



DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

SUBJECT: HIPAA BUSINESS ASSOCIATES	POLICY NO. 500.20	EFFECTIVE DATE 04/14/03	PAGE 1 of 6
APPROVED BY:  <div style="text-align: right;">Director</div>	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S) 1

PURPOSE

- 1.1 To protect clients' Protected Health Information (PHI) transferred to, created or received by the business associates of the Department of Mental Health (DMH) by including contractual provisions requiring the Business Associate to safeguard the PHI and use the PHI only as permitted by the Business Associate Arrangement in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- 1.2 This policy relates to relevant Board of Supervisors' Agreements and Purchase Orders executed by DMH for services by vendors that perform functions, activities or services, other than client care services, on behalf of DMH that involve the use and/or disclosure of PHI.

POLICY

- 2.1 DMH shall execute appropriately drafted agreements with its designated Business Associates, in accordance with the requirement of the HIPAA Privacy Rule at 45 C.F.R. § 164.50(e)1. DMH and its officers, workforce members and agents shall not disclose client PHI to any Business Associate in the absence of a written agreement. The agreement shall state how the Business Associate may use or disclose the PHI and their obligations to safeguard the PHI.
- 2.2 Business Associate provisions are not required for disclosures by DMH to a health care provider concerning the treatment of a client.
- 2.3 DMH may be designated and act as a Business Associate of other covered entities. DMH will receive appropriate Business Associate provisions received from contractors and it will comply with those accepted provisions. County Counsel will review and approve appropriate Business Associate provisions.
- 2.4 DMH is not liable for privacy violations of its Business Associates. DMH is not required to actively monitor or oversee the means by which the Business Associates carry out safeguards of the extent to which the Business Associate abides by the requirements of the contract.

DEFINITIONS

- 3.1 **"Business Associate"** means a person or entity that perform certain functions, activities or services on behalf of DMH, other than a member of the Department's workforce, requiring the use and/or disclosure of PHI. These functions include, but are not limited to:



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3.2 **“Protected Health Information”** means information that is (i) created or received by a health care provider; (ii) relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and (iii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

PROCEDURES

4.1 Managing Business Associate Agreements

- 4.1.1 The DMH Chief Deputy Director, or designee, shall be responsible for managing all agreements with Business Associates assuring that required provisions are included in all appropriate agreements and that such provisions are current and in compliance with the requirements of the HIPAA Privacy Rules.
- 4.1.2 The provisions of the Business Associate Agreement to be used by DMH are detailed in the Board Letter, approved on January 7, 2003, entitled, **APPROVAL OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) AGREEMENT PROVISIONS FOR LOS ANGELES COUNTY AS A COVERED HYBRID ENTITY**”. All Business Associate Agreements (Attachment I) executed after October 14, 2002 shall include the Business Associate language. If the contract requires the use or disclosure of PHI to a vendor for non-treatment purposes, DMH must include the Board approved “Business Associate” language with or within the contract. If it is in relation to a purchase order, DMH must request ISD to submit this language with or within the purchase order.
- 4.1.2.1 If the contract involves the use or disclosure of PHI to a health care provider for treatment purposes, DMH may include the Board approved “Health Care Provider” language with or within the contract. If it is in relation to a purchase order, DMH may request ISD to submit this



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language with or within the purchase order. This language informs the health care provider that if it is a covered entity, it must also adhere to the necessary HIPAA provisions.

4.1.2.2 If the contract does not involve the disclosure of PHI to a vendor, DMH may include the Board approved “Inadvertent Medical Record Access” (Attachment III) language with or within the contract. If it is in relation to a purchase order, DMH may request ISD to submit this language with or within the purchase order. This language informs the vendor that if any of its employees or subcontractors inadvertently gains access to PHI, it must report it to DMH and not further disclose its findings.

4.1.2.3 DMH is responsible for tracking and managing all of its Business Associate agreements.

4.1.3 No changes or modifications to the language of the Business Associate Agreement may be made without prior legal review and authorization by County Counsel and the Chief Information Privacy Officer.

4.1.4 DMH managers shall notify the designated Privacy Officer of any potential service agreement with a Business Associate to whom client PHI will be disclosed prior to the execution of the service agreement. Failure to notify the designated Privacy Officer of such impending agreements shall be cause for disciplinary action.

