



## Policy: Business Associate Agreements

Effective: 10/12/21

Identifier: S-FW-LD-1007

Acute Care: ENC  GR  LJ  MER

Ambulatory  SHAS

**PURPOSE:** To establish policy and procedure for Business Associates (BA) and Business Associate Agreements (BAA) to enable compliance with the related HIPAA Privacy Regulations.

### I. DEFINITIONS

Refer to Health Information Management Access, Use and Disclosure (S-FW-IM-0203) for HIPAA, Privacy, and related terminology.

A. **Business Associate:** A person or entity (not an employee) who, **on behalf of Scripps Health:**

1. Performs a function involving the creation, receipt, maintenance, or transmission of Protected Health Information (PHI), (other than incidental) including claims processing or administration, data collection/analysis, processing or administration, utilization review, quality assurance, patient safety activities, billing, benefit management, practice management, re-pricing, provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for Scripps, where the provision of the service involves the disclosure of individually identifiable health information from Scripps.
2. Exceptions to the Business Associate Standard are found in the HIPAA Privacy Rule 45 CFR 164.502. If this exception is met, Scripps is not required to have a business associate contract or other written agreement in place before protected health information may be disclosed to the person or entity. The most frequent exception applicable at Scripps is for disclosures made by Scripps to another health care provider for treatment of the individual.

### II. POLICY

- A. Under the Privacy Rule, Scripps Health cannot disclose PHI to its business associates without having in place a written contract that includes specific privacy protections. Business associate agreements (BAA) are critical to safeguarding PHI when used or disclosed by service providers such as third-party administrators, benefit consultants and attorneys not otherwise covered by the privacy rules.
- B. Scripps Health Legal Department has developed a standard HIPAA business associate contractual language to be used in any newly established business associate relationship or any contracts with existing relationships that are being renewed. (*See Related Form A: Scripps Business Associate Agreement and Cover Sheet*)

The BAA is generally an addendum to the main contract; however, in some contracts, it may be embedded into the main contract.

- C. At the discretion of Scripps Legal Department, an alternate BAA with more stringent requirements/specifications may be used with specific Business Associates that are deemed higher risk as determined by Scripps Legal.

- D. Only a Scripps Legal Department attorney may approve signing a BAA that is not the Scripps standard BAA (i.e., the Business Associate's version) or making changes to the Scripps BAA if requested by the Business Associate.
- E. Scripps Privacy Office will maintain the current list of signed BAAs available to management in the Scripps Employee Portal/Manager's Toolbox.
- F. An evaluation of the services a third party/vendor will provide may determine that the relationship does not meet the definition of a Business Associate; however, the third-party/vendor's functions, activities or services might incidentally include access to protected information and/or raise other confidentiality concerns.

If this is the case, it is recommended that the mutual agreement/contract with such third-party/vendors include appropriate provisions supporting Scripps' privacy and security requirements. The contract terms should include an obligation to protect each patient's right to privacy, security, and the confidentiality of their medical information. Please contact Scripps Legal Department for assistance.

### **III. PROCEDURES**

The Scripps individual responsible for the contractual arrangement (refer to *Contracting and Signing Authority, S-FW-LD-1001*) is responsible for the following:

- A. Evaluate the relationship and/or need for a Business Associate Agreement (see *Related Forms B- Prospective Business Associate Third party/Vendor Guide and C BAA Decision Tree*).

If unclear whether a relationship requires a BAA, contact Scripps Privacy Office or Scripps Legal Department for assistance.

- B. Determine the existence of a signed current BAA by reviewing the BAA Listing on the Manager's Portal.
- C. If BAA (or core contract content addressing BAA requirements) is not on file, provide the business associate with the Scripps Health Business Associate Agreement to sign. (*Related Form A*)
- D. If the Business Associate proposes edits or alterations to the BAA, want to use their own BAA, or indicate that negotiations are needed, contact the Scripps Legal Department.
- E. Upon receipt of signed Scripps Business Associate Agreement from the third party/vendor:
  - 1. Scan and email third party/vendor signed agreement to designate Scripps Legal representative for signature.
  - 2. When forwarding, include the completed BAA Cover Sheet with the demographic information about the third party/vendor (i.e., company name, address, phone number, email address, company website) and a brief statement explaining what the vendor will be doing on behalf of Scripps. (*Related Form A*)
- F. Scan and email signed Business Associate agreements to the Scripps Privacy Program Manager and Audit, Compliance, and Risk Services (ACRS) Executive Assistant for logging and retention.

- G. When completing *New Vendor Set-Up & Reactivation Authorization* form, the cost center manager must verify necessity and existence of a signed BAA, and either:
  - 1. Check off on the fact that a BAA is not needed, or
  - 2. If a BAA is needed, document that a signed BAA has been completed before checking off and approving the form.
- H. When the relationship with the vendor/Business Associate ends, provide timely notification to the Privacy Office (i.e., Privacy Program Manager; ACRS Executive Assistant) of the effective termination date so the Business Associate Agreement may be appropriately archived.

**IV. RELATED DOCUMENTS**

- A. Scripps Standard Business Associate Agreement and Cover Sheet; [SW-LD-1007](#)
- B. Prospective “Business Associate” Third Party/Vendor Guide; [SW-LD-1007 A](#)
- C. Scripps HIPAA/HITECH Business Associate Decision Tree; [SW-LD-1007 B](#)
- D. Business Associate Agreement Vendor List (Managers Portal)
- E. [New Vendor Set-Up & Reactivation Authorization \(sharepoint.com\)](#)

**V. RELATED PRACTICE DOCUMENTS**

Contracting and Signing Authority; [S-FW-LD-1001](#)

**VI. REFERENCES**

- A. HIPAA Administrative Simplification Regulation Text- 45 CFR Parts 160, 162, and 164.
- B. 45 CFR - Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule. Federal Register January 25, 2013.
- C. California Health Information Privacy Manual. California Hospital Association (CHA).

**VII. SUPERSEDED**

Business Associate Agreement Policy; S-FW-LD-1007, 06/19

Document Chronology		
ORIGINAL: 03/03	REVISED: 09/13, 07/16, 06/19, 09/21	REVIEWED: