

Polk County Wisconsin
ORGANIZATIONAL REQUIREMENTS
Business Associate Contract and Other Arrangements
Policy and Procedures
45 CFR §164.314(a)(1), 164.504(e)(2)

Policy 602.I

Effective Date: October 12, 2004 Revision Date:

Policy

- A. Polk County Government may enter into a business associate agreement/contract with a person that meets the definition of a business associate under the Health Insurance Portability and Accountability Act (HIPAA).
1. A business associate is a person, who is not a member of Polk County Government's workforce and who, on behalf of Polk County Government, performs or assists in the performance of any function or activity involving use or disclosure of individually identifiable health information or who provides certain services to Polk County Government. The business associate is using or creating protected health information (PHI) for or on behalf of Polk County Government, as opposed to another entity or individual. [45 CFR 160.103]
 2. Business associate agreements/contracts must specify how the business associate will maintain the confidentiality of individually identifiable health information it receives from Polk County Government. The agreement/contract will allow the business associate to use and disclose PHI for purposes as outlined within the agreement/contract.
- B. Polk County Government may permit a business associate to create, receive, maintain or transmit electronic protected health information (EPHI) on Polk County Government's behalf if Polk County Government obtains satisfactory assurances in accordance with the Privacy and Security Rules that the business associate will appropriately safeguard the information.
- C. The Privacy Officer, in coordination with the Polk County Department of Administration, will be responsible for implementation and oversight of business associate agreements/contracts involving security of EPHI.

Procedures

- A. The Information Technology Department, in coordination with the Privacy Officer, or HIPAA Committee member(s), will identify all business relationships to determine if a business associate agreement/contract is required. The relationship with an individual or a group that is not a part of Polk County Government's workforce will be reviewed to determine if this relationship will require a business associate agreement/contract. See *Identification of Types of Business Associates Form* and *Business Associates Worksheet*.
- B. A business associate agreement/contract is not required for:
 - 1. The transmission by a covered entity of EPHI to a health care provider concerning the treatment of an individual.
 - 2. The transmission of EPHI by a group health plan or a health maintenance organization (HMO) or health insurer on behalf of a group health plan to a plan sponsor.
 - 3. The transmission of EPHI from or to other agencies when the covered entity is a government program providing public benefits.
- C. Polk County Government will require all business associates to sign a written agreement/contract that provides assurances that the business associate will abide by Polk County Government's privacy and security practices. Polk County Government will acquire the Business Associate contract contain all the components required by the Privacy and Security Rules. See *Business Associate Contract Sample*.
- D. The contract will require that the business associate:
 - 1. Ensure that any agent, including a subcontractor, to whom it provides protected information, agrees to implement reasonable and appropriate safeguards to protect it.
 - 2. Report to Polk County Government any security incident of which it becomes aware.
 - 3. Authorize termination of the contract by Polk County Government if Polk County Government determines that the business associate has violated a material term of the contract.
- E. Polk County Government's agreement/contract with the business associate will require the business associate to implement administrative, physical and technical safeguards that reasonably and appropriately protect confidentiality, integrity and availability of EPHI that it creates, receives, maintains or transmits on behalf of Polk County Government.[45 CFR 164.314(a)(2)(i)(A)]

- F. The Information Technology Department will verify that, when required, a business associate agreement/contract is obtained and is in compliance with all applicable state and federal requirements.
- G. Any required reporting of a security incident, pattern of security incidents or any complaints regarding the business associate's use and/or disclosure of individually identifiable health information will be reported to the Information Technology Department who will then determine whether the incident requires mitigated or contract termination. The Information Technology Department will be responsible for oversight of mitigation or termination as deemed appropriate.
- H. If termination is determined to be necessary and is determined not feasible by the [Security Officer], the problem is to be reported by the Information Technology Department to the Secretary of the Department of Health and Human Services.
- I. Upon termination of the agreement, the Information Technology Department will be responsible for monitoring the destruction or return of any PHI used, created or obtained by the business associate.
- J. Business associate processes will be documented and maintained by the Information Technology Department.
- K. All documentation related to business associate processes will be retained by the Information Technology Department for six years from the date of its creation or the date when it was last in effect, whichever is later.

Contents of the Business Associate Agreement/Contract

Note: The requirements as listed include all the requirements of the Privacy and Security Rules. The reference to the information protected may be to PHI as required in the Privacy Rule or EPHI as required in the Security Rule.

