



**SUNY HIPAA at UB – POSITION STATEMENT
UB STUDENT EDUCATIONAL PROGRAMS AND BUSINESS ASSOCIATE AGREEMENTS
WITH EXTERNAL COVERED ENTITIES
Revised March 24, 2004**

Issue: Certain health care providers, health plans, and health care clearing houses, known collectively as Covered Entities (CE) under the Health Insurance Portability and Accountability Act (HIPAA), are required by federal regulations to enter into a formal Business Associate Agreement with external entities that perform certain functions or services for the CE. Some CEs may interpret this requirement as meaning that they must enter into a HIPAA Business Associate Agreement with UB when UB sends students to the CE as part of an educational or training program.

Declaration: It is the position of the State University of New York (the University) and of the University at Buffalo (UB) as a component of the University, that it is not a business associate of a CE when sending UB students to a CE site for a clinical rotation or to receive other educational experiences within a CE. UB will not enter into a Business Associate Agreement in these situations unless specific services meeting the criteria of a business associate, as defined by HIPAA, can be identified and agreed upon by the CE and UB/the University.

Furthermore, students at a CE are defined by HIPAA as being part of the CE's workforce. It is therefore the CE's obligation to ensure that students are appropriately trained and operate in compliance with all relevant HIPAA policies and procedures implemented at the CE.

Rationale:

- Within the scope of these educational experiences, UB does not arrange, perform or assist in the performance of a function, service or activity for or on behalf of the CE involving the use or disclosure of individually identifiable information, such as those described in 45 CFR 160.103(1)(i). Similarly UB does not provide any functions on behalf of the CE, such as those defined in 45 CFR 160.103(1)(ii).
- Student educational experiences occurring at a CE are explicitly defined as being within the CE's own Health Care Operations component per 45 CFR 164.501 *Health Care Operations* (2). Specifically: "..., conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals,..."
- Students functioning at a CE are part of the CE's workforce per 45 CFR 160.103 *Workforce* which defines a CE's workforce as "employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity." As students are under the direct control of the CE when on site, they are part of the CE's workforce while they are engaged in training activities within the CE's Health Care Operations.

In addition, the following guidance was issued by the Office of Civil Rights (updated 7/18/2003; HIPAA FAQ #209) which indicates that students may receive health information protected by HIPAA as part of a Covered Entity's Health Care Operations:

Question: Do the HIPAA Privacy Rule's minimum necessary requirements prohibit medical residents, medical students, nursing students, and other medical trainees from accessing patient medical information in the course of their training?

Answer: No. The definition of “health care operations” in the Privacy Rule provides for “conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers.” Covered entities can shape their policies and procedures for minimum necessary uses and disclosures to permit medical trainees access to patients’ medical information, including entire medical records.

Although the University and UB are of the opinion that a BA is not an appropriate instrument under HIPAA for governing student training experiences, UB does recognize its responsibility to assist CEs in their efforts to comply with HIPAA. Towards this end UB works to ensure:

- That its students and faculty respect the confidential nature of all information that they have access to, including but not limited to patients' personal health information provided to them orally, contained in patient medical records or maintained on the CE's electronic information system.
- That efforts are made to advise all appropriate students and faculty of the importance of complying with all relevant state and federal confidentiality laws, including but not limited to HIPAA, to the extent applicable. In addition, the UB program sponsoring the educational activity agrees to familiarize relevant students and faculty with the general requirements of the privacy and security provisions of HIPAA and to advise them of the importance of complying with a CE's specific policies and procedures relative to HIPAA.
- That students and faculty using patients' personal health information for educational purposes at the CE and at UB will, to the extent practicable, appropriately de-identify all information used for such purposes so as to remove all data that may be used to connect such information back to the patient to whom it relates.