

14. Business Associates	
<b>PURPOSE</b>	This policy explains the process for providing disclosures to Business Associates.
<b>POLICY</b>	<p>14.1. Polk County will recognize the use and disclosure of PHI to Business Associates. §164.502(e)</p> <p>14.2. Polk County will recognize the necessity of executing Business Associate contracts in order to ensure and safeguard PHI. §164.504(e)</p> <p>14.3. Polk County will recognize its role in safeguarding PHI shared with a Business Associate. §164.504(e)</p>

### **PROCEDURES**

Polk County may disclose PHI to a Business Associate and may allow a Business Associate to create or receive PHI on its behalf with satisfactory assurance that they will appropriately safeguard PHI.

A Business Associate is a person or organization who performs, or assists in the performance of, a function or activity involving the use or disclosure of PHI. This may be another covered entity or not. Examples include data analysis, claims processing or administration, quality assurance, billing, legal consulting, accounting services, management or financial services.

#### ***Using PHI***

The Business Associate may use PHI for:

- C Treatment, payment and health care operations.
- C Proper management and administration of the Business Associate.
- C To carry out the legal responsibilities of the Business Associate.

## ***Disclosing PHI***

In order for a Business Associate to disclose information, the disclosure must be required by law, or the Business Associate must obtain reasonable assurances.

The Business Associate must obtain reasonable assurances from the person to whom the information is disclosed, that PHI will be held in confidence and used or further disclosed only as required by law.

- C The Business Associate must draft a document specifying reasonable assurances.
- C The contract must be dated and signed by both parties, and maintained by both parties.

### **Satisfactory Assurance**

If a Business Associate is required by law to perform a function or activity on behalf of Polk County, Polk County must obtain (or attempt in good faith to obtain) satisfactory assurances as required by paragraph 164.504(e)(3)(i). Satisfactory assurances must be documented through a written contract or other written agreement. You should use the *Business Associate Contract* form.

Additionally, if an individual or organization provides services to Polk County, during which time there is the potential that they may access PHI, then a statement of satisfactory assurances should be included in their contract.

- a. Draft a document that provides the satisfactory assurances.
- b. Send the document to the Business Associate for review and execution.
- c. If assurances are not received, document the attempts and the reasons that such assurances cannot be obtained.
- d. Be sure the documents are dated and signed.
- e. File and retain these documents.

### **Business Associate Contract**

A Business Associate contract is not required if:

- C An organization or person is required by law to carry out a function or activity on behalf of Polk County. Polk County may disclose PHI as necessary for the person or organization to meet the requirements of the law. However, Polk County must still attempt in good faith to obtain satisfactory assurances, and if such attempts fail, must document the attempts and reason they failed.
- C The disclosure is to a health care provider for the treatment of a patient.
- C The disclosure is to a plan sponsor if Polk County is part of a health plan

or HMO.

- C The disclosure is to another covered entity that performs a function or activity on behalf of Polk County as required by law. You must, however, obtain satisfactory assurances.

If Polk County wishes to enter into a business association, download the sample *Business Associate Contract* and customize the contract for your needs. However, the following requirements, must be met at a minimum, and retained in the contract:

- a. The contract must establish the Business Associate's permitted and required uses and disclosures of PHI, consistent with the Privacy Rule. This may also include use of PHI for management and administration of the Business Associate. This may include providing data aggregation services relating to the health care operations of Polk County.
- b. The contract must specify that the Business Associate will not use or further disclose the information other than as permitted or required by the contract, or as required by law.
- c. The contract must specify the use of appropriate safeguards to prevent use or disclosure of the information, other than as provided for by contract.
- d. The contract must specify that the Business Associate will report to Polk County any known use or disclosure of the information not provided for by the contract of which the Business Associate becomes aware.
- e. . If the Business Associate discloses any PHI that is received from, created or received by the Business Associate on behalf of Polk County, to any agents including subcontractors, the Business Associate must ensure that they agree to the same restrictions and conditions that apply to the Business Associate.
- f. The contract must require the Business Associate to make available information for patients who request access to PHI.
- g. The contract must require the Business Associate to make available information for amendment, and agree to incorporate any amendments to PHI.
- h. The contract must require the Business Associate to maintain documentation required to provide patients an accounting of disclosures.
- i. The contract must ensure that the associate's internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by the Business Associate on behalf of Polk County, are available to the Secretary for purposes of determining Polk County's compliance with the Privacy Rules.
- j. The contract must specify that at termination of the contract, if feasible, the Business Associate will return or destroy all PHI received from, or created or received by the Business Associate on behalf of Polk County. The Business Associate will not maintain or retain copies (in any form) of

such information. If such return or destruction is not feasible, extend the protections of the contract to limit further uses and disclosures.

- k. The contract must authorize the termination of the contract by Polk County, if Polk County determines that the Business Associate has violated a material term of the contract. You may omit this statement, if it is inconsistent with statutory obligations of Polk County or the Business Associate.

### **Memorandum of Understanding**

If Polk County and its Business Associate are both governmental entities, you may enter into a memorandum of understanding with the Business Associate. This document contains terms that accomplish the same objectives as the contract in 3B above. This memorandum must comply with business association rules as stated in §164.504(e).

