



## Standard Operating Policies - SOP # 7: HIPAA Business Associate/Client Agreements

Title:	<b>HIPAA Business Associate/Client Agreements</b>	Effective Date:	<b>10/03/2014</b>
Author:	<b>Privacy Officer</b>	Last Review Date:	<b>12/01/2021</b>
Location:	<b>All Locations</b>	Last Revision Date:	<b>12/01/2021</b>
Functional Area:	<b>Administration</b>		

### POLICY

All Liberty Subcontractors and vendors shall have an executed Business Associate Agreement as required by law. To the extent that Liberty is considered a Business Associate, Liberty shall execute the appropriate document. For the purposes of this Standard Operating Procedure (“SOP”), “business associate” means a person or entity who is not a Liberty employee or a physician subcontracted member, including a “Liberty contracted staff or another vendor/agent” (meaning a person or entity, other than a Liberty employee or physician subcontracted staff, to whom a Business Associate delegates functions or activities), who creates, receives, maintains or transmits PHI for functions or activities regulated by the HIPAA Privacy Rule on behalf of Liberty, including but not limited to, the following functions: claims processing or administration, utilization review, quality assurance, billing, benefit management, and re-pricing, legal, actuarial, accounting, consulting, data aggregation, management, administrative, or financial services.

### PROCEDURE

#### I. Business Associates (Subcontractors)

1. Liberty shall require all Business Associates to have a current Business Associate Agreement with Liberty prior to permitting the use or disclosure of PHI by or to the Subcontractor or the Business Associate.
2. Liberty shall require a Business Associate Agreement with any Covered Entity before Liberty uses or discloses PHI on behalf of or to the Covered Entity.
3. Prior to entering into any service contract, Liberty shall identify and determine whether the service provider is a Business Associate. In case of a question as to whether a Business Associate Agreement is necessary, Liberty’s Privacy Officer shall be consulted.
4. Liberty’s Privacy Officer shall maintain a “standard” Business Associate Agreement that shall be presented to service providers and contractors who shall or may have the potential to access any PHI. There may be different “standards” for different relationships. The “standard” shall maintain all required terms and conditions outlined in #6 below. As the “standard” may change from time to time, it is not attached to this SOP, but a copy is maintained in a locked cabinet in Liberty’s Privacy Officer’s locked office.
5. The Business Associate shall either (a) be provided with Liberty’s standard Business Associate Agreement or (b) provide a copy to Liberty of their standard Business Associate Agreement. If a modification is made to Liberty’s standard agreement or Liberty is asked to execute the Business Associate’s standard Business Associate Agreement, the documents will be referred to the Chief Compliance Officer (CCO) and Privacy Officer or General Counsel, if needed, for review and response.

6. All Business Associate Agreements shall have, at a minimum each on the following clauses: (1) A description of the uses and disclosures of PHI permitted and required by the services agreement, the Business Associate Agreement or as required by law; (2) a prohibition on further uses and disclosures except that the Business Associate may (a) use or disclose PHI for the proper management and administration of the Business Associate; or (b) provide data aggregation services. (3) provisions that address: (a) the use of appropriate safeguards to prevent the use or disclosure of PHI other than as provided by the Business Associate Agreement; (b) the reporting of any uses or disclosures not provided for by the Business Associate Agreement of which the Business Associate is aware; (c) require that any agents or subcontractors of the Business Associate agree to the same terms and conditions that the Business Associate has agreed to with respect to the PHI; (d) assist Liberty meet its duties under HIPAA, including with respect to individual rights requests (e.g., the individual requests PHI that the Business Associate holds); (e) make all internal practices, books, records relating to the uses and disclosures of PHI available to the Secretary of the U.S. Department of Health & Human Services; (g) at the end of the services agreement return or destroy all PHI in the Business Associate's possession, however, if return or destruction is determined not to be feasible, the protections of the Business Associate Agreement shall continue for as long as the Business Associate retains the PHI; (h) a term and termination clause, including a termination clause which specifies the effect of termination and any reference to a later survival clause or section; (i) if possible, indemnification for all expenses incurred for the Business Associate's breach of the Business Associate Agreement.
7. If the Business Associate violates a material term of the Business Associate Agreement, the Business Associate Agreement shall be terminated. If termination is not feasible, the problem shall be reported to the Secretary of the U.S. Department of Health & Human Services.
8. Liberty's Business Associate Agreement shall include a requirement that the Business Associate implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI.
9. Liberty's Business Associate Agreement shall include a requirement that the Business Associate ensure that any agents or subcontractors agree to implement reasonable and appropriate safeguards to protect electronic PHI.
10. Liberty's Business Associate Agreement shall require that all security incidents are reported to Liberty.
11. Liberty's Business Agreement shall contain specific clauses with regard to how the Business Associate shall meet the requirements of Breach Notification Rule (45 C.F.R. 164.400-164.414).
12. Liberty's Business Agreement shall contain a section requiring the Business Associate to use Standard Transactions and Code Sets (45 C.F.R. 162.923), where applicable.
13. If Liberty discovers or suspects that a Business Associate is inappropriately using or disclosing or failing to protect PHI, Liberty's Privacy Officer shall immediately investigate the concern and notify the Chief Operating Officer and General Counsel. If the concern is determined to be valid following a dialogue between Liberty's Privacy Officer, Chief Operating Officer and General Counsel, Liberty's Privacy Officer shall notify the appropriate Liberty leadership of the concern and take appropriate follow-up given the level of concern.
14. Liberty shall routinely review Business Associate relationships and contracts to comply with the requirement that all Business Associates maintain a Business Associate Agreement.

## II. Client Agreements

1. Prior to entering into any client agreement (whether it be a public or private client), Liberty shall identify and determine whether Liberty is a Business Associate. If there is a question as to whether a Business Associate Agreement is necessary, both Liberty's Privacy Officer and General Counsel shall be consulted.
2. The Liberty client shall either (a) be provided with Liberty's standard Business Associate Agreement or (b) provide a copy to Liberty of their standard Business Associate Agreement. If a modification is made to Liberty's standard Business Associate Agreement or if the client asks Liberty to use its Business Associate Agreement, the documents will be referred to Liberty's CCO and Privacy Officer, or General Counsel, as needed, for review and response.
3. All Business Associate Agreements shall have, at a minimum, each of the clauses as required by law and identified above in this SOP.

Approved By: \_\_\_\_\_

## Revision History

Version	Date	Author	Summary of Changes
#1	10/03/2014	Judith Ann Shields	Initial ISF release – refactor and update of previous security policies into distinct documents
#2	12/22/2015	Judith Ann Shields	Annual review, Attorney reviewed no changes. Added inactivity lock requirement
#3	01/18/2016	Judith Ann Shields	Annual review, Attorney reviewed no changes. Added inactivity lock requirement
#4	12/22/2017	Judith Ann Shields	Annual review, Attorney reviewed no changes. Added inactivity lock requirement
#5	12/22/2018	Judith Ann Shields	Annual review, Attorney reviewed no changes. Added inactivity lock requirement
#6	12/22/2019	Judith Ann Shields	Annual review, Attorney reviewed no changes. Added inactivity lock requirement
#7	11/15/2019	Judith Ann Shields	Annual review, Attorney reviewed © LHC. Added inactivity lock requirement
#8	11/02/2020	Judith Ann Shields	Annual review, Attorney reviewed no changes. Added inactivity lock requirement
#9	12/01/2021	John Beck	Annual review, minor changes and made changes to the provisions the Business Associate Agreement must include. Added inactivity lock requirement