



Administrative Policies and Procedures: 32.7

Subject:	Business Associate Relationships
Authority:	Health Insurance Portability and Accountability Act (HIPAA) of 1996; TCA 37-5-105, 37-5-106.
Standards:	DCS Practice Model Standard: 7-102A, 7-120C
Application:	To All Department of Children's Services Employees

Policy Statement:

The Department of Children's Services may disclose a client's Protected Health Information (PHI) to a Business Associate of DCS and will specify provisions that must be included in DCS contracts with Business Associates.

Purpose:

To outline procedures and ensure compliance with the HIPAA Privacy Rule when DCS discloses PHI to business associates with whom there is a written contract or memorandum of understanding (MOU).

Procedures:

- | | |
|-------------------------------|---|
| A. General Information | <ol style="list-style-type: none"> 1. DCS has many contractual and business relationships, and policies governing those contracts and business relationships, however, not all contractors or business partners are Business Associates of DCS. This policy only applies to contractors or business partners that come within the definition of a Business Associate. 2. A Business Associate: <ol style="list-style-type: none"> a) Performs or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing; or any other function or activity regulated by HIPAA; or b) 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 a covered entity, where the provision of the services involves the disclosure of individually identifiable health information from the covered entity, or from another business associate of the covered entity, to the requesting person or agency. |
|-------------------------------|---|

	<p>2. If a contractor or business partner is a Business Associate, those contracts that define the contractual relationship remain subject to all State and Federal Laws and policies governing the contractual relationship. A Business Associate relationship also requires additional contract provisions as described below. DCS must identify and document its Business Associates.</p>
<p>B. Business Associate Relationship</p>	<p>A Business Associate relationship is formed only if PHI is to be used, created, or disclosed in the relationship and falls within the definition of a Business Associate.</p> <p>The following situations do not create or constitute Business Associates or Business Associate relationships:</p> <ul style="list-style-type: none"> a) DCS Staff, offices, and programs; b) Health and medical providers providing treatment to clients; c) Eligibility determinations involving DCS clients, between government agencies; d) Payment relationships, such as when DCS is paying health and medical providers, managed care organizations, or other entities for services to DCS clients, e) When the entity is providing its own normal services that are not on behalf of DCS; f) When a client’s PHI is disclosed based solely on a client’s authorization; g) When a client’s PHI is not being disclosed by DCS or created for DCS; and h) When the only information being disclosed is information that is de-identified in accordance with DCS Policy 32.6, De-identification of Client PHI and Use of Limited Data.
<p>C. Disclosure to a business associate</p>	<p>DCS may disclose a client’s PHI to a Business Associate and may allow a Business Associate to create or receive a client’s PHI on behalf of DCS, if:</p> <ul style="list-style-type: none"> 1. DCS first enters into a written Business Associate Agreement (BAA) before disclosing a client’s PHI to the Business Associate, in accordance with the requirements of <i>Section D</i>, below, of this policy, and the BAA provides satisfactory assurances to DCS that the Business Associate will appropriately safeguard the information. 2. A Business Associate is required by law to perform a function or activity on behalf of DCS, or to provide a service to DCS. DCS can disclose PHI to the Business Associate to the extent necessary to enable compliance with the legal requirement without a written contract or agreement, if: <ul style="list-style-type: none"> a) DCS attempts in good faith to obtain satisfactory assurances from the Business Associate that the Business Associate will protect PHI to the

	<p>extent specified in <i>section D</i> of this policy; and</p> <p>b) If such attempt fails, DCS documents the attempt and the reasons that such assurance.</p>
<p>D. Contract requirements applicable to business associates</p>	<ol style="list-style-type: none"> 1. Unless there are specific reasons why additional information and assurances are needed in a BAA between DCS and a Business Associate, DCS must use the standard Business Associate Agreement form approved by the Department of Finance and Administration. 2. This standard and pre-approved form includes terms and conditions that establish permitted and required uses and disclosures of PHI by the Business Associate and terms and conditions required by the Business Associate. The BAA does not authorize the Business Associate to further use or disclose PHI obtained from DCS in a manner that would violate the requirements of the HIPAA Privacy Rule. 3. If other law or regulations contain requirements applicable to the Business Associate that accomplish the same objective, the BAA is not required.
<p>E. Business Associate non-compliance, known breaches and complaints</p>	<ol style="list-style-type: none"> 1. If DCS knows of a pattern of activity or practice of a Business Associate that constitutes a material breach or violation of the Business Associate's obligation under their BAA, DCS must take reasonable steps to cure the breach or end the violation, as applicable. 2. Any DCS staff member receiving a client complaint, or a report or complaint from any source about inappropriate uses or disclosures of information by Business Associates, must provide information regarding that report or complaint to DCS privacy official. 3. If a client complaint is made directly to DCS Privacy Officer, DCS Privacy Officer must contact the appropriate DCS program official. 4. Notice of breach is required. When a covered entity discovers a breach, the covered entity must, without unreasonable delay and no later than 60 calendar days after discovery of the breach, notify each individual whose unsecured protected health information (PHI) has been or is reasonably believed to have been accessed, acquired or disclosed as a result of the breach. If the unsecured PHI of more than 500 State residents has been or is reasonable believed to have been accessed, acquired or disclosed, notice must be provided to prominent media outlets serving the State. When a business associate discovers a breach, the business associate must notify the covered entity. In all cases of breach, notice must be provided to the Secretary of HHS, who will publish on the internet the instances of breach involving 500 or more individuals.

Forms:	<u>HIPAA Business Associate Agreement Authorization</u> (This is a Finance & Administration form and will <u>not</u> be posted on the DCS forms web page)
Collateral documents:	<i>None</i>