

(10-2-17: Clarification edit, P3, D1)

TITLE: Business Associates

IDENTIFIER: S-FW-LD-1007

EFFECTIVE DATE:

APPROVED: Executive Cabinet 07/19/16

 Acute Care: ENC 08/23/16 GH 08/23/16LJ 08/23/16 MER 08/23/16

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KEYWORDS: BAA, Business Associate Agreement, ePHI, Incidental Disclosure

I. PURPOSE

To establish policy and procedure for Business Associates (BA) and Business Associate Agreements (BAA) to enable compliance with the HIPAA Privacy Regulations relating to "Business Associates" (BA).

II. DEFINITIONS

- A. **Protected Health Information (PHI):** is individually identifiable information, including genetic information, that is transmitted or maintained in any form or medium and that relates to the past, present or future physical or mental health or condition of a patient, the provision of health care to a patient, or the past, present or future payment for the provision of health care by a patient. Information is "individually identifiable" if it either identifies an individual or contains enough specific information to do so. See policy S-FW-IM-0203- Health Information, Access, Use and Disclosure for complete definition of "Individually Identifiable".
- B. **Electronic Protected Health Information (ePHI):** Protected Health Information (PHI) stored or transmitted by electronic means.
- C. **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 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; or
 2. 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.
 3. 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.

- D. **Incidental Disclosure:** The possible disclosure of PHI due to exposure to information while performing a service for Scripps that does not directly involve access, use and disclosure of PHI. Examples include, janitorial service, non-patient care employees/vendors in the patient room or waiting area.

III. POLICY

- A. Under the Privacy Rule, Scripps Health cannot disclose protected health information (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 (see Related Form A: Scripps Business Associate Agreement) that should be used in any newly-established business associate relationship or any contracts with existing relationships that are being renewed. The BAA is generally an addendum to the main contract; however in some contracts it may be embedded into the main contract rather than an addendum.
1. At the discretion of Scripps Legal Office, an alternate BAA with more stringent requirements/specifications may be used with specific Business Associates that are deemed higher risk. The Scripps Legal Office generally reviews the higher risk contracts, and will therefore determine when a contract requires the more comprehensive version.
- C. Only a Scripps Legal Office attorney can approve signing a BAA that is not the Scripps standard BAA (e.g. the Business Associate's version), or making changes to the Scripps BAA if requested by the Business Associate.
- D. Signed Business Associate agreements are to be scanned and emailed to a member of the Scripps Privacy team for logging and retention. A listing of signed BAA's will be maintained by Scripps Privacy Office and made available to management in the Scripps Employee Portal/Manager's Tool Box.
- E. Evaluations of the services a third party/vendor will provide may result in the determination 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 raise other confidentiality concerns. 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.

IV. RESPONSIBILITIES

- A. Individuals responsible to, and allowed to enter into contractual arrangements, (in accordance with Contracting and Signing Authority policy, S-FW-LD-1001), will:
 - 1. Ensure that Business Associate agreements are signed with associates, vendors or third parties whom are considered “business associates,” as a part of any new or existing contractual engagement with Scripps Health.
 - 2. Ensure that all Business Associate Agreements are signed by Legal.
 - 3. Ensure that all signed Business Associate Agreements are sent to the Privacy Office to be electronically retained, as well as documented in the current list of signed BAAs.
 - a. Scripps Privacy Office will maintain the current list of signed BAAs obtained (posted on the Employee Portal/ Manager’s Toolbox).
- B. The Scripps Legal will:
 - 1. Sign the Business Associate Agreement once the vendor has signed and provide the signed document back to the responsible individual.

V. PROCEDURES

- 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).
 - 1. 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. Upon receipt of signed Scripps Business Associate Agreement from the third party/vendor
 1. ~~Scan and send by email signed agreement as outlined in “Responsibilities” section A2 (see previous page).~~ Clarification of process step:
 1. Scan and email third party/vendor signed agreement to Legal for signature.
 2. When forwarding include a completed 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.
- E. Do not sign Business Associate Agreements submitted to Scripps from outside organizations, or a Scripps BAA that has been altered or revised by the BA.

- F. If the third party/vendor requests Scripps sign their BAA or expresses concerns or indicates that negotiation is needed, contact Scripps Legal Department for consultation and negotiation directly with the business associate.
- G. When completing *New Vendor Set-Up & Reactivation Authorization* form – cost center manager must verify necessity and existence of a signed BAA, and either:
 - 1. Check off on the fact that BAA is not needed; or
 - 2. If BAA is needed, document that signed BAA is completed before checking off and approving the form.

VI. 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. [HIPAA/HITECH Business Associate Decision Tree](#) - WEDI Privacy & Security Workgroup, Business Associate Sub-Workgroup. July 2013.
- D. [Business Associate Agreement Vendor List](#) (Managers Portal)
- E. [Scripps New Vendor Set-Up & Reactivation Authorization](#)

VII. RELATED POLICIES

- A. Contracting and Signing Authority; S-FW-LD-1001

VIII. REFERENCES

- A. HIPAA Administrative Simplification Regulation Text- 45 CFR Parts 160, 162, and 164. (Unofficial Version, as amended through February 16, 2006).
- 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). July 2013.

IX. SUPERCEDED

- Business Associate Agreement Policy; S-FW-LD-1007 09/13