4.2 The Department’s Responsibility to Business Associates

4.2.1 With regard to the use and/or disclosure of PHI by Business Associates, DMH shall provide the necessary information and documentation to assure the Business Associate complies with the privacy practices of DMH and acts in accordance with the wishes of the client regarding his/her PHI.

4.2.2 The designated Privacy Officer shall make available the relevant HIPAA Privacy policies and procedures and forms to its Business Associates upon request, to assure that its Business Associates understand the basics of how DMH is executing the HIPAA Privacy Rule, the Department’s legal obligations and the expectations of DMH regarding the activities of its Business Associates to assure compliance with the HIPAA Privacy Rule.

4.2.3 The designated Privacy Officer shall notify Business Associates in writing within the (10) workdays of any arrangements permitted or required by DMH that may impact the use or disclosure of PHI by its Business Associates.



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4.3 Business Associate Obligations to DMH

- 4.3.1 At the request of and in the time and manner specified by the designated Privacy Officer, Business Associates shall provide access to PHI to DMH, the client or his/her personal representative, to whom such PHI relates in order to meet a request under the Client's Right to Access Health Information Policy.
- 4.3.2 At the request of and in the time and manner specified by the designated Privacy Officer, Business Associates shall make any amendments to PHI that DMH approves and directs as detailed in the Client's Right to Amend Health Information Policy.
- 4.3.3 At the request of and in the time and manner specified by the designated Privacy Officer, Business Associates shall provide an accounting of disclosure to DMH, the client or his/her personal representative to whom the PHI relates, in order to meet a request under the Client's Right of Accounting of Disclosure of Protected Health Information Policy.
- 4.3.4 Business Associates shall not use or disclose PHI, except as permitted by the agreement or required by law. The agreement recognizes that a Business Associate may use or disclose PHI for the proper management and administration of its business and as required by law.
- 4.3.5 The Business Associate shall take reasonable steps to ensure that it is receiving only the minimum necessary amount of PHI to provide the contracted services to DMH.
- 4.3.6 Business Associates shall use appropriate safeguards to prevent an unauthorized use or disclosure of PHI.
- 4.3.7 Business Associates shall report violations to the designated Privacy Officer within forty-eight (48) hours upon learning of any unauthorized use or disclosure of PHI.
- 4.3.8 Business Associates shall ensure that their employees and agents, including subcontractors, agree to the same restrictions and conditions on the use or disclosure of PHI that apply to the Business Associate.
- 4.3.9 Business Associates shall make its internal practices, books and records related to the use or disclosure of PHI available to the Secretary of the United States Department of Health and Human Services for the purposes of determining the Department's compliance with the HIPAA Privacy Rule.
- 4.4 In the event the Business Associate relationship is terminated, the Business Associates shall, if feasible, return or destroy all PHI in its possession relating to any DMH client. The Business



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Associate shall also recover, return or destroy and PHI in the possession of its subcontractors or agents. If it is not feasible to return or destroy the PHI, the provisions of the agreement shall be extended to protect the PHI so that no one has access to, or can use or disclose, that PHI.

- 4.5 If DMH becomes aware of a pattern or practice of the Business Associate that constitutes a material breach or violation of the Business Associate’s obligations under the agreement, the designated Privacy Officer shall require the Business Associate to take prompt and reasonable steps to cure the breach or to end the violation. Reasonable steps will vary with the circumstances and nature of the relationship. The designated Privacy Officer shall coordinate activities to address the violation.
 - 4.5.1 If efforts fail to cure the breach or end the violation of contract obligations, the County will terminate the agreement with the Business Associate.
 - 4.5.2 If circumstances exist that make termination of the Business Associate Agreement not feasible (for example, when there are no other viable business alternatives for DMH), the problem shall be reported to the Chief Information Privacy Offices and to the Office of Civil Rights (OCR).
- 4.6 When appropriate and necessary, DMH may act in the capacity of a Business Associate for other, external covered entities. The Department’s Chief Deputy Director or designee, shall be responsible for managing all service agreements in which DMH is performing as a Business Associate by assuring the Business Associate provision contained or attached to such an agreement are necessary, appropriate and in compliance with the requirements of the HIPAA Privacy Rule.
 - 4.6.1 If the Business Associate provisions are in conjunction with a Board agreement, the Department’s Chief Deputy Director or design, shall obtain the approval of County Counsel before signing and accepting any agreement containing Business Associate provisions. Upon Acceptance, DMH will adhere to all provisions outlined in the agreement.
 - 4.6.2 If the Business Associate provisions are in conjunction with a Purchase Order, the Internal Services Department (ISD) representative shall obtain the approval of County Counsel before signing and accepting the agreement. Upon acceptance, DMH will adhere to all provisions outlined in the agreement.
 - 4.6.3 If the Business Associate provisions are not in conjunction with either a Board of Supervisors Agreement or a Purchase Order, the Department’s Chief Deputy Director or designee, shall obtain the approval of County Counsel before signing and accepting the agreement. Upon acceptance, DMH will adhere to all provisions outlined in the agreement.



