SUNY HIPAA at UB
COVERED FUNCTION AND BUSINESS ASSOCIATE DETERMINATION CRITERIA
June 18, 2013

The University at Buffalo (UB), as a component of The State University of New York (SUNY) hybrid entity under HIPAA, must designate SUNY HIPAA covered functions at UB per 45 CFR § 164.105(a)(2)(iii)(D). This document outlines the criteria for identifying those functions per 45 CFR §160.102 *Applicability*. *Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA)*, also known as The *Health Information Technology for Economic and Clinical Health Act (HITECH)*, extends HIPAA compliance obligations and liabilities to Business Associates (BAs) of HIPAA covered entities and makes compliance with elements of HIPAA, as well as liabilities for violating these requirements, applicable to BAs as a matter of law whether or not the activities are governed by a formal contract.

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

COVERED FUNCTION DETERMINATION CRITERIA

1) SUNY HEALTH PLAN FUNCTION
a) **Criteria**: meeting definition of health plan in 45 CFR §160.103.

2) SUNY HEALTH CARE CLEARINGHOUSE FUNCTION
a) **Criteria**: meeting definition of health care clearinghouse in 45 CFR §160.103.

3) SUNY HEALTH CARE PROVIDER FUNCTION
a) **Criteria**: meeting requirements of a covered health care provider per 45 CFR §160.103 who transmits any health information in electronic form in connection with a transaction [see ii) below for list of transactions]. For a UB function to qualify as a SUNY Health Care Provider covered function it must:
i) Be a health care provider (45 CFR §160.103) and utilize employees who are paid by New York State to provide health care within that function[1];
ii) Engage in the transmission of health information in electronic form in connection with a transaction covered by 45 CFR §160.103[2,3]
(1) Health care claims or equivalent encounter information.
(2) Health care payment and remittance advice.
(3) Coordination of benefits.
(4) Health care claim status.
(5) Enrollment and disenrollment in a health plan.
(6) Eligibility for a health plan.
(7) Health plan premium payments.
(8) Referral certification and authorization.
(9) First report of injury.
(10) Health claims attachments.
(11) Health care electronic funds transfers (EFT) and remittance advice.
(12) Other transactions that the Secretary may prescribe by regulation.
a) Medicaid Pharmacy Subrougation

[1] Individuals are often involved in multiple functions at UB and may also have multiple employers. Each combination of function and employer results in a different set of professional obligations for the individual. This criterion is designed to include only functions that provide health care and that utilize individuals employed by the state whose professional obligation to the state involves the provision of health care within that function.
[2] Currently defined in 45 CFR §160.103 Definitions: *Transactions* and §162 subparts K-S: K) Health Care Claims or Equivalent Encounter Information, L) Eligibility for a Health Plan, M) Referral Certification and Authorization, N) Health Care Claim Status, O) Enrollment and Disenrollment in a Health Plan, P) Health Care Electronic Funds Transfer (ETF) and Remittance Advice, Q) Health Plan Premium Payments, R) Coordination of Benefits, S) Medicaid Pharmacy Subrougation. Items (9) and (10) in *Transactions* are outlined via the Accredited Standard Committee (ASC), the U.S. national standards body for the development and maintenance of Electronic Data Interchange (EDI) standards. X 12 275 "claims attachments" means submitting claims attachments to the health insurer and per ASC X 12 I48, "report of first injury" means first report of injury to the health insurer.
[3] In some situations a unit may engage in a variety of health care provider activities, some of which are required to be included in the SUNY Health Care Provider function and some of which may optionally be included in the SUNY Health Care Provider function because of SUNY's hybrid entity status per 45 CFR § 164.105(a)(2)(iii)(D). In these situations, the decision to include or not include the activity in the SUNY Health Care Provider function will be made by the UB Director of HIPAA Compliance in consultation with the unit.

BUSINESS ASSOCIATE DETERMINATION CRITERIA

As defined in 45 CFR §160.103, Business Associate means:

(1) Except as provided in paragraph (4) of this definition, business associate means, with respect to a [HIPAA] covered entity [or function], a person who:

> (i) On behalf of such covered entity or of an organized health care arrangement (as defined in this section) in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity regulated by this subchapter, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR 3.20, billing, benefit management, practice management, and repricing; or
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> (ii) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in § 164.501[4] of this subchapter), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.

(2) A covered entity may be a business associate of another covered entity

(3) Business associate includes:

> (i) A Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to protected health information to a covered entity and that requires access on a routine basis to such protected health information.
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> (ii) A person that offers a personal health record to one or more individuals on behalf of a covered entity.
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> (iii) A subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate.

(4) Business associate ***does not include***:

> (i) A health care provider, with respect to disclosures by a covered entity to the health care provider concerning the treatment of the individual.
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> (ii) A plan sponsor, with respect to disclosures by a group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to the plan sponsor, to the extent that the requirements of § 164.504(f) of this subchapter apply and are met.
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> (iii) A government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another government agency, or collecting protected health information for such purposes, to the extent such activities are authorized by law.
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> (iv) A covered entity participating in an organized health care arrangement that performs a function or activity as described by paragraph (1)(i) of this definition for or on behalf of such organized health care arrangement, or that provides a service as described in paragraph (1)(ii) of this definition to or for such organized health care arrangement by virtue of such activities or services.

[4] Data aggregation means, with respect to protected health information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.