



**HIPAA Privacy Procedure #6**

Effective Date: April 14, 2003  
Reviewed Date: February, 2011  
Revised Date: February, 2011  
Scope: Radiation Oncology

**Use or Disclosure of PHI with Business Associate**

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**Policy Expectation:**

Washington University (“WU”) has adopted a Business Associates policy setting forth the general privacy standards that apply to Protected Health Information (“PHI”) and Business Associates of WU. A Business Associate is a person who: (1) performs functions or activities on behalf of WU, such as claims processing or administration, data analysis, processing or administration, quality assurance, billing, benefit management or practice management; or (2) provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for WU. Business Associate Agreements are not the same as affiliation agreements or confidentiality agreements.

The Radiation Oncology Department (RO) may disclose PHI to a Business Associate and allow a Business Associate to create, receive or use PHI on its behalf only if RO receives satisfactory assurances from the Business Associate that it will safeguard the PHI. The required assurances are set forth in a form called the Business Associate Agreement that must be signed by the Business Associate before PHI is Disclosed to or created, received or Used by the Business Associate.

The Business Associate policy applies to all Business Associates.

**Why is this important?**

- Compliance with all HIPAA privacy regulations is required of all RO divisions that Use, Disclose, collect or maintain PHI.
- Failure to comply may results in WU being liable for civil and criminal penalties.

**What do you need?**

- Copy of the WU HIPAA Policy on Use or Disclosure of PHI with Business Associates
- Copy of Business Associate Agreement
- RO Checklist to determine if third party is a Business Associate
- RO process that ensures that Business Associate Agreements are offered and signed before PHI is Disclosed, created, received or Used by Business Associates
- Glossary of HIPAA terms

<b>Steps:</b>	<b>Additional Information</b>
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Steps:	Additional Information
<p>1. Determine whether PHI will be Disclosed to, or created, received or Used by a third party on behalf of your division or section.</p> <p>If no PHI is involved, you do not need a Business Associate agreement.</p>	<p>Any questions should be forwarded to your supervisor, or the RO Privacy Liaison <b>Kevin Sharkey 286-1076</b>, Campus Box 8224</p> <p>or the WU Privacy Office at <a href="mailto:HIPAA@msnotes.wustl.edu">HIPAA@msnotes.wustl.edu</a></p>
<p>2. <b><u>If PHI is involved</u></b>, determine whether the third party is a Business Associate</p>	<p>See Business Associate checklist or check the WU HIPAA Web site at <a href="http://HIPAA.wustl.edu">http://HIPAA.wustl.edu</a> or with the WU Purchasing Office.</p>
<p>3. <b><u>If the third party is a Business Associate</u></b>, and if a Business Associate Agreement is in place, you may proceed with the business relationship.</p>	<p>Any parties who are employees of BJH, SLCH or WU are not considered Business Associates. They are employees and are therefore covered under HIPAA. No action is necessary.</p> <p>Examples of Business Associates are medical transcription firms and outside billing companies.</p>

<b>Steps:</b>	<b>Additional Information</b>
<p>4. If PHI is involved and the party is a Business Associate:</p> <ul style="list-style-type: none"> <li>a. Contact the RO Privacy Liaison</li> <li>b. The RO Privacy Liaison will determine if the WU Purchasing Office has already obtained a Business Associate Agreement on behalf of the University. If they have, you will not need to do so.</li> <li>c. If the Purchasing Office has not obtained a Business Associate Agreement, then the Privacy Liaison will send you the Business Associate Agreement.</li> <li>d. You will ask your contact at the business to sign two originals of the Business Associate Agreement.</li> <li>e. Note the date that the Business Associate Agreement was sent to the Business Associate.</li> <li>f. If the business associate requests changes to the Agreement, notify RO Privacy Liaison who will consult with General Counsel. Make no changes to the Business Associate Agreement.</li> </ul> <p>5. If you do not receive the signed Business Associate Agreement within ten (10) days, send a follow up reminder communication.</p> <p>6. Once the signed Business Associate Agreements are returned, forward them to the RO Privacy Liaison. You may keep a copy if you like.</p>	<p>See Form Business Associate Agreement</p> <p><b>DO NOT DISCLOSE ANY PHI TO THE BUSINESS ASSOCIATE UNTIL BUSINESS ASSOCIATE RETURNED TWO (2) SIGNED BA AGREEMENTS TO YOU.</b></p>
<p>7. The RO Privacy Liaison will forward the original to the Purchasing Office and keep a copy. One fully executed contract will be returned to you to return to the Business Associate after the appropriate University Designee has signed the agreement. One copy will be retained in the files of the RO Privacy Liaison.</p>	

<b>Steps:</b>	<b>Additional Information</b>
<p>8. If the Business Associate refuses to sign the Business Associate Agreement, terminate the business relationship or revise the business arrangement to avoid Disclosure of PHI to, or the creation, receipt or Use of PHI by, the Business Associate. Notify the RO Privacy Liaison.</p>	
<p>9. Business Associate agreements must be retained for the entire duration of the relationship, plus 6 years.</p> <p>10. If at any time during the Business Relationship, the Business Associate intentionally breaches HIPAA regulations, the relationship must be terminated immediately. If the breach was accidental, immediate steps must be taken to recover information and to ensure the breach does not occur again. This must be documented and kept in the file with the Business Associate agreement. Notify RO Privacy Liaison immediately.</p>	

## **RADIATION ONCOLOGY DEPARTMENT** **BUSINESS ASSOCIATE CHECKLIST**

### ***Definition of a Business Associate***

- A Business Associate is a person or entity who provides certain functions, activities or services for or to a Covered Entity that involves the use and/or disclosure of PHI.
- A Business Associate is not a member of the Workforce of the Covered Entity.
- A health care provider or a health plan can be a business associate of another covered entity.

### ***Exclusion from Business Associate Provisions***

The Business Associate provisions do NOT apply to Covered Entities who disclose PHI to providers for Treatment purposes. For example, the following are not business associate arrangements:

- Information exchanges between a primary care physician and a specialist physician about a patient's treatment
- Information exchanges between a hospital and a physician on staff about a patient
- Faculty physicians providing specialist services to patients at Shriner's Hospital, the VA Hospital, an unaffiliated clinic or outstate hospital or other facility

### ***Examples of Potential Business Associates***

Attorneys  
Accountants  
Accreditation agencies  
Benefit management companies and consultants  
Billing companies  
Clearinghouses  
Coding vendors  
Computer consultants, hardware and software vendors  
Copying companies  
Consultants  
Data storage and warehouse companies  
Information systems providers and consultants  
Microfilming companies  
Optical disk conversion companies  
Paper recycling companies  
Professional services contracts  
Risk management consultants  
Shredding/incineration companies  
Temporary staffing agencies  
Third party administrators  
Transcriptionists  
Waste Hauling companies