- A. The Privacy and Security Rules require that the Business Associate Agreement/Contract:
 - 1. Include assurances that the business associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that it creates, receives, maintains or transmits on behalf of the covered entity. [Security Rule: 45 CFR 164.314(a)(2)(i)(A)]

2. Establish permitted and required uses and disclosures of protected information by the business associate. The agreement/contract may not authorize the business associate to use or further disclose PHI in a manner that would violate the requirements of the Privacy Rule except that:
[Privacy Rule: 45 CFR 164.504(e)(2)(i)(A-B)]
 - a) The agreement/contract may permit the business associate to use and disclose PHI for proper management and administration of the business associate, as provided in the Privacy Rule; and
 - b) The agreement/contract may permit the business associate to provide data aggregation services relating to health care operations of the covered entity.
3. Provide that the business associate will:
 - a) Not use or further disclose the information other than as permitted or required by the agreement/contract or as required by law [Privacy Rule];
 - b) Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by its agreement/contract [Privacy Rule];
 - c) Report to the covered entity any use or disclosure of PHI or EPHI not provided for by its agreement/contract or any security incidents of which it becomes aware [Privacy Rule and Security Rule]:
 - d) Ensure that any agents, including a subcontractor, to whom it provides PHI received from, or created or received by the business associate on behalf of, the covered entity agrees to the same restrictions and conditions that apply to the business associate with respect to such information [Privacy and Security Rules];
 - e) Make available PHI in accordance with the patient right of access standard [Privacy Rule];
 - f) Make available PHI for amendment and incorporate any amendments to PHI in accordance with the patient right to request an amendment standard [Privacy Rule];
 - g) Make available PHI required to provide an accounting of disclosures in accordance with the patient right to an accounting standard [Privacy Rule];
 - h) Make its internal practices, books and records relating to use and disclosure of PHI received from, or created or received by the business associate on behalf of, the covered entity available to the Secretary for purposes of determining the covered entity's compliance with this subpart [Privacy Rule]; and
 - i) At termination of the agreement/contract, if feasible, return or destroy all PHI received from, or created or received by the

business associate on behalf of, the covered entity that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend protections of the agreement/contract to PHI and limit further uses and disclosures to those purposes that make the return or destruction of PHI not feasible. [Privacy and Security Rules]

- j) Polk County Government will authorize termination of the contract if Polk County Government determines that the business associate has violated a material term of the contract. [Privacy and Security Rules] If termination is determined to be necessary and is determined not feasible by the [Security Officer], the problem is to be reported to the Secretary of the Department of Health and Human Services. [Privacy Rule]

Note: A business associate agreement/contract must make the business associate responsible for ensuring that any person to whom it delegates a function, activity or service which is within its business associate agreement with Polk County Government agrees to abide by the restrictions and conditions that apply to the business associate under the agreement/contract. [Privacy and Security Rules]

B. Disclosures to Business Associates

1. Polk County Government may disclose PHI to a business associate and may allow a business associate to create or receive PHI on its behalf, if Polk County Government obtains satisfactory assurance that the business associate will appropriately safeguard the information. [Privacy Rule]
2. Disclosures made by Polk County Government to another health care provider concerning treatment of an individual are not regulated by the business associate standard in the Privacy Rule. [Privacy Rule]
3. Polk County Government may rely on a request for disclosure of PHI by Polk County Government's business associate for purposes of providing services to Polk County Government, if the business associate represents that the information requested is the minimum necessary for the stated purpose. [Privacy Rule 45 CFR 164.514(d)(3)(iii)(C)]

C. Mitigation

1. Polk County Government is not in compliance with the Privacy or Security Rules if Polk County Government knew of a pattern of activity or practice of the business associate that constituted a material breach or violation of the business associate's obligation under the agreement/contract or other arrangement, unless Polk County Government took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful [Privacy and Security Rules]:
 - a) Terminated the agreement/contract or arrangement, if feasible; or
 - b) If termination is not feasible, reported the problem to the Secretary.

D. Polk County Government as a Business Associate

1. If Polk County Government violates the satisfactory assurances it provided as a business associate of another covered entity, Polk County Government will be found noncompliant under the Privacy Rule. [Privacy Rule 45 CFR 164.502(e)(1)(iii)]

E. Documentation

1. Documentation related to business associate agreements/contracts will be maintained for six years from the date of its creation or the date when it was last in effect, whichever is later. [Privacy and Security Rules 45 CFR 164.530(j)(2) and 164.316(b)(2)(i)]