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DOCUMENT RETENTION

- 5.1 DMH will document and retain the executed agreements containing Business Associate provisions for both Board of Supervisor approved agreements and DMH Purchase Orders containing Business Associate provisions for a period of at least six (6) years from the date of its creation or the date when it was last in effect, whichever is later.

AUTHORITY

HIPAA, 45 CFR, Sections 160.103, 164.504(e)(1)

ATTACHMENT

Attachment I	Contractor's Obligation as a Business Associate
Attachment II	Compliance with Health Insurance Portability and Accountability Act (HIPAA) of 1996
Attachment III	Inadvertent Medical Records Access

**CONTRACTOR’S OBLIGATION AS A BUSINESS ASSOCIATE
UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996**

Under this Agreement, Contractor (also Business Associate) provides services to County (also Covered Entity) and Business Associate receives, has access to or creates Protected Health Information in order to provide those services. Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Parts 160 and 164 (“Privacy Regulations”);

The Privacy Regulations require Covered Entity to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place;

Therefore, the parties agree as follows:

DEFINITIONS

1.1 “Disclose” and “Disclosure” mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate’s internal operations or to other than its employees.

1.2 “Individual” means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.3 “Protected Health Information” has the same meaning as the term “protected health information” in 45 C.F.R. § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity.

1.4 “Required By Law” means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by

a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.

1.5 “Services” has the same meaning as in the body of this Agreement.

1.6 “Use” or “Uses” mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate’s internal operations.

1.7 Terms used, but not otherwise defined, in this Paragraph ___ shall have the same meaning as those terms in the Privacy Regulations.

OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:

- (a) shall Use and Disclose Protected Health Information as necessary to perform the Services, and as provided in Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 4.3 and 5.2 of this Agreement;
- (b) shall Disclose Protected Health Information to Covered Entity upon request;
- (c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:
 - (i) Use Protected Health Information; and
 - (ii) Disclose Protected Health Information if the Disclosure is Required by Law.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose.

2.2 Adequate Safeguards for Protected Health Information. Business Associate warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Paragraph ___. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the minimum necessary in accordance with the Privacy Regulation’s minimum necessary standard.

2.3 Reporting Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity each Use or Disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors but is not specifically permitted by this Agreement. The initial report shall be made by telephone call to [the Departmental Privacy Officer], telephone number _____ within forty-eight (48) hours from the time the Business Associate becomes aware of the non-permitted Use or

Disclosure, followed by a full written report no later than ten (10) business days from the date the Business Associate becomes aware of the non-permitted Use or Disclosure to the Chief Information Privacy Officer at:

Chief Information Privacy Officer
Kenneth Hahn Hall of Administration
500 West Temple ST.
Suite 493
Los Angeles, CA 90012

2.4 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Paragraph ____.

2.5. Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

2.6 Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy that Protected Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from Covered Entity. Business Associate shall provide copies of that Protected Health Information within five (5) business days after receipt of request from Covered Entity.

2.7 Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a "designated record set" as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within ten (10) business days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.

2.8 Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or subcontractors.

[Optional, to be used when all Uses and Disclosures permitted in order to perform the Services will be for the Covered Entity's payment or health care operations activities: However, Business Associate is not required to provide an accounting of Disclosures that are necessary to perform the

Services because such Disclosures are for either payment or health care operations purposes, or both.]

