POLICY REGARDING BUSINESS ASSOCIATES AND BUSINESS ASSOCIATE AGREEMENTS

Purpose: To set forth the policy and procedures of WVU Physicians of Charleston (WVUPC) regarding the identification of, and contracting with, business associates as required by the Health Insurance Portability and Accountability Act of 1996 and subsequent related amendments.

Standard: WVUPC will enter into business associate agreements as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and subsequent amendments thereto. WVUPC will allow its business associates to create, receive, maintain or transmit PHI on its behalf, if WVUPC obtains satisfactory written assurances that the business associate will appropriately maintain the privacy and security of the PHI and will fulfill all HIPAA business associate obligations as required by law.

A business associate relationship exists when an individual or entity, acting for and/or on behalf of WVUPC, assists in the performance of a function or activity involving the use or disclosure of PHI. Business associates may include any individual or entity that receives PHI from WVUPC in the course of providing legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services. A covered entity may be the business associate of another covered entity depending upon the activities being performed.

Policy: WVUPC will identify business associate relationships and, prior to disclosing an individual’s PHI to such business associates, enter into a business associate agreement in accordance with the procedures set forth below.

Procedure: 1. Identification of Business Associate Relationships
   a. Analysis of Business Relationships. WVUPC will, in connection with any existing business arrangement with outside entities, identify whether such arrangement (contractual or otherwise) constitutes a business associate relationship under HIPAA by doing both of the following:
      i. Identifying whether the other contracting party is performing a function or activity for or on behalf of WVUPC
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ii. Determining whether the party receives PHI from WVUPC to perform such function or activity.

b. Newly Formed Relationships. Prior to entering into any new relationships with outside entities, WVUPC will evaluate whether such relationships will constitute business associate relationships by:

i. Identifying whether the outside entity will perform a function or activity for or on behalf of WVUPC

ii. Determining whether the entity will receive PHI from WVUPC in the performance of such function or activity.

2. Exceptions to a Business Associate Relationship

A business associate relationship does not exist, even though an outside entity may receive PHI from WVUPC in order to perform a function or activity for or on WVUPC’s behalf, in the following instances:


b. Financial Transactions. A business associate relationship does not exist between WVUPC and a financial institution if the financial institution only processes consumer-related financial transactions for the purpose of health care payment.

c. Disclosures between a group health plan and plan sponsor. A business associate relationship does not exist between a group health plan and plan sponsor.

d. Organized health care arrangements. Entities that participate in an organized health care arrangement are not business associates of each other.

e. Entities Acting as Mere Conduits. A business associate relationship does not exist between WVUPC and entities
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acting as mere conduits in the transmission of PHI (such as the US Postal Service or a courier service).

3. **Contracting Requirements of Business Associate Agreements**

Where WVUPC has identified that a business associate relationship exists and an exception does not apply, then WVUPC will require that the outside entity enter into a business associate agreement (“Agreement”) with WVUPC using a form of such agreement as specified by WVUPC and/or another such form that has been reviewed and approved by WVUPC’s legal counsel. Such an agreement will contain the following provisions:

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<tr>
<th>Procedure: <strong>Permitted Uses and Disclosures</strong></th>
<th>The Agreement will state the purpose(s) for which the business associate may use and/or disclose PHI and will indicate generally the reasons and types of persons to whom the business associate may make further disclosures.</th>
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<tr>
<td><strong>Assurances</strong></td>
<td>The Agreement will contain the following assurances from the business associate:</td>
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<tr>
<td>i.</td>
<td>The business associate will not use or disclose PHI other than as permitted by the Agreement or as required by law;</td>
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<td>ii.</td>
<td>The business associate will use appropriate safeguards to protect the confidentiality of PHI;</td>
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<td>iii.</td>
<td>The business associate will report to WVUPC any use or disclosure of PHI not permitted by the Agreement;</td>
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<td>iv.</td>
<td>The business associate will ensure that its agents or subcontractors will agree to the same restrictions and conditions as the business associate;</td>
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<td>v.</td>
<td>The business associate will make available to WVUPC the information necessary for WVUPC to comply with an individual’s rights to access, amend, and/or receive</td>
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an accounting of disclosures of their PHI;

vi. The business associate will make available to the Secretary of the Department of Health and Human Services (“DHHS”) the business associate’s internal practices, books and records relating to the use and disclosure of PHI;

vii. The business associate will return or destroy the PHI once the contract is terminated; and

viii. Such other provisions as may be required by the 2013 amendments to HIPAA and or such other later amendments as required by law.

c. Breach and Termination. The Agreement will provide that, if WVUPC knows (e.g., has substantial or credible evidence) of a business associate’s pattern of activity or practice which constitutes a material breach or violation of the business associate’s obligations under the Agreement, WVUPC will take “reasonable steps” to cure the breach or violation. If the measures taken are unsuccessful, WVUPC will terminate the Agreement.

d. Appropriate Safeguards. The Agreement will contain language that requires the business associate to use “appropriate safeguards” to prevent the use or disclosure of PHI other than as provided for in the Agreement.

e. Optional Provisions. In consultation with WVUPC’s legal counsel, the following provisions also may be included in the Agreement:

i. WVUPC’s access to a business associate’s operations for purposes of conducting an audit.

ii. Requirement that business associate will carry sufficient insurance to cover losses that may arise from a loss of data or to cover lawsuits based upon a breach of confidentiality.

iii. Indemnification provision whereby business associate will indemnify WVUPC in the event of a breach of
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confidentiality.

iv. No third party beneficiary provision.

v. Provisions to the allow business associate to use PHI in the performance of the business associate’s management and administration functions.

4. Timing of Execution of Business Associate Agreement

a. Business Associate Agreements, when necessary by law and/or under the provisions of this policy, shall be entered into prior to the Business Associate performing any activities for or on behalf of WVUPC that require access to patient PHI.

References:

CFR 164.103
CFR 164.504(e)
HITECH 13408
HITECH 13401
HITECH 13404