

Business Associate language (Assurances of Compliance with HIPAA) - general usage guidelines.

A non-DMH employee (e.g., a contractor or volunteer) **other than one who performs clinical services** who has access to or uses DMH client information is normally a business associate. Stated another way, contractors, volunteers, agents, etc., who need access to or uses DMH client PHI to perform their job for DMH are normally business associates, **unless their job involves providing clinical services to DMH clients**. Other entities within State government may be a business associate if they have access to DMH client information and perform a non-clinical service to or for DMH.

While most medical practitioner groups are covered entities and are subject to HIPAA, some are not. For example, medical practitioner entities with fewer than 10 employees, or those that do not submit information electronically; are generally not covered entities.

Licensed practitioners and others who **could provide clinical services** would, however, be business associates if they perform a non-clinical function for DMH, such as quality assurance activities.

DMH business associates include but are not limited to food service providers (who also provide a dietician); transcriptionists; an entity or person that disposes of infectious waste; nurses who review and/or update client records rather than provide clinical services; priests; hair groomers; deaf interpreters; a school board or school board members; foster grandparents; security services; an entity that provides temporary nurses, mental health workers, or sitters; computer consultants/programmers; laundry services, advocates; accountants; auditors; and attorneys.

Note: as indicated above, medical practitioners (see above) performing services for DMH other than clinical services are generally business associates.

Clinical services are normally services provided by a psychiatrist, psychologist, licensed clinical social worker, substance abuse counselor, or nurse.

**Assurances of Compliance with the Health Insurance
Portability and Accountability Act of 1996**
(Business Associate Agreement)

In addition to and without limitation to any other provision of this contract, if and to the extent, and for so long as, required by the provisions of 42 U.S.C. Section 1171 *et seq.* enacted by the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, all as amended from time to time (collectively known as “HIPAA regulations”), **{contractor’s name}** also known hereunder as “business associate”, agrees to safeguard, in accordance with HIPAA, all Protected Health Information (PHI) (as such term is defined in HIPAA) made available to business associate from the DMH or any of DMH’s employees, vendors, business associates or agents. This exhibit establishes the permitted and required uses and disclosures of such PHI by **{contractor’s name}** as a business associate (as that term is defined in HIPAA regulations) of DMH.

1. Terms used, but not otherwise defined in this exhibit shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.
2. Without limitation of any other provision of this Contract or this Exhibit, business associate agrees:
 - (a) Not to use or further disclose any PHI other than as permitted or required by this Contract or as required by law;
 - (b) Not to use or further disclose any PHI in a manner that would violate the requirements of applicable law (including but not limited to HIPAA) if done by DMH;
 - (c) To use appropriate safeguards to prevent the use or disclosure of such PHI other than as provided for by this Contract, and to mitigate, to the extent practicable, any harmful effect that is known to business associate of a use or disclosure of PHI by business associate in violation of the requirements of this Contract;
 - (d) To immediately report to DMH any use or disclosure of such PHI not provided for by this Contract of which business associate becomes aware;
 - (e) To ensure that any subcontractor or agent to whom contractor provides such PHI agrees in writing to the same restrictions and conditions that apply to DMH and contractor with respect to such information; provided, however, that contractor shall not provide any PHI to any subcontractor or agent without the prior written consent of DMH;
 - (f) To make such PHI available for inspection and copying by the subjects thereof in accordance with applicable law, including, but not limited to HIPAA;
 - (g) To make business associate’s internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services for purposes of determining DMH’s compliance with applicable law (including, but not limited

to HIPAA); provided, however, that in all events, business associate shall immediately notify DMH upon receipt by business associate of any such request, and shall provide DMH with a copy thereof and copies of all materials so disclosed;

- (h) To make any amendment(s) to PHI in a designated record set that DMH directs or agrees to pursuant to 45 CFR 164.526 at the request of DMH or an individual, and in the time and manner designated by DMH;
- (i) To document such disclosures of PHI and information related to such disclosures as would be required for DMH to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528;
- (j) To provide DMH or an individual, in the time and manner designated by DMH, information collected in accordance with paragraph 2 (i) of this exhibit, to permit DMH to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528;
- (k) At termination of this Contract, to return or destroy all PHI from DMH that business associate maintains in any form or media, and retain no copies of such PHI; and
- (l) To incorporate any amendments or corrections to such PHI when notified by DMH thereof.

3. Without limiting any right or remedy of DMH provided elsewhere in this Contract or this Exhibit or available under applicable law (including but not limited to HIPAA), DMH may terminate this Contract without penalty or recourse to DMH if DMH determines that business associate has violated any material term of this Exhibit.

4. In order to assure that this Contract and Exhibit are consistent, and in compliance with, HIPAA, business associate agrees that this Exhibit may be amended from time to time upon written notice from DMH to business associate as to any revisions required to make this Contract consistent with, and in compliance with, HIPAA.

5. Should business associate fail to perform the aforesaid obligations, then DMH may, in its sole discretion, terminate this contract.

Authorized signature

Date