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Objective:

- I. To identify instances wherein Health Share/Tuality Health Alliance (THA) and business associates may exchange individuals' protected health information (PHI).
- II. To specify the PHI privacy provisions that must be included in THA contracts with business associates.

Definition:

Per 45 CFR 160.103, a THA business associate refers to a person or entity, who is not a THA employee, volunteer, or intern and who:

- a. On behalf of THA, performs or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information, including claims processing, data analysis, utilization review, quality assurance, billing benefit management, practice management, and re-pricing; or
- b. Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for THA within an organized business arrangement.

The following are **not** business associates or business associate relationships:

- THA employees, offices, or programs;
- Medical providers providing treatment to individuals;
- Payment relationships, such as when THA is paying medical providers or other entities for services to THA members.
- When an individual's protected health information is disclosed based solely on an individual's authorization;
- When an individual's protected health information is not being disclosed by DHS or created for DHS; and
- When the only information being disclosed is information that is de-identified in accordance with *THA Policy 2-9: De-identification of Member Information and Use of Limited Data Sets*.

Policy:

- I. THA and business associates shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 through written contracts and Business Associate Agreements. The effective Business Associate Agreement must be signed by THA and the business associate and will maintain satisfactory assurances that:
 - a. Both entities will only share and use PHI for necessary purposes;
 - b. Both entities will safeguard the information from misuse; and
 - c. Both entities will comply with their privacy duties under the Agreement.

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II. Responsibilities of THA in Business Associate Relationships

- a. THA responsibilities regarding the protection of PHI in business associate relationships include, but are not limited to, the following:
 - Receiving and logging an individual's complaints regarding the uses and disclosures of PHI by the business associate or the business associate relationship;
 - Receiving and logging reports from the business associate of possible violations of the business associate contract/agreement;
 - Implementation of corrective privacy action plans, as needed; and
 - Mitigation of known violations, up to and including contract termination.
- b. THA 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.
- c. THA will only share the minimum information necessary for the business associate to perform required working relationship business operations.

III. Business Associate Non-Compliance

- a. PHI is not to be used for independent purposes by business associates. The exception to this is if the information is needed for the proper management and administration of the business associate.
- b. If THA 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 or Business Associate Agreement, THA will take reasonable steps to cure the breach or end the violation, including providing consultation to the business associate. If such steps are unsuccessful, THA will:
 - Terminate the contract or business arrangement; or
 - If termination is not feasible, report the problem to the U.S. Department of Health and Human Services.

- IV. THA follows *Tuality Healthcare Policy O-97F: Business Associate Relationships* in its entirety.

References: 45 CFR 160 & 164
DHS 100-008 Business Associate Relationships
Health Share RAE Participation Agreement
THC Policy O-97F

Attachments: Watch List for Received Contracts

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Formulated:	October 2002
Reviewed:	September 2013 September 2015
Revised:	March 2003 January 2008 October 2010