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DIRECTIVE: 70.	EFFECTIVE DATE: April 14, 2003	REVISION DATE: 9/20/2010
REVIEWING ENTITY: HIPAA COMMITTEE		
PURPOSE: Utah State Developmental Center (USDC) may disclose an individual's protected health information to a business associate of USDC, and specify provisions that must be included in USDC contracts with business associates.		
AUTHORITY REFERENCE: "Health Insurance Portability Act of 1996," (HIPAA) 45 CFR § 164.530 and "Health Information Technology for Economic for Clinical Health Act" (HITECH). See American Recovery and Reinvestment Act of 2009, § 13400 (P.L. 111-115); 45 CFR § 164.400 -164.414.		

Policy:

1. General

- a. A business associate is a person or entity who:
 - i. On behalf of USDC, performs or assists in the performance of:
 - A. A function or activity involving the use or disclosure of individually identifiable protected health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing; or
 - B. Any other function or activity regulated as part of the Administrative Simplification Provisions of HIPAA; or
 - ii. Provides, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for USDC, where the provision of the service involves the disclosure of individually identifiable protected health information to the person providing the service.

- b. A business associate relationship is formed only if protected health information is to be accessed, acquired, used, created, or disclosed in the relationship.

- c. The following are **not** business associates or business associate relationships:
 - i. USDC employees, volunteers, trainees, or others under the direct control of USDC, whether or not they are paid by USDC.
 - ii. Medical providers providing treatment to individuals;
 - iii. Enrollment or eligibility determinations, involving individuals served by USDC, between government agencies;
 - iv. Payment relationships, such as when USDC is paying medical providers, or other entities for services to an individual, when providing services that are not on behalf of USDC;
 - v. When an individual's protected health information is disclosed based solely on an individual's authorization;
 - vi. When an individual's protected health information is not being disclosed by USDC or created for USDC; and
 - vii. When the only information being disclosed is information that is de-identified in accordance with De-identification of Protected Health Information and Use of Limited Data Sets policy.

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- d. USDC may disclose an individual's protected health information to a business associate and may allow a business associate to create or receive an individual's protected health information on behalf of USDC, if:
 - i. USDC enters into a written contract, or other written agreement or arrangement, with the business associate before disclosing an individual's protected health information to the business associate;
 - ii. The written contract or agreement provides satisfactory assurance that the business associate will appropriately safeguard the protected health information.
- 2. Business associate contract requirements**
- a. A contract between USDC and a business associate must include terms and conditions that:
 - i. Establish the permitted and required uses and disclosures of protected health information by the business associate. The contract may not authorize the business associate to access, acquire, use or disclose protected health information in a manner that would violate HIPAA of USDC privacy policies, except that the contract may permit the business associate to:
 - A. Access, acquire, use and disclose protected health information for the proper management and administration of the business associate; and
 - B. Provide data segregation services related to USDC healthcare operations.
 - ii. Provide that the business associate will:
 - A. Not use or further disclose protected health information other than as permitted or required by the contract or as required by law;
 - B. Use appropriate safeguards to prevent use or disclosure of the protected health information that are not permitted by the contract;
 - C. Report to USDC anytime it becomes aware of a use or disclosure of protected health information not permitted by HIPAA or the contract;
 - D. If a breach of unsecured protected health information occurs at or by a business associate, the business associate must notify the covered entity following the discovery of a breach.
 - a. To the extent possible, the business associate should provide the covered entity with identification of each individual affected by the breach as well as any information required to be provided by the covered entity in its notification to affected individuals.
 - i. Notification will be written in plain language, delivered first class mail, or alternatively, by e-mail if the affected individual has agreed to receive such notices electronically and include:
 - ii. A brief description of what happened, including the date of the breach, the date of the discovery of the breach, if known;
 - iii. A description of the types of protected health information that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - iv. Any steps individuals should take to protect themselves from potential harm resulting from the breach;

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- v. A brief description of what USDC is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
 - vi. Contact procedures for individuals to ask questions or learn additional information, which may include a toll-free telephone number, an e-mail address, Web site, or postal address.
 - E. Ensure that any agents or subcontractors to whom it provides protected health information agrees to the same restrictions and conditions that apply to the business associate;
 - F. Make protected health information available so that USDC may comply with a request from an individual to inspect and copy protected health information, amend protected health information or obtain an accounting of disclosures as required by the Privacy Rights of Individuals policy.
 - G. Incorporate amendments to protected health information when notified to do so by USDC;
 - H. Makes its internal practices, books, and records relating to the use and disclosure of protected health information available to USDC and to the United States Department of Health and Human Services for the purpose of determining compliance with federal requirements; and
 - I. At termination of the contract, if feasible, return or destroy all protected health information that the business associate still maintains in any form. If return or destruction is not feasible, the business associate will continue to protect the information.
 - iii. Authorize termination of the contract if USDC determines that the business associate has violated a material term of the contract.
- b. If the business associate of USDC is another governmental entity:
 - i. USDC may enter into a memorandum of understanding, rather than a contract, with the business associate if the memorandum of understanding contains terms that accomplish the same objectives as the business associate agreement; or
 - ii. USDC is not required to enter into a business associate, if other laws or regulations contain requirements applicable to the business associate that accomplish the same objectives as the business associate agreement.
- c. If a business associate is required by law to perform a function that qualifies it as a business associate, USDC must make a good faith attempt to obtain satisfactory assurances but if it fails:
 - i. USDC may disclose protected health information to the business associate to the extent necessary to comply with the legal requirements without obtaining satisfactory assurances; and
 - ii. USDC must document its good faith attempt and the reason for the failure.
- d. The written contract or agreement between USDC and the business associate may permit the business associate to:
 - i. Use information it receives in its capacity as a business associate to USDC if necessary:
 - A. For proper management and administration of the business associate; or

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- B. To carry out legal responsibilities of the business associate.
 - ii. Disclose information it receives in its capacity as a business associate for the purposes in subsection i above, if:
 - A. The disclosure is required by law; or
 - B. The business associate receives reasonable assurances from the person to whom the protected health information is disclosed that:
 - I. It will be held confidentially and used or disclosed further only as required by law or for the purposes to which it was disclosed to such person; and
 - II. The person notifies the business associate of any known instances in which the confidentiality of the information has been breached.
3. **Responsibilities of USDC in Business Associate relationships**
- a. USDC responsibilities in business associate relationships include, but are not limited to, the following:
 - i. Receiving and logging an individual's complaints regarding the uses and disclosures of protected health information by the business associate;
 - ii. Receiving and logging reports from the business associate of possible violations of the business associate contracts;
 - iii. Implementation of corrective action plans, as needed; and
 - iv. Mitigation, if necessary, of known violations up to and including contract termination.
 - b. USDC will provide business associates with applicable contract requirements and may provide consultation to business associates as needed on how to comply with contract requirements regarding protected health information.
4. **Business associates non-compliance**
- a. If USDC knows of a pattern of activity or practice of a business associate that constitutes a material breach or violation of the business associate's obligation under the contract, USDC must take reasonable steps to cure the breach or end the violation, as applicable, including working with and providing consultation to the business associate.
 - b. If such steps are unsuccessful, USDC must:
 - i. Terminate the contract or arrangement, if feasible; or
 - ii. If termination is not feasible, report the problem to the United States Department of Health and Human Services.

KAREN A. CLARKE, SUPERINTENDENT