

MAIMONIDES MEDICAL CENTER

CODE: HIPAA 002 (Reissued)

DATE: October 27, 2015

ORIGINALLY ISSUED: April 14, 2003

SUBJECT: BUSINESS ASSOCIATES

I. POLICY

HIPAA requires that MAIMONIDES MEDICAL CENTER enter into a written business associate agreement with any person or entity (“Vendor”) that either (1) creates, receives, maintains, or transmits PHI¹ or “EPHI” (collectively “PHI”) on behalf of MAIMONIDES MEDICAL CENTER or (2) receives PHI while providing legal, accrediting, actuarial, accounting, consulting, data aggregation, management, administrative, or financial services to or for MAIMONIDES MEDICAL CENTER. The business associate agreement will document assurances from the Vendor that it will not use or disclose PHI except as permitted by law. MAIMONIDES MEDICAL CENTER’s Legal Department will act as gatekeeper to (1) determine whether a business associate agreement is necessary with a particular Vendor and (2) provide the appropriate business associate agreements needed in each particular situation.

II. RESPONSIBILITIES:

A. All managers who have authority to negotiate and/or enter into Vendor contracts are responsible for evaluating the Vendor’s scope of work in order to determine whether use or disclosure of PHI is involved and a business associate agreement is required.

B. The Legal Department is responsible for assisting managers in evaluating the necessity for business associate agreements, and for preparing and negotiating business associate agreements with Vendors, when applicable.

C. Every Medical Center employee who becomes aware of a disclosure or use of PHI that is not in compliance with a business associate agreement or with HIPAA is responsible for reporting such circumstances to the Privacy Officer.

¹ “Protected health information,” as used in this Policy, consists of any patient (or employee) information, including very basic information such as their name or their age, that (1) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and (2) either identifies the individual, or could reasonably be used to identify the individual. Protected health information may be in any form, including spoken, written, or electronic form. Examples of protected health information include, but are not limited to, medical records, medical data on information systems, and applications for health or disability benefits. “EPHI” (Electronic Protected Health Information) is PHI transmitted by or maintained in electronic media.

D. The Managers described in subparagraph II A above and the Legal Department are jointly responsible for ensuring that a fully executed Business Associate Agreement is in place prior to commencement of work by a Vendor who will be performing any work involving use or disclosure of PHI or EPHI.

III. PROCEDURE:

A. Existing Contracts.

The Legal Department, with the assistance of the various Departments, will review MAIMONIDES MEDICAL CENTER contracts with Vendors that involve the creation, receipt, maintenance, or transmission of PHI in order to determine whether such contracts need to be amended to include business associate agreement provisions. MAIMONIDES MEDICAL CENTER personnel shall forward each existing Vendor contract to the Legal Department for review if such contract (a) involves the creation, receipt, maintenance, or transmission of PHI by the Vendor and (b) has not already been reviewed and approved by the Legal Department. Business associate agreements must be in place prior to commencement of work by the Vendor. The business associate agreement currently in use at the Medical Center can be found on the Legal Department site on the Medical Center's SharePoint Web Portal.

B. New Contracts.

MAIMONIDES MEDICAL CENTER personnel shall immediately contact the Legal Department whenever they enter into contract negotiations – including negotiations to amend or supplement existing contracts -- with any Vendor who will engage in an activity involving the creation, receipt, maintenance, or transmission of PHI. These contracts could include contracts with persons who will have only incidental contacts with PHI (e.g. janitorial, security services), as well as persons/vendors who will have substantial contact with patient records (e.g. transcriptionists, billing consultants).

The Legal Department will assist in determining whether a Business Associate Agreement is necessary in each instance, and will, if applicable, prepare and provide the requesting MAIMONIDES MEDICAL CENTER personnel, and/or the Vendor directly, with a business associate agreement for the proposed business associate to sign. The business associate agreement shall specify, among other things, the business associate's responsibilities with regard to its use and disclosure of PHI (including disclosures of PHI made to or by the business associate's subcontractors), safeguarding the PHI in accordance with the requirements of the HIPAA Privacy and Security Standards, and returning PHI to MAIMONIDES MEDICAL CENTER. (Business associates are required to return or destroy, if appropriate, MAIMONIDES MEDICAL CENTER's PHI upon the termination of the agreement, unless it is infeasible to do so, e.g., the business

associate is required by other law to maintain the PHI. The negotiations should determine the circumstances according to which it is infeasible to return or destroy MAIMONIDES MEDICAL CENTER's PHI).

C. Execution Process

All Business Associate Agreements will be generated by the Legal Department and will be sent already executed by the Privacy Officer (or other authorized signatory) to the relevant Vendor for execution by the Vendor. The Privacy Officer is the authorized signatory for Business Associate Agreements. In an emergency, in the Privacy Officer's absence, Business Associate Agreements may be signed by the signatories set forth in AD-83 Authorized Signatories.

D. Exceptions.

Certain parties performing activities involving MAIMONIDES MEDICAL CENTER'S PHI may not be required to sign a business associate agreement. MAIMONIDES MEDICAL CENTER personnel should make this determination in consultation with the Legal Department. Some examples of categories of persons or Vendors who may **not** be required to sign a business associate agreement include:

1. certain workers who are not employed by MAIMONIDES MEDICAL CENTER, but work mostly on-site at MAIMONIDES MEDICAL CENTER, and who are deemed to be part of MAIMONIDES MEDICAL CENTER's workforce (e.g. nursing agency staff);
2. certain entities participating in an "organized health care arrangement" with MAIMONIDES MEDICAL CENTER (e.g. the non-employed Medical Staff; Infusion Options, MMC Pharmacy);
3. certain affiliates of MAIMONIDES MEDICAL CENTER (e.g. students and residents rotating to the Medical Center from outside institutions).

E. Disclosures to Business Associates.

MAIMONIDES MEDICAL CENTER and its personnel may disclose PHI to a business associate who has entered into a business associate agreement with MAIMONIDES MEDICAL CENTER.

F. Termination of Business Associate Relationship.

MAIMONIDES MEDICAL CENTER is not required to actively monitor a business associate. However, if MAIMONIDES MEDICAL CENTER obtains knowledge that a business associate has engaged in activity that is a material violation of the business associate's obligations under the business associate agreement, MAIMONIDES MEDICAL CENTER is required to take reasonable steps to cure the breach or end the violation. If continuing violations occur, MAIMONIDES MEDICAL CENTER must terminate the contract, if feasible.

IV. CONTROLS:

The Privacy Officer and the Legal Department shall monitor compliance with this policy.

Pamela S. Brier
President & CEO

REFERENCES: HIPAA Privacy Rule (45 C.F.R. §§ 160.103 (definition of business associate), 164.502(e) (disclosures to business associates), and 164.504(e) (business associate contracts); 78 Fed. Reg. 5566-5685 (Jan. 25, 2013)).

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ORIGINATING DEPARTMENT: Executive Office (Office of General Counsel)