

2.2.9 Business Associate Use and Disclosure of Protected Health Information

(a) Policy

California Correctional Health Care Services (CCHCS) may only disclose Protected Health Information (PHI) to a business associate when CCHCS enters into a written Business Associate Agreement (BAA) with the business associate. Alternate forms of BAAs must be approved by legal counsel.

(b) Purpose

To specify when CCHCS may disclose a patient's PHI to a business associate of CCHCS and to specify provisions that must be included in CCHCS contracts with business associates.

(c) Responsibility

Oversight responsibility of the Privacy Office shall be vested in the Privacy Officer. The Privacy Officer is required to oversee privacy rights as required by laws, policies, and standards for respecting the rights of individuals with regard to the collection, use, and disclosure of personal information throughout CCHCS.

(d) Business Associate Use and Disclosure of PHI

(1) Exceptions

- (A) If a business associate is required by law to perform a function, activity, or service on behalf of CCHCS as described in the definition of business associate, CCHCS may disclose the minimum necessary PHI to the business associate to the extent necessary to comply with the legal mandate. This can be done without meeting the requirements of a business associate contract, provided that CCHCS attempts in good faith to obtain satisfactory assurances that the business associate shall protect health information to the extent required by a CCHCS BAA, and, if such attempt fails, CCHCS shall document the attempt and the reasons that such assurances cannot be obtained.
- (B) A business associate contract is not required between CCHCS and the subcontractors of a business associate where the business associate maintains a valid business associate contract with CCHCS.

(2) Responsibilities of CCHCS in Business Associate Relationships

CCHCS responsibilities in business associate relationships include, but are not limited to, the following:

- (A) Receiving, logging, and reporting a patient's complaints regarding the uses and disclosures of PHI by the business associate;
- (B) Receiving, logging, and reporting notices from the business associate of possible violations of the business associate contract;
- (C) Implementation of corrective action plans, as needed; and
- (D) Mitigation, if necessary, of known violations up to and including contract termination.

(3) Business Associate Non-Compliance

If CCHCS becomes aware of a pattern of activity or practice of a business associate that constitutes a material breach or violation of the business associate's obligation under the contract or other arrangement, CCHCS must take reasonable steps to mitigate the breach and/or end the violation. This may include working with and providing consultation to the business associate, terminating the contract, and/or reporting the problem to the Secretary of the U.S. Department of Health and Human Services.

(e) Training Requirements and Contact Information

- (1) Privacy training is required for new employees during New Employee Orientation and annually thereafter.
- (2) For questions or clarification, please contact: Privacy@cdcr.ca.gov or 1-877-974-4722.

References

- Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, Section 160.103 – Definitions
- Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 164, Subpart E, Section 164.502 - Uses and disclosures of protected health information: General rules
- Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 164, Subpart E, Section 164.504(e)
- Health Care Department Operations Manual, Chapter 2, Article 2, Section 2.2.8, De-Identification of Patient Information and Use of Limited Data Sets

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CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES
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