

Institutional Handbook of Operating Procedures Policy 06.02.35	
Section: Compliance Policies	Responsible Vice President: Senior Vice President & General Counsel
Subject: Privacy Related	Responsible Entity: Office of Institutional Compliance

I. Title

Business Associates with Access to PHI

II. 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.

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.

III. Business Associate Requirements

- A.** 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. Department of 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 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;
 - e. 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 Protected Health Information (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 Associate determines that the return or destruction of PHI is infeasible, Business Associate shall:
 - i. provide UTMB with written notification of the reason,
 - ii. agree to extend the protections of the agreement to UTMB's PHI, and
 - iii. 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.

- B. 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.
- C. In the event that the Business Associate cannot 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.
- D. UTMB does not permit subcontractors to offshore any beneficiary PHI. If UTMB makes an exception and agrees that an agent or subcontractor may engage in offshoring beneficiary PHI that involves Medicare related work, the agent or subcontractor must complete the Health Care Service Corporation/Health Care Information System Offshore Attestation form 30 days prior to signing a contract with UTMB.
- E. UTMB will provide the Centers for Medicare and Medicaid Services (CMS) the attestation and subcontractor's specified offshoring information regarding the protection of beneficiary PHI through the CMS Offshore Subcontract Data module in the Health Plan Management System.

IV. Relevant Federal and State Statutes

[45 C.F.R. §164.502\(e\)\(1\)](#)

[45 C.F.R. §160.103](#)

[Texas Health & Safety Code §181.001\(b\)\(1\)\(A\)](#)

V. Related UTMB Policies and Procedures

[IHOP - 06.02.26 - Patient Rights Related to Protected Health Information \(PHI\)](#)

VI. Additional References

[Business Associate Agreement \(BAA\) Decision Tree](#)

VII. Dates Approved or Amended

<i>Originated:</i> 04/11/2003	
<i>Substantive Revisions</i>	<i>Non-Substantive Revisions</i>
09/2/2011	11/26/2014
06/21/2018	

VIII. Contact Information

Office of Institutional Compliance
(409) 747-8700