

Mississippi State Hospital
Business Associate Agreement

A. Purpose of this Agreement

Whereas, Mississippi State Hospital and its facilities (hereafter MSH) and _____ (hereafter Business Associate) intend to protect the privacy and security of certain Protected Health Information (PHI) to which the Business Associate may have access to, MSH and Business Associate will act in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinstatement Act of 2009 (ARRA), Pub. L. No. 111-5 and any other applicable law subsequently adopted to deal with the use and disclosure of confidential information.

B. Definitions: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, that is, standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E, the Security Rule, and the HITECH Act. For example:

1. Business Associate- A business associate is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information. A business associate is also a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. A business associate may use or disclose protected health information only as permitted or required by its business associate contract or as required by law. A business associate is directly liable under the HIPAA Rules and subject to civil, and in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate is also directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule.
2. Covered Entity- A covered entity is a health plan, healthcare clearing house, or a healthcare provider who transmits any health information in electronic form in connection with a transaction that is covered by HIPAA regulations.
3. Protected Health Information- Protected health information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium.

4. Subcontractor- Subcontractor means a person to whom a business associate delegates a function, activity, or service other than in the capacity of a member of the workforce of such business associate.
5. Designated Record Set- A designated record set means a group of records maintained by or for a covered entity that is the medical records or billing records about Individuals maintained by or for a covered health provider, the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or used, in whole or in part, by or for the covered entity to make decisions about Individuals.

C. Obligations and Activities of the Business Associate

1. Business Associate agrees to keep records and submit compliance reports as well as follow all other requirements regarding compliance with 45 CFR § 160.310.
2. Business Associate agrees to acknowledge that if the Secretary determines that the business associate has violated any administrative provision then the business associate is subject to a civil money penalty pursuant to 45 CFR § 160.402.
3. Business Associate agrees to ensure the confidentiality, integrity, and availability of all electronic protected health information the business associate creates, receives, maintains, or transmits.
4. Business Associate must review and modify security measures implemented as needed to continue to protect electronic protected health information, and update documentation of such security measures in accordance with 45 CFR § 164.316.
5. Business Associate must implement policies and procedures to comply with administrative safeguards pursuant to 45 CFR § 164.308.
6. Business Associate must implement policies and procedures to comply with physical safeguards pursuant to 45 CFR § 164.310.
7. Business Associate must implement policies and procedures to comply with technical safeguards pursuant to 45 CFR § 164.312.
8. Business Associate agrees to notify MSH of any breach of unsecured protected health information within 5 days so that MSH can notify and identify, at the business associate's expense, each Individual whose unsecured protected health information has been acquired, accessed, or disclosed within 60 days.
9. Business Associate agrees to notify MSH of any breach within 5 days by utilizing the MSH Privacy Violation Report for Business Associates form (hereafter referred to as Attachment A) attached with this Agreement.
10. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the business associate of a use or disclosure of protected health information by the business associate in violation of the requirements of this Agreement.

11. Business Associate agrees that discovery of the breach will be treated as of the first day that the business associate knew of the breach or, by exercising reasonable diligence, would have been known to the business associate.
12. Business Associate may use or disclose protected health information only as permitted or required by this agreement or as required by law.
13. Business Associate agrees to provide MSH with protected health information in order for MSH to satisfy MSH's obligations under HIPAA regulations.
14. Business Associate agrees to provide access, at the request of MSH, to any applicable protected health information maintained by business associate in a Designated Record Set. Such access will be provided within 10 days of receiving a written request from MSH. Such access will be provided to MSH or, as directed by MSH, to an Individual in order to meet the 30 day requirement and other requirements under 45 CFR § 164.524.
15. Business Associate agrees to make any amendment to protected health information in a Designated Record Set that MSH directs or agrees to in accordance with 45 CFR § 164.526 at the request of MSH or an Individual, within 30 days of receiving a written request for such amendment.
16. Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for MSH to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
17. Business Associate agrees to provide to MSH or an Individual information collected in accordance with this Agreement, to permit MSH to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR § 164.528. Business associate agrees to provide this information within 30 days of receiving a written request from MSH.
18. Business Associate agrees that when using or disclosing protected health information or when requesting protected health information from another business associate, the business associate must make reasonable efforts to limit the protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
19. If the business associate uses protected health information containing alcohol and drug abuse treatment records, the business associate agrees to comply with federal regulations on confidentiality of alcohol and drug abuse treatment records found in 42 CFR Part 2, and only provide Individual's alcohol and drug abuse records as permitted by law.
20. Business Associate agrees to comply with 45 CFR § 164.504 in order to properly safeguard information if the business associate works with a subcontractor.
21. Business Associate agrees to acknowledge that it will not be found in compliance with 45 CFR § 164.502 if the business associate knew of a pattern of activity or practice of a subcontractor that constituted a material breach or violation of the subcontractor's obligation under the agreement, unless the business associate took reasonable steps to