Any accounting provided by Business Associate under this Section 2.8 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.8, Business Associate shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure. Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of request from Covered Entity, information collected in accordance with this Section 2.8 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

OBLIGATION OF COVERED ENTITY

3.1 Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

TERM AND TERMINATION

4.1 Term. The term of this Paragraph ___ shall be the same as the term of this Agreement. Business Associate's obligations under Sections 2.1 (as modified by Section 4.2), 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 4.3 and 5.2 shall survive the termination or expiration of this Agreement.

4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in this Agreement, upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- (a) Provide an opportunity for 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 Covered Entity;
- (b) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
- (c) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary of the federal Department of Health and Human Services.

4.3 Disposition of Protected Health Information Upon Termination or Expiration.

(a) Except as provided in paragraph (b) of this section, upon termination for any reason or expiration of this Agreement, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make infeasible. If return or destruction is infeasible, 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 Business Associate maintains such Protected Health Information.

MISCELLANEOUS

5.1 No Third Party Beneficiaries. Nothing in this Paragraph ___ shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Paragraph ___.

5.3 Relationship to Services Agreement Provisions. In the event that a provision of this Paragraph ___ is contrary to another provision of this Agreement, the provision of this Paragraph ___ shall control. Otherwise, this Paragraph ___ shall be construed under, and in accordance with, the terms of this Agreement.

5.4 Regulatory References. A reference in this Paragraph ___ to a section in the Privacy Regulations means the section as in effect or as amended.

5.5 Interpretation. Any ambiguity in this Paragraph ___ shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Regulations.

5.6 Amendment. The parties agree to take such action as is necessary to amend this Paragraph ___ from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Regulations.

COMPLIANCE WITH HEALTH INSURANCE
PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) OF 1996
PROVIDERS OF PATIENT CARE SERVICES

The parties acknowledge the existence of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ('HIPAA'). Contractor understands and agrees that it is a 'covered entity' under HIPAA and, as such, has obligations with respect to the confidentiality, privacy and security of patients' medical information, and must take certain steps to preserve the confidentiality of this information, both internally and externally, including the training of its staff and the establishment of proper procedures for the release of such information, and the use of appropriate consents and authorizations specified under HIPAA.

The parties acknowledge their separate and independent obligations with respect to HIPAA, and that such obligations relate to Transactions and Code Set, Privacy, and Security. Contractor understands and agrees that it is separately and independently responsible for compliance with HIPAA in all these areas and that County has not undertaken any responsibility for compliance on Contractor's behalf. Contractor has not relied, and will not in any way rely, on County for legal advice or other representations with respect to Contractor's obligations under HIPAA, but will independently seek its own counsel and take the necessary measures to comply with the law and its implementing regulations.

Contractor and County understand and agree that each is independently responsible for HIPAA compliance and agree to take all necessary and reasonable actions to comply with the requirements of the HIPAA Law and implementing regulations related to Transactions and Code Set, Privacy, and Security. Each party further agrees to indemnify and hold harmless the other party (including their officers, employees, and agents), for its failure to comply with HIPAA.

INADVERTENT MEDICAL RECORD ACCESS

Contractor expressly acknowledges and agrees that the provision of services under this Agreement does not require or permit access by Contractor or any of its employees to any patient medical records. Accordingly, Contractor shall instruct its employees that they are not to pursue or gain access to patient medical records for any reason whatsoever.

Notwithstanding the foregoing, the parties acknowledge that, in the course of the provision of services hereunder, Contractor or its employees may have inadvertent access to patient medical records. Contractor understands and agrees that neither it nor its employees are to take advantage of such access for any purpose whatsoever. Additionally, in the event of such inadvertent access, Contractor and its employees shall maintain the confidentiality of any information obtained and shall notify hospital supervisory personnel that such access has been gained immediately or upon the first reasonable opportunity to do so.

In the event of any access, whether inadvertent or intentional, Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, actions, fees, costs, and expenses (including attorney and expert witness fees) arising from or connected with Contractor's or its employees' access to patient medical records. Contractor agrees to provide appropriate training to its employees regarding their obligations in this regard.