS Administration and Finance Division - Flexible Spending Accounts Program

4. **Covered Component Indirect Services that supports a Plan/Provider (no client contact):**
- a. HHS Administration and Finance Division - Director and Chief Assistant Director
  - b. HHS Health Services Division - Assistant Director
  - c. HHS Public Health Officer - County Health Officer
  - d. HHS Administration and Finance Division - Fiscal Services
  - e. HHS Administration and Finance Division - Child and Adult Service Contracts
  - f. County IT - Information and Technology
  - g. County Counsel
  - h. Department of Revenue Recovery
  - i. Office of Compliance
  - j. Countywide Services - Chief Administrative Officer and staff

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## WHAT IS A HIPAA BUSINESS ASSOCIATE?

The HIPAA business associate requirements are intended to extend privacy protection practices to situations where a covered entity interacts with an outside entity, discloses protected health information (PHI) to other persons so that those persons can perform functions or activities on its behalf, or delivers specified services to the covered entity. In these situations, a business associate contract is required. Business associates cannot self-certify or receive certification by a third party in lieu of a business associate contract. The right to use or disclose PHI belongs with the covered entity. [Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2001] A business associate contract requires a business associate to maintain confidentiality of PHI that it receives and to use or disclose such information only for the specific activities or functions that the business associate performs for the covered entity. [Page 82507, Federal Register, Volume 65, No. 250, Thursday, December 28, 2001] A business associate contract must limit the business associate's use and disclosures of PHI to be consistent with the covered entity's minimum necessary policies and procedures. The contract accomplishes this through the requirement that business associates do not violate the federal HIPAA privacy use and disclosure regulations. [OCR HIPAA Privacy Guidance, December 3, 2002]

When determining the business associate status you should remember that a person or organization is a business associate by virtue of the service or function they perform on your behalf, not depending on what or who they are. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2001] While the HIPAA regulations permit use or disclosure of PHI in specified circumstances, this permission does not mean that a business associate contract is not required. [Page 82476, Federal Register, Volume 65, No. 250, Thursday, December 28, 2001] A covered entity can choose to provide limited data sets rather than PHI and substitute a limited data set agreement for a business associate agreement. [Page 53252, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002, and 45 CFR § 164.524(e)]

Covered entities are not required to monitor or oversee how their business associates carry out their privacy safeguards, nor are they liable for actions of their business associate. However, they are responsible for taking reasonable steps to cure breaches or end violations and, if unsuccessful, terminate the contract with the business associate. [45 C.F. R. § 164.504(e)(1) and OCR HIPAA Privacy Guidance, December 3, 2002]

The tools and templates provided in CalOHI Policy and Information Memoranda have generally been authored by HIPAA workgroups. Users should view the information presented in the context of their own organizations and environments. Legal opinions and/or decision documentation may be needed when interpreting and/or applying this information.

The federal regulations, preamble narrative and comments that are cited in this document can be found at the CalOHI website on the Privacy page at [CalOHI - Privacy](http://www.ohi.ca.gov), [www.ohi.ca.gov] You need to thoroughly review the citations provided in this document to fully understand the conditions that apply to your business practices. A sample business associate agreement is provided by the U.S. Department of Health and Human Services and can be found at: [contractprov](http://www.hhs.gov/ocr/hipaa/contractprov.html) [http://www.hhs.gov/ocr/hipaa/contractprov.html].

### 1. **Identify Business Associates**

Identify any person or organization, not part of your workforce, who creates, uses or discloses PHI, orally or in writing, with or for your organization.

### 2. **Documentation of Relationship**

Document the relationship your organization has with the business associate identified.

### 3. **Definition of a Business Associate**

Determine if the person or organization:

- Assists you in the performance of
  - Functions or activities involving the use or disclosure of PHI including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, or repricing; or
  - Any other function or activity regulated by HIPAA. OR
- Provides (other than in the capacity of a member of the workforce of such covered entity) legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation,

or financial services to or for you where the service involves the disclosure of PHI from you or from another of your business associates.

**A covered entity may be the business associate of another covered entity.** [45 C.F.R. § 160.103 definition of Business Associate]

#### 4. **Exceptions for Business Associate Agreements**

If the person or organization performs one of the following functions, they **are not** your business associate.

