

	PCHP.PV.131 Business Associates V3 PCHP.PV.131	
	Name:	PCHP.PV.131 Business Associates
	ID Number:	PCHP.PV.131
	Approval Date:	03/16/2018
	Approved By:	Garland Morton/CentraNotes

Body

Policy Name: Business Associates

Scope: Entire Piedmont workforce

Purpose: To ensure Piedmont has appropriate written agreements with Business Associates that will safeguard any Protected Health Information (PHI) created or received on Piedmont's behalf in accordance with the HIPAA Privacy Rule.

Definitions & Acronyms:

CMS: Centers for Medicare & Medicaid

CFR: Code of Federal Regulations

PBM: Pharmacy Benefit Manager

HIPAA: Health Insurance Portability and Accountability Act of 1996

HITECH: Health Information Technology for Economic and Clinical Health Act

PHI: Protected Health Information

DRS: Designated Record Set

BAA: Business Associate Agreement

ACA: Affordable Care Act

Piedmont: "Piedmont" collectively refers to Piedmont Community Health Plan (PCHP), Piedmont Community HealthCare, Inc. (PCHC), Piedmont Community HealthCare HMO, Inc., and any future entities that are owned, affiliated with and/or operated by Piedmont.

Covered Entity: *Health plan; health care clearinghouse; health care providers* who transmits health information in electronic form in connection with one or more transactions; joint administrators of public health plans.

--Piedmont Community HealthCare, Inc: Covered Entity for Medicare Advantage, Exchange and Fully-Insured Group Insurance.

--Piedmont Community HealthCare, HMO, Inc: Covered Entity for Exchange and Fully-Insured Insurance.

Business Associate (BA): A person or entity that performs certain functions or activities involving the use or disclosure of protected health information (PHI) on our behalf.

--Piedmont Community Health Plan, Inc: Business Associate of self-insured groups

--Piedmont Community Health Plan, Inc: Business Associate of PCHC, Inc. and PCHC HMO, Inc.

--Entities contracting with PCHP are Sub-Contractor Business Associates

Subcontractor: any individual or entity that creates, receives, maintains, or transmits PHI on behalf of the Business Associate.

Group Health Plan: Insured or self-insured employee welfare benefit plan that provides, directly or through insurance, reimbursement or otherwise, medical care, including items or services paid for as a medical care to employees and their dependents, and that has a least 50 participants, or (if less than 50 participants) is administered by an administrative services only, third party administrator, or other entity different than the employer that established and maintains the *group health plan*.

Plan Sponsor: Employer, multi-employer or employee organization that establishes and maintains an employee benefit plan.

Policy:

1. Piedmont may contract with outside entities and organizations to perform functions or provide services on behalf of Piedmont that may involve the disclosure of Protected Health Information (PHI) to the outside entity.
2. Piedmont must receive satisfactory assurances from the Business Associate that the Business Associate will comply with all applicable privacy and security requirements of a Business Associate by entering into a Business Associate Agreement with the outside individual or entity.
3. A Business Associate Agreement must:
 - A. Establish the permitted and required uses and disclosure of the PHI by the Business Associate;
 - B. Provide that the Business Associate will:
 - 1). Not use or further disclose the information other than as permitted or required by the contract or law;
 - 2). Use appropriate safeguards and comply with the Security Standards established in the **HIPAA Security Rule (subpart C – 45 CFR 164.314(a))**;
 - 3). Report to Piedmont any use or disclosure of information not provided for in the BA Agreement of which it becomes aware of, including breaches of unsecured PHI.
 - 4). Assure that any subcontractors that create, receive, maintain, or transmit protected PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to their contract with us;
 - 5). Make available PHI as required;
 - 6). Make available PHI for amendment and incorporate any amendments to PHI as required;
 - 7). Make available the information required to provide an accounting of disclosures as required;
 - 8). Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the business associate on behalf of Piedmont available to HHS to determine Piedmont's compliance with the Privacy Rule;
 - 9). At termination of contract, if feasible, return or destroy all PHI received from, or created or received by the BA on behalf of Piedmont that the BA still maintains in any form and retain no copies of such information or, if not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
 - C. Authorize termination of the contract by Piedmont, if Piedmont determines that the BA has violated a material term of the contract.
4. Self-Insured Group Health Plans:
 - A. For all self-insured groups, the employer group is classified as the "Covered Entity", and PCHP is classified as the "Business Associate" of the Self-Insured Group.
 - B. For self-insured groups, PCHP should ensure that a Business Associate Agreement is in place, and correctly classifies the employer as "Covered Entity" and PCHP as "Business Associate".
5. Fully-Insured Groups, Medicare Advantage, and ACA Exchange – Sub-Contractor Business Associates:
 - A. Piedmont must have a Business Associate Agreement (BAA) in place before protected health information may be disclosed to a Business Associate. The BAA must include language that the BA will:
 - 1). Appropriately safeguard any PHI they create or receive on Piedmont's behalf;
 - 2). Comply with the HIPAA Security Rule;
 - 3). Report any breaches of unsecured PHI to Piedmont;
 - 4). Ensure that any subcontractors that create or receive PHI agree to the same restrictions and conditions as the business associate;

