

<b>POLICIES AND PROCEDURES</b>
<b>TOPIC:</b> Business Associates
<b>DOCUMENT NUMBER:</b> 1401
<b>EFFECTIVE DATE:</b> September 1, 2014



**I. BACKGROUND AND PURPOSE**

The HIPAA Privacy Standards establish that an entity performing certain types of services on behalf of a Covered Entity constitutes a Business Associate. The HIPAA Privacy Standards also require that a Covered Entity and its Business Associate must enter into a Business Associate Agreement designed to protect the privacy and security of Protected Health Information made available to the Business Associate during the performance of services on behalf of the Covered Entity. The purpose of this policy is to ensure that the WVHIN complies with all obligations applicable to Business Associates in conjunction with its operation of a Health Information Exchange.

**II. POLICY**

A Business Associate is defined as a person or entity that performs a function, activity, or service on behalf of a Participating Organization or another Business Associate involving the disclosure of Protected Health Information or Personal Demographic Information to the Business Associate. The WVHIN is a Business Associate to each of its Participating Organizations. Subcontractors and vendors to the WVHIN may be Business Associates of the WVHIN. A Business Associate shall have the same meaning as such term is defined in 45 C.F.R. Part 160, as may be amended.

A Business Associate Agreement is a formal written contract between the WVHIN and Participating Organizations or WVHIN Business Associates, which obligates the WVHIN and its Business Associate subcontractors to maintain the privacy and security of Protected Health Information in accordance with the requirements of the HIPAA Privacy Standards. The WVHIN will enter into written Business Associate Agreements with Participating Organizations and WVHIN Business Associate subcontractors.

Operation or management of the Health Information Exchange may require the access, use, or disclosure of Protected Health Information by the WVHIN, or its Business Associate subcontractors acting under a Business Associate Agreement, to perform functions or activities on behalf of Participating Organizations. A Business Associate is obligated not to use or further disclose Protected Health Information other than as permitted or required by the Business Associate Agreement or as required by law.

The provisions of this policy are effective between the WVHIN and its Participating Organizations, and between the WVHIN and its Business Associates subcontractors.

### **III. PROCEDURES**

#### **A. Patient Procedures.**

None.

#### **B. Participating Organization Procedures.**

1. Each Participating Organization must enter into a Business Associate Agreement with the WVHIN prior to obtaining authorization to access, use, or disclose Protected Health Information through the Health Information Exchange.

2. The Business Associate Agreement between the WVHIN and each of its Participating Organizations must comply fully with all of the requirements of the HIPAA Privacy Standards, the HIPAA Security Rules, and the HITECH Act, as implemented by regulation.

3. Should either the WVHIN or a Participating Organization elect to terminate their Business Associate Agreement for any reason, the Participating Organization must no longer be allowed to access the WVHIN's Health Information Exchange.

#### **C. WVHIN Procedures.**

1. The WVHIN must enter into a Business Associate Agreement with each of its Participating Organizations prior to authorizing the latter to access or disclose Protected Health Information through the Health Information Exchange.

2. The Business Associate Agreement between the WVHIN and each of its Participating Organizations must comply fully with all of the requirements of the HIPAA Privacy Standards, the HIPAA Security Rules, and the HITECH Act, as implemented by regulation.

3. WVHIN Business Associate subcontractors shall fully comply with the requirements of the HIPAA Privacy Standards, the HIPAA Security Rules, and the HITECH Act, as implemented by regulation, and not further use or disclose Protected Health Information other than as permitted or required by any Business Associate Agreement entered into with the WVHIN, or as required by law.

4. The WVHIN must enter into a Business Associate Agreement with each of its Business Associate subcontractors prior to authorizing the latter to perform any services on behalf of the WVHIN that could cause the Business Associate to receive, maintain, transmit, or create Protected Health Information or Personal Demographic Information from or through the

WVHIN's Health Information Exchange. No access to Protected Health Information will be allowed, no account will be set up, and no money will be paid for services until the Business Associate Agreement is executed.

5. The WVHIN and its Business Associate subcontractors may access, use, or disclose only the Minimum Necessary Protected Health Information obtained from or on behalf of any Participating Organization for the following purposes:

- a. For purposes of installing, testing, maintaining, or operating the Health Information Exchange;
- b. In order to provide technical, administrative, and maintenance support to Participating Organizations in the use of the Health Information Exchange;
- c. In order to provide training to Workforce members, to Participating Organizations and their Authorized Users, and to WVHIN Business Associate subcontractors and their Workforce members;
- d. For purposes of the WVHIN's appropriate management and administration; and
- e. To perform any other service or function reasonably necessary to carry out the mission of the WVHIN as defined in its authorizing statute and rules.

6. The WVHIN will not use or disclose Protected Health Information obtained from or on behalf of any Participating Organization for any purpose not permitted by the WVHIN's policies, any signed Business Associate Agreement, or as otherwise provided by applicable law.

7. The WVHIN will notify affected Participating Organizations as soon as reasonably practical, but in no event later than thirty (30) days of any known use or disclosure of Protected Health Information or Personal Demographic Information not provided for by its Business Associate Agreement or this policy in accordance with the WVHIN Breach Notification Policy (*see* Policy and Procedure Document Number 1500).

8. Neither the WVHIN nor its Business Associate subcontractors shall sell Protected Health Information to third parties for marketing or other commercial purposes without the prior written authorization of the affected patient.

9. A copy of each executed Business Associate Agreement shall be retained by the WVHIN. The WVHIN Privacy Officer shall be responsible for overseeing continued compliance with the HIPAA Privacy Standards, the HIPAA Security Rules, and the HITECH Act and its implementing regulations.

10. Upon report of an unauthorized use or disclosure of Protected Health Information or other material breach of any Business Associate Agreement, the WVHIN will take appropriate

action, up to and including, the termination of the Business Associate Agreement and related services.