- a. Draft a memorandum of understanding.
- b. Send the document to the Business Associate for review and execution.
- c. Be sure the documents are dated and signed.
- d. File and retain the contract or agreement.

### **Letter of Understanding**

Polk County has providers who assist the Covered Entities in carrying out their health care and health plan responsibilities. Some of these providers work through a Purchase Order rather than under contract. In such cases, the responsibilities and expectations of the business associate are described in a Letter of Understanding that is signed by both parties.

### **Breach of Confidentiality or Noncompliance**

If a covered entity that is the Business Associate of another covered entity violates the satisfactory assurances it provided, it is in noncompliance with the standards and requirements of the Privacy Rule.

#### **Take Action**

If Polk County knows that the Business Associate, or person to whom the Business Associate disclosed information, engaged in a pattern of activity or practice that was a material breach or violation of the written agreement, or Polk County suspects they are in noncompliance with the Privacy Rule, Polk County must do the following:

- C Take immediate steps to prevent further breaches or violations.

- C Take immediate action to mitigate harm caused by the breach or violation.
- C Notify the Business Associate of the breach or violation in writing.
- C The Business Associate must take action to end the breach or violation and prevent further occurrences.
- C Document this process in writing and retain for a period of six years.

### **Terminate the Relationship**

If the Business Associate does not take reasonable steps to cure the breach or end the violation, or if reasonable steps are unsuccessful, you must terminate the contract. Polk County must:

- C Draft a letter to the Business Associate notifying them that you are terminating contract, and indicate the reasons for termination.
- C Be sure the notice is dated and signed.
- C Send the termination to the Business Associate by certified mail, receipt requested, for proof of receipt.

### **Report the Problem**

If termination is not feasible, you must report the problem to the Secretary of the Department of Health and Human Services. You must:

- C Draft a letter to the Secretary outlining the breach or violations.
- C Be sure the notice is dated and signed.
- C Send the report by certified mail, receipt requested, for proof of receipt.
- C File and retain a copy of these documents.

## **FREQUENTLY ASKED QUESTIONS**

### ***Who is included as a workforce member, Business Associate, or representative?***

Business associates or representatives used by Polk County in delivering services are considered Business Associates. For example, a doctor's office using a billing agency or a laboratory for services would be included in this policy. When Business Associates are used, a written contract or agreement must be in place stating that the Business Associate will safeguard PHI, and follow the privacy policies established by Polk County.

### ***What does it mean to receive, create, use, or disclose PHI?***

This refers to how medical information is used. For example, in the course of treating a single patient, a doctor's office may *receive* medical records from the patient's previous physician, or another physician currently treating the patient. All of these physicians are *creating* new files (PHI) that will be *used* to examine or treat the patient. The physicians may *disclose* PHI at the patient's request or through a referral. The federal rules, and the policies of Polk County, use the phrase "receive, create use or disclose" to cover all possible uses of PHI.

### ***What is a Business Associate?***

A Business Associate is any organization or individual who Polk County works with in the course of conducting business. This may include a laboratory that conducts tests for your patients, or a billing agency that bills patients and insurance companies. For purposes of this policy, your Business Associates may see PHI. You must be careful in making this determination, however. For example, you may not expect your cleaning service to access PHI but, in the course of cleaning, files may be in their view. Therefore, you should consider them a Business Associate.

Note: If you are working with another *covered entity* that must comply with HIPAA and has created its own policies and procedures to maintain PHI, then a Business Associate contract is not necessary.

### ***What is satisfactory assurance?***

This policy attempts to ensure satisfactory assurance that your Business Associates will follow the same policies and procedures that your employees do when conducting business. Business associates must guarantee compliance with your procedures to keep PHI secure. This is achieved through a signed contract with each Business Associate.

### ***What should be in the contract?***

The contract between Polk County and your Business Associates should be carefully designed to ensure satisfactory assurance. The contract should contain provisions that:

- C State the purpose(s) for Business Associates to use or disclose PHI, and prohibit them from using the information for any other purpose.
- C Require the Business Associate to maintain necessary safeguards to ensure that PHI is not used or disclosed, except as provided by the contract.
- C Require the Business Associate to report to you any use or disclosure of PHI that is not provided for in the contract.
- C Require the Business Associate to ensure that any of its subcontractors or agents, to whom it provides PHI, will agree to the same restrictions and conditions.

- C Require the Business Associate to make available its internal practices, books, and records relating to the use and disclosure of PHI.
- C Require the Business Associate, at termination of the contract, to return or destroy all PHI received from Polk County.
- C State that individuals, who are the subject of the PHI disclosed, are intended to be third-party beneficiaries of the contract.
- C Provide that the contract may be terminated by Polk County if you determine that the Business Associate has violated a material term of the contract.

***What does the Business Associate have to do?***

Business associates must comply with the terms in the contract. If properly drafted, the contract will require that they use and disclose PHI only for the stated purposes, that they keep such information safe and confidential, and that they document any use or disclosure not provided in the contract. The contract will allow for a relationship with a Business Associate to be terminated if any provision of the contract is violated.

Ultimately, your goal is to have Business Associates follow your policies and procedures, thus maintaining the integrity of PHI.

**AUTHORITY**

45 CFR §164.502(e)(2002)

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