Section	6	Compliance Policies	04/11/03-Originated
Subject	6.2	Privacy Related	09/02/11 -Reviewed w changes -Reviewed w/o changes
Policy	**6.2.35**	**Business Associates With Access to PHI**	Compliance Office -Author

Business Associates with Access to PHI

Definition

Business Associate is a person or entity who provides certain functions, activities, or services for or to UTMB, involving the use and/or disclosure of Protected Health Information (PHI).A business associate may include one of the additional components of the University of Texas system, other medical schools or other health care providers. UTMB workforce members are not considered business associates.

Examples of business associate functions or activities include: claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, software hosting. Examples of business associate services include: legal; actuarial; accounting; consulting; data aggregation; management; administrative; accreditation; and financial.

Policy

UTMB shall enter into a business associate agreement with individuals or entities meeting the definition of a business associate. The agreement must include certain protections for the use and disclosure of PHI as outlined further in this policy.

Under the HIPAA Privacy Regulations, UTMB is not required to actively monitor or oversee the means by which its business associates carry out safeguards, or the extent to which the business associates abide by the requirements of the contract. However, UTMB is required to investigate and take corrective action if it becomes aware of a practice or pattern that constitutes a material breach of this policy. As a result, it is important that anyone with knowledge of a business associate who has violated the HIPAA Privacy Regulations contact the Office of Institutional Compliance.

Violation of this policy may result in disciplinary action up to and including termination for employees; a termination of employment relationship in the case of contractors or consultants; or suspension or expulsion in the case of a student. Additionally, individuals may be subject to loss of access privileges and civil and/or criminal prosecution**.**

Business Associate Requirements

All personnel must strictly observe the following standards relating to business associates:

1) UTMB must enter into contracts with business associates that contain specific language. Legal Affairs will provide the language for contracts.
2) The contract must describe the permitted and required uses of PHI by the business associate and include language that provides that the business associate shall:
   a) Not use or further disclose the PHI other than as business associates:
3) UTMB must enter into contracts with business associates that contain specific language. Legal Affairs will provide the language for contracts.
4) The contract must describe the permitted and required uses of PHI by the business associate and include language that provides that the business associate shall:
   a) Not use or further disclose the PHI other than as permitted or required by the contract or as required by law;
   b) Use appropriate administrative, physical, and technical safeguards to prevent the use or
   c) Disclosure of PHI for any reason other than as provided by the Agreement.
   d) Notify UTMB of a breach of PHI without unreasonable delay and in no case later than five (5) calendar days following the discovery of a breach. ;
   Require any agents or subcontractors who receive PHI to be bound by the same restrictions and conditions outlined in the Agreement including implementation of reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of electronic PHI;
   f) Make PHI available in accordance with the UTMB IHOP Policy 6.2.26 Patient Rights Related to PHI;
   g) Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created by, or on behalf of, UTMB, available to U. S. Department of Health & Human Services (HHS) for purposes of determining UTMB's compliance; and
   h) At termination of the contract return or destroy all UTMB PHI (i.e. PHI received from, or created by or on behalf of, UTMB) that the business associate still maintains in any form. Business Associate shall retain no copies of such information. If Business

Business Associate Requirements, continued

i) Associate determines that the return or destruction of PHI is infeasible, Business Associate shall:
   (1) provide UTMB with written notification of the reason,
   (2) agree to extend the protections of the agreement to UTMB's PHI, and
   (3) limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible for long as Business Associate retains the PHI.

In the event UTMB 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 its contract, UTMB must take reasonable steps to cure the breach or to end the violation, as applicable.

In the event that the business associate can not or will not remedy the practice or pattern, UTMB must terminate the contract if feasible. Where termination is not feasible, contact the UTMB Privacy Office for reporting to HHS, as required.

References

45 C.F.R. §164.502(e)(1)
45 C.F.R. §160.103
Texas Health & Safety Code §181.001(b)(1)(A)
IHOP 6.2.26 Patient Rights Related to Protected Health Information