



SUNY HIPAA at UB
HIPAA BUSINESS ASSOCIATE DETERMINATION CRITERIA
September 1, 2011

The University at Buffalo (UB), as a component of The State University of New York (SUNY), must identify SUNY HIPAA Business Associate functions at UB to ensure compliance with the "Health Information Technology for Economic and Clinical Health Act" (HITECH) requirements within "Title XIII of the American Reinvestment and Recovery Act of 2009".

All SUNY functions at UB intending to engage in Business Associate activities must identify themselves to the UB Director of HIPAA Compliance for review and approval prior to engaging in such activities.

BACKGROUND

HITECH extends some HIPAA compliance obligations and associated penalty structures to the Business Associates of HIPAA covered entities.¹ These compliance obligations are conveyed upon Business Associates *as a matter of law* and are in force whether or not a HIPAA Business Associate Contract has been implemented between relevant parties.

Functions within SUNY that perform Business Associate activities for other SUNY HIPAA covered functions must either a) be included in the SUNY HIPAA covered function, or, b) if the business associate activities can occur within existing SUNY HIPAA covered functions then personnel engaged in those activities must be made a formal part of the SUNY HIPAA covered function's workforce.² Functions within SUNY that perform Business Associate activities for non-SUNY entities must do so only after the execution of a formal Business Associate Contract which has gone through appropriate review and approval mechanisms.³

It is UB's intent not to provide Business Associate services to external entities outside the framework of a formal Business Associate Contract.

DRAFT UB POLICY: "The University at Buffalo is a hybrid entity under HIPAA. General Services deployed by the University such as telephony, data network, data storage, email, etc., including the activities of University employees associated with the provision of those Services, are not implemented, operated or managed in a manner that is intended to be HIPAA compliant. HIPAA compliant Services at the University are limited to those provided within University HIPAA covered functions or to those governed by an appropriately executed HIPAA Business Associate Contract. University HIPAA covered functions, or other non-SUNY entities using University Services, must take this fact into consideration when utilizing any University Services or personnel in a manner which may directly or indirectly support their own operations. It is the University's position that, unless explicitly acknowledged in a separate HIPAA Business Associate Contract (for non-SUNY entities), or in a formal extension of the University's HIPAA covered function declaration or covered function workforce, the consumers of University Services affirm that such services will not be used in any way that could be construed as making the University a HIPAA Business Associate or as extending the University's HIPAA covered function activities. SUNY functions at UB intending to engage in Business Associate activities must identify themselves to the UB Director of HIPAA Compliance for review and approval prior to engaging in such activities."

BUSINESS ASSOCIATE CRITERIA

- a) **Criteria:** meeting definition of a business associate in 45 CFR §160.103⁴
- b) **Criteria:** meeting definition in HITECH SEC. 13408; "Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information ... or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record"

¹ For a listing of SUNY designated HIPAA covered functions at UB see [SUNY HIPAA Covered Function at UB COVERED FUNCTION DECLARATION](#). For a listing of general criteria for identifying SUNY HIPAA covered functions see [SUNY HIPAA at UB COVERED FUNCTION DETERMINATION CRITERIA](#).

² Covered functions will have a formal mechanism for listing members of their workforce

³ Contact the UB Director of HIPAA compliance for more information. In general the authority to execute these agreements has been delegated to a single, separate individual on campus for SUNY, RF and UBF. Only these designated individuals are authorized to execute Business Associate Contracts.

⁴ Except under special circumstances associated with a formal Business Associate Contract, UB Research activities are not considered to be Business Associate activities; see [HIPAA GUIDANCE: RESEARCH AND BUSINESS ASSOCIATE CONTRACTS \(BACs\) aka BUSINESS ASSOCIATE AGREEMENTS \(BAAs\)](#).