

Upper Bay Counseling & Support Services, Inc.
(Administration)

SUBJECT: Business Associate Agreement Policy

EFFECTIVE DATE: September 16, 2014

DATE OF ORIGIN: September 9, 2014

REVIEWED/REVISED DATE: March 8, 2016

POLICY: The purpose of this policy is to provide guidelines for compliance with the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations relating to ‘Business Associates’. Prior to any Protected Health Information (PHI) being shared with a Business Associate, there must be a written agreement between UBCSS and the Business Associate under which the Business Associate must agree to appropriately safeguard the PHI and comply with the Privacy and Security Standards and UBCSS’s Privacy Policies.

SCOPE: All UBCSS staff involved with external vendors.

DEFINITIONS:

1. **Business Associate:** A person or entity (not an employee) who, on behalf of UBCSS (1) Performs a function involving the use or disclosure of individually identifiable health information, PHI, (other than incidental) including claims processing or administration, data collection/analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, or (2) Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for UBCSS, where the provision of the service involves the disclosure of individually identifiable health information from UBCSS.
2. **Business Associate Agreement:** The HIPAA required contract between two parties that share PHI for non-Treatment, Payment or Healthcare operations. This is commonly referred to as the BAA.
3. **Incidental Disclosure:** The possible disclosure of PHI due to exposure to information while performing a service 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.
4. **Protected Health Information (PHI):** individually identifiable health information that is transmitted or maintained in any form or medium [Electronic Protected Health Information (ePHI) or hard copy PHI] and that relates to the past, present or future physical or mental health or condition of a patient, the provision of health care to client, or the past, present or future payment for the provision of health care by a client.

Information is “individually identifiable” if it either identifies an individual or contains,

but is not limited to, client name, birth date, treatment dates, social security number, medical record number, health plan beneficiary number or photographic images.

PROCEDURE:

UBCSS has developed a standard Business Associate Agreement that must be used in any newly established business associate relationship, new contracts or any contracts with existing relationships that are being renewed.

OBTAINING THE BUSINESS ASSOCIATE AGREEMENT

Business Associate Agreements are the basis for protecting data entrusted to non-workforce members. The following applies regarding obtaining agreements:

1. Any UBCSS Manager who is contemplating a contract should determine if a Business Associate Agreement is required according to the definition. Questions concerning this should be directed to the Privacy Officer. This may include but is not limited to implementations of new software packages, new hosting agreements, sharing of data with a non-workforce member or exporting information with PHI to be analyzed by a vendor.
2. UBCSS Staff may access the current Business Associate Agreement inventory via the Staff Only Website (SOS).
3. UBCSS Staff, vendors and other interested parties may access the UBCSS Business Associate Agreement on the UBCSS external website, www.upperbay.org
4. If a UBCSS staff member needs assistance in determining Business Associate Agreement requirements they must contact the UBCSS Privacy Officer.

COMPILATION AND MAINTENANCE OF BUSINESS ASSOCIATE AGREEMENTS :

The UBCSS Risk Manager and Privacy Officer are responsible for the following:

1. Periodic review the accounts receivable and accounts payable list to identify all parties who are Business Associates of UBCSS. A review is also required if regulation changes drive the need for new or amended agreements.
2. Compiling an inventory list of Business Associate relationships with the following information:
 - a. Legal name or other known name of the Covered Entity or Business Associate
 - b. Contact information for the Covered Entity or Business Associate
3. Maintenance of the Business Associate Agreement inventory list including but not limited to adding new agreements, updating existing agreements and archiving old agreements.
4. Filing all executed Business Associate Agreements in a central location.
5. Seeking approval from UBCSS's Legal Department of any proposed language changes which materially deviate from the standard Business Associate Agreement.
6. Ensuring that the Business Associate Agreement process and related elements including but not limited to forms, documentation and education are reviewed for updates and compliance when federal or state regulations change.

7. All Business Associate Agreement documentation shall be maintained for a period of six years beyond the date of when the BAA relationship is terminated.
8. The Business Associate Agreement shall be effective for the length of the relationship between the BA and UBCSS, unless otherwise terminated under the provisions outlined in the agreement.

REQUIRED TERMINATION OF AGREEMENT:

If UBCSS comes to know of a pattern of activity or practice of the Business Associate that violates its obligations under the Business Associate Agreement, and the Business Associate does not halt this activity or practice, then UBCSS must terminate the agreement and/or report the problem to the Secretary of Health & Human Services.

Business Associate Checklist

Company Name (UBCSS has contracted services with): _____

___ A Business Associate is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of UBCSS. **A Business Associate Agreement is required.**

Typically a Business Associate:

Examples of service providers that are typically business associates when accessing PHI, except when acting as members of the workforce of the covered entity or of another business associate:

- ___ Medical transcription companies
- ___ Answering services
- ___ Document storage or disposal (shedding) companies
- ___ Patient safety or accreditation organizations
- ___ Companies involved in claims processing, repricing or collections (e.g., medical Billing companies)
- ___ Health information exchanges (HIEs), e-prescribing gateways and other HIOs
- ___ Third party administrators and pharmacy benefit managers
- ___ Data conversion, de-identification and data analysis service providers
- ___ Utilization review and management companies

Sometimes a Business Associate:

The following are examples of service providers that are sometimes business associates, depending on the underlying relationships, whether they access PHI and the functions involved:

- ___ Accounting firms
- ___ Auditors
- ___ Law firms
- ___ Consulting firms
- ___ Software vendors and consultants
- ___ Financial institutions (if engaging in accounts receivable or other functions extending Beyond payment processing)
- ___ ISP, ASPs and could be other vendors
- ___ Companies providing personal health records (business associate if providing personal health records on behalf of a covered entity)
- ___ Researchers (if performing HIPAA functions for a covered entity)

Examples of businesses and individuals that are typically **not** considered business associates:

- ___ An individual who performs services as part of the workforce of a covered entity. Page 1 of 2
- ___ A health care provider, to the extent that disclosures of PHI by another covered entity concern the treatment of the individual.
- ___ A plan sponsor (such as an employer), with respect to various disclosures from its group health plan
- ___ Financial and banking institutions when performing only payment processing

- activities
- ___ A janitorial service performing traditional functions
- ___ Maintenance and repair personnel (other than working on systems holding PHI)
- ___ Conduits (e.g., U.S. Postal Service and its electronic equivalents)
- ___ Researchers (unless engaged to perform activities regulated by the HIPAA rules)

Other:

___ Please Explain: _____

This contract was approved by: _____
UCSS Staff

Date: _____

A copy of this completed form **must** be given to the Privacy Officer as soon as a contract has been executed.

If you have determined that this company is a Business Associate of UBCSS, you **must** attach a copy of the Business Associate Agreement to this completed form and submit both to the Privacy Officer.