cure the breach or end the violation, as applicable, and, if such steps were unsuccessful terminate the contract if feasible.

22. Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to same restrictions and conditions that apply to the business associate with respect to protected health information.
23. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the business associate on its behalf of MSH available to the Secretary for purposes of determining MSH's compliance.
24. Business Associate agrees to only use protected health information received by MSH for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

D. Obligations of MSH

1. MSH shall notify the business associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520 to the extent that such limitation may affect the business associate's use or disclosure of protected health information.
2. MSH shall notify the business associate of any changes in, or revocation of, permission by an Individual to use or disclose protected health information, to the extent that such changes may affect the business associate's use or disclosure of protected health information.
3. MSH shall notify business associate of any restriction to the use or disclosure of protected health information that MSH has agreed to in accordance with 45 CFR § 164.522, to the extent that such restrictions may affect the business associate's use or disclosure of protected health information.

E. Permissible Requests by MSH

MSH shall not request the business associate to use or disclose protected health information in any manner that would not be permissible under the Privacy/Security Rule if done by MSH.

F. Term and Termination

1. Term. The Term of this Agreement shall be effective as of the date signed by both parties, and shall terminate when all of the protected health information provided by MSH to the business associate, or created or received by the business associate on behalf of MSH, is destroyed or returned to MSH, or, if it is infeasible to return or destroy protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.

2. Termination for Cause. Upon MSH's knowledge of a material breach by the business associate, MSH shall either:

a.) Provide an opportunity for the business associate to cure the breach or end the violation and terminate this Agreement if business associate does not cure the breach or end the violation within the time specified by MSH; or

b.) Immediately terminate this Agreement if the business associate has breached a material term of this Agreement and cure is not possible.

3. Effect of Termination. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the business associate shall return or destroy all protected health information received from MSH, or created or received by the business associate on behalf of MSH. This provision shall apply to protected health information that is in the possession of subcontractors or agents of the business associate. The business associate shall retain no copies of the protected health information.

In the event that the business associate determines that returning or destroying the protected health information is infeasible, the business associate shall provide to MSH written notification of the conditions that make return or destruction infeasible. Upon notifying MSH that return or destruction of the protected health information is infeasible, the business associate shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible for so long as the business associate maintains such protected health information.

G. Regulatory References. A reference in this Agreement to a section in the Privacy/Security Rule means the section as in effect or as amended.

H. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for MSH and the business associate to comply with the requirements of the Privacy/Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

I. Survival. The respective rights and obligations of the business associate as provided in this Agreement shall survive the termination of this Agreement.

J. Interpretation. Any ambiguity in this Agreement shall be resolved to permit MSH and the business associate to comply with the Privacy/Security Rule.

IN WITNESS WHEREOF, the parties have hereunto affixed signatures intending to be legally bound by this Agreement.

Business Associate Execution:

Mississippi State Hospital Execution:

By:_____

By:_____

Print Name:_____

Print Name:_____

Print Title:_____

Print Title:_____

Date Signed:_____

Date Signed:_____