

7010 BUSINESS ASSOCIATE AGREEMENTS

EFFECTIVE DATE: May 29, 2024

REFERENCES: 45 C.F.R. § 160.103; 45 C.F.R. § 164.501; 45 C.F.R. §
164.504

PURPOSE

This policy applies to all Division of Developmental Disabilities (the Division) staff. The purpose of this policy is to outline the requirements of the Business Associate Agreement as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

DEFINITIONS

1. "Business Associate" means the same as in 45 CFR § 160.103.
2. "Covered Entity" means:
 - a. A health plan.
 - b. A health care clearinghouse.
 - c. A health care provider who transmits any health information in electronic form in connection with a transaction covered under the Privacy Rule.

3. “Disclosure” means the release, transfer, or provision of access to or divulgence in any other manner of PHI to parties outside the entity holding the information.
4. “Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule” means the Federal Regulation that establishes national standards to protect individuals' medical records and other individual health information that applies to health plans, healthcare clearinghouses, and those health care providers that conduct certain health care transactions electronically. The Rule requires appropriate safeguards to protect the privacy of individual health information and sets limits and conditions on the uses and disclosures that may be made of such information without authorization from the Responsible Person. The Rule also gives Members rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections.
5. “Member” means the same as “client” as defined in A.R.S. § 36-551.

6. "Protected Health Information" or "PHI" means individually identifiable health information about a Member that is transmitted or maintained in any medium where the information is:
- a. Created or received by a:
 - i. Health care provider,
 - ii. Health plan,
 - iii. Employer, or
 - iv. Health care clearinghouse.
 - b. Relates to the:
 - i. Past, present, or future physical or mental health condition of a Member;
 - ii. Provision of health care to a Member; or
 - iii. Payment for the provision of health care to a Member.
 - c. PHI excludes information in:
 - i. Education records covered by the Family Educational Rights and Privacy Act as amended, 20 U.S.C. 1232g;

- ii. Records described at 20 USC 1232g(a)(4)(B)(IV);
 - iii. Employment records held by a Covered Entity in its role as an employer; or
 - iv. Regarding a person who has been deceased for more than 50 years.
7. “Use” means the sharing, employment, application, utilization, examination, or analysis of PHI within the entity that maintains such information.

POLICY

- A.** The Division’s contracted or out-of-network agreement Business Associates shall ensure appropriate safeguard of the Protected Health Information (PHI).
- B.** The Division shall enter into a Business Associate Agreement before PHI is used, created, or disclosed between the covered component and the entity or contractor.
- C.** The Division shall ensure the Business Associate Agreement contains:
 - 1. Description of the permitted and required uses of PHI by the Business Associate.

2. Provision that the Business Associate does not use or further disclose the PHI other than as permitted or required by law.
3. Requirement for the Business Associate to use safeguards necessary to prevent the use or disclosure of PHI other than as provided for by the contract.
4. Requirement to report to the Division any use or disclosure not allowed by the contract or out-of-network agreement.
5. Provision for the Business Associate to implement the same restrictions and conditions that apply in the Business Associate Agreement with the Division to any subcontractor.
6. Provision to make PHI available to the individual in accordance with the Right to Access.
7. Provision to make PHI available to the Member to amend and incorporate any agreed upon amendment in accordance with the Right to Request Amendments to PHI.
8. Provision to produce an accounting of disclosures when it is requested by a Member.
9. Provision to make Business Associate's internal practices, books, and records relating to the use and disclosure of PHI available to

the Division and Department of Health and Human Services –
Office of Civil Rights, upon request.

10. At the termination of the contract or out-of-network agreement, if feasible, require the Business Associate to return or destroy all Protected Health Information received from, or created or received by the Business Associate on behalf of, the covered entity.