- ✓ The person or organization does not exchange PHI with the covered entity. [Page 53252, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002]
- ✓ The person is a member of the covered entities' workforce. [Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ An individual who's PHI is subject to creation, maintenance or transmission. [45 C.F.R. § 164.502(a)(1)(i)]
- ✓ Persons or organizations that create, maintain or transmit PHI pursuant to a valid authorization. [45 C.F.R. § 164.502(a)(1)(iv)]
- ✓ Health care providers providing treatment. [45 C.F.R. § 164.502(a)(1)(ii) & 45 C.F.R. § 164.502(e)(1)(i)(A) and Pages 53248 & 53252, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002]
- ✓ Plan sponsor receiving PHI from a group health plan, a health insurance issuer or an HMO with respect to a group health plan. [45 C.F.R. § 164.502(e)(1)(i)(B) and Page 53248, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002]
- ✓ Government agency providing eligibility or enrollment for public benefits authorized by law for a government agency that is a health plan. [45 C.F.R. § 164.502(e)(1)(i)(C), Page 82504, 82642 & 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000 and Page 53248, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002]
- ✓ Persons or organizations that provide health care oversight activities. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Affiliate entities that have designated themselves as a single, combined covered entity. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Software vendors that merely provide software or where the vendors' employees are considered members of the covered entities' workforce. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Medical device manufactures to the extent they are health care providers. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Disease managers to the extent they are health providers or health plans and perform disease management on their own behalf. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Employers who receive PHI from a group health plan. [Pages 82642 & 82644, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Two covered entities that participate in an organized health care arrangement but do not provide services on behalf of the other covered entity. [Page 82476, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ A person or organization that acts as a conduit for PHI, such as the U.S. Postal services, certain private couriers and electronic equivalents. [Page 82476, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Financial institutions acting on behalf of a covered entity when they process consumer-conducted financial transactions by debit, credit or other payment card, clear checks, initiate or process electronic fund transfers or other activities that directly transfer funds for compensation for health care services. [Page 82476 & 82504, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Where one entity is required by law to act as a business associate to another covered entity, the covered entity may disclose PHI to the entity to the extent necessary to comply with the legal mandate without a business associate contract. [Page 82506 & 82507, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ When the PHI exchanged with an individual or organization has been de-identified. [45 C.F.R. § 164.514(a)]

- ✓ Covered entities in an organized health care arrangement that exchange PHI. [Page 53252, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002]
- ✓ Researchers for research purposes as permitted by the HIPAA privacy regulations (approval by an Institutional Review Board or Privacy Board; or use of a limited data set provided through a data use agreement). [Page 53252, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002, 45 C.F.R. § 164.512(i) & 164.514(e)]
- ✓ Health care providers who have staff privileges at a hospital are not the hospitals business associates. [Page 82476, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Persons or organizations whose functions, activities or services do not involve use or disclosure of PHI such as janitors, plumbers, electricians, or photocopy repair technicians. [OCR HIPAA Privacy Guidance, December 3, 2002]

##### 5. **Business Associates**

If the person or organization performs one of the following functions, they **are** your business associate.

- ✓ Persons or organizations that may not always act on behalf of the covered entity, but the service is commonly provided to the covered entity and PHI is disclosed. {[Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]}
- ✓ Attorneys who access or receive PHI to perform functions or activities on behalf of the covered entity. [Page 82475 & 82642, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000, and Page 53253, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002].
- ✓ Auditors who access or receive PHI to perform functions or activities on behalf of the covered entity. [Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Consultants who access or receive PHI to perform functions or activities on behalf of the covered entity. [Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Third-party administrators who access or receive PHI to perform functions or activities on behalf of the covered entity. [Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Accounting services provided by an outside consultant when they have access to or receive PHI. [Page 53248, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002]
- ✓ Health care clearinghouses that receive PHI to perform functions or activities on behalf of the covered entity. [Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Data processing firms that receive PHI to perform functions or activities on behalf of the covered entity. [Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Billing firms that receive PHI to perform functions or activities on behalf of the covered entity. [Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Persons or organizations that provide legal, actuarial, accounting, consulting, management, administrative, accreditation, data aggregation or financial services on behalf of a covered entity. [Page 82475, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Persons or organizations performing functions for an organized health care arrangement. [Page 82476, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Government Attorneys (Through the use of Memorandums of Understanding) [Page 82642, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000].
- ✓ Accreditation agencies [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000 and Page 53252, Federal Register, Volume 67, No. 157, Wednesday, August 14, 2002]
- ✓ Affiliates to the extent that they designate themselves as separate covered entities for HIPAA purposes. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Software vendors where access to PHI is necessary for data management. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Medical device manufacturers that are not a health care provider but receive or create PHI in the performance of functions or activities on behalf of, or in provision of specified services to, the covered entity. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Disease managers to the extent that they perform disease management functions or services for a covered entity. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Collection agencies to the extent that they provide a specified service or perform functions or activities on behalf of a covered entity. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Case managers to the extent that they provide a specified service or perform functions or activities

on behalf of a covered entity. [Page 82643, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]

- ✓ An employee organization that performs quality assurance for a group health plan. [Page 82644, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Volunteers who perform functions off-site and need PHI for the functions. [Page 82645, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Health insurance issuers or HMOs that provide insurance or coverage to a health plan. [Page 82476, Federal Register, Volume 65, No. 250, Thursday, December 28, 2000]
- ✓ Clearinghouses that perform a function for a covered entity. [45 C.F.R. 164.500(b)]

This list is not all-inclusive, but reflects the information provided in the federal HIPAA privacy regulations and preamble narrative. You may need to consult with your legal counsel to make determinations about the status of other business relationships that we have not listed. You should consult with your legal counsel about any determination you make concerning business associate status. You may use this checklist as documentation to support of your determinations of business associates' status.

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