- 5). Comply with the HIPAA Privacy Rule to the extent it is carrying out Piedmont's obligations.
 - 6). Such written assurances will be in place before Piedmont discloses PHI to the Business Associate.
- B. Business Associates who contract with subcontractors are required to have written agreements in place in the same manner that covered entities have with Business Associates.
- 1). In many circumstances PCHP is providing services on behalf of PCHC and/or PCHC HMO as the Business Associate to the Covered Entity (second level Business Associate):
 - 2). If an individual or entity is contracting with PCHP to provide services on behalf of the PCHP, the entity should be classified as a subcontractor to the covered entity.
 - 3). A BAA should be prepared that identifies PCHP as the Business Associate and the Vendor/Entity as the Sub-Contractor Business Associate
6. All BAAs must be signed by the CEO or Compliance Officer of Piedmont.
7. Violations of BA Requirements
- A. If a workforce member learns of a breach or violation of a BA requirement by a BA, such breach or violation shall be reported to the Compliance Officer or to the compliance department.
 - B. The Compliance Officer or compliance department will assist in determining whether reasonable steps can be taken to cure the breach.
 - 1). If reasonable steps to cure the BA's violations are unsuccessful, Piedmont may terminate the contract or arrangement;
 - 2). If termination is not feasible, Piedmont will report the problem to the Secretary of the U.S. Department of Health and Human Services.
8. Notice of Termination of a Contract with a BA
- A. The Compliance Officer shall be notified when issuing or receiving a notice of contract termination involving a BA.
 - B. Legal Counsel may be asked to assist with contacting the BA regarding the BA's obligations to return or destroy all PHI, or if return or destruction is not feasible, to extend the protections of the BA requirements to the PHI and to limit further use and disclosures to those purposes that make the return or destruction of the PHI infeasible.
9. The Business Associate Agreement and any documentation associated with oversight of the business associate must be retained for six years after the contract was last in affect.

Procedures:

1. The Compliance Officer and/or Department Directors will decide whether a Business Associate Agreement is required. The following criteria will be considered when deciding whether to implement a BAA.
 - A. A Business Associate Agreement is generally required when:
 - 1). The outside individual or entity creates, receives, maintains, or transmits PHI, **and**
 - 2). The outside individual or entity is performing a function on Piedmont's behalf.
 - B. A Business Associate Agreement is not required for:
 - 1). Treatment services provided to the member (e.g. a physician or reference laboratory),
 - 2). Incidental access to PHI (e.g., janitorial services), and
 - 3). Other specific exceptions.
2. If it is determined that a Business Associate Agreement is required, the Compliance Officer will execute the appropriate agreement.
 - A. Self Insured Groups: If the employer group does not have a form/template BAA, Piedmont has prepared a template BAA for the self-insured group health plan to use (see "Attachment A – Self Insured Group BAA").
 - B. Fully-Insured, Medicare Advantage, Exchange: Per policy 4B, PCHP is the Business Associate of PCHC & PCHC HMO. If an outside individual or entity is a Business Associate of PCHP, the department director should have the entity execute the appropriate Sub-Contractor Business Associate Agreement template (see "Attachment B – Piedmont Sub-BAA").

- C. If a third party provides its own BA Use of any other Business Associate Agreement) is not permitted unless reviewed and approved by the Compliance Officer.
- D. Alterations or modifications to our agreements are generally not permitted. The Compliance Officer must approve any vendor requests to alter or modify the Business Associate Agreement prior to execution of the agreement. (The Compliance Officer will consult with legal counsel as appropriate.)
- 3. Once the BAA terms have been approved by both parties, present the BAA to the CEO or the Compliance Officer
- 4. The Business Associate Agreement and any documentation associated with oversight of the business associate must be retained for six years after the contract was last in affect.

Equipment: None

Forms and Letters: None

Reference(s): 45 CFR §164.308(b)(1-3); §164.314(a); §164.502(e) and §164.504(e)(1/25/13)

Interdisciplinary Review: None

Policy History:

Date	Revision No.	Reason for Change	Sections Affected
04/14/2003	NEW		All
09/23/2013	1.0	<ul style="list-style-type: none"> • Updated policy to new format. • Provided more detailed clarification and included changes/updates from the HIPAA Omnibus Rule effective 9/23/13. 	All
02/02/2016	1.1	<ul style="list-style-type: none"> • Converted to Centra Format 	
09/16/2016	2.0	<ul style="list-style-type: none"> • Reviewed for compliance with Phase 2 Audit Protocol • Added Definitions • Moved Procedural Language into Policy • Added Policy language to policy to clarify our requirements for BAAs • Added reference to template attachments, Group BAAs and Vendor BAAs. 	
03/12/2018	3.0	<ul style="list-style-type: none"> • Added references to Security CFRs and Security content required in the BAA. • Updated the BAA templates 	Procedures

-
-

<p>Document Link Manager</p> <p>No Documents Linked No Documents Linked</p>

<p>Attachment Manager</p> <p>Attachments List:</p>

Name	Size
Attachment A - Self-Insured Group BAA.doc	85 KB
BAA Subcontractor - PCHP.BAA.S1 (Iss. 2016.12.21).DOC	115 KB
