I. Description

A UNCHCS Facility may disclose protected health information (PHI) to a Business Associate, and may allow a Business Associate to create, modify, maintain, transmit, release or destroy protected health information on its behalf so long as the UNCHCS Facility obtains satisfactory assurances from the Business Associate in writing that the Business Associate will appropriately safeguard the PHI.

Included within the scope of this policy are the patient care programs of the UNC School of Medicine (UNC SOM). As a result, this policy shall apply to all UNC SOM personnel, including but not limited to faculty, staff, students, trainees, interns and volunteers who may be full-time, part-time, paid or unpaid who create, store, transmit, access or use any patient information in support of clinical purposes for UNCHCS or any other healthcare entity.
II. Policy

A. Business Associate Agreement Required. UNCHCS Facilities shall require that all third parties who perform a service for or on behalf of one or more UNCHCS Facilities involving the use or disclosure of PHI sign a Business Associate Agreement in order to document the satisfactory assurances required of third parties as set forth in this policy.

B. Business Associate Agreement Form. Each UNCHCS Facility must use a Business Associate Agreement, in substantially the same form as the UNCHCS BAA - For Use as Business Associated or UNCHCS BAA - For Use as Covered Entity.

1. Identifying Business Associates. Each UNCHCS Facility is responsible for identifying all business arrangements with third parties that require the execution of a Business Associate Agreement.
   a. The identification of Business Associates is the responsibility of the department of the UNCHCS Facility receiving the services from the Business Associate by indication on the requisition form/contract cover, routing sheet or any entity-approved purchasing mechanism of a department (collectively, the "Purchasing Departments").
   b. The Purchasing Departments and the applicable entity’s legal department and UNCHCS Facility Privacy Office can serve as resources to assist the departments in identifying Business Associates.

2. Amending the Business Associate Agreement. The UNCHCS Business Associate Agreement Form may be amended by UNCHCS Facilities as necessary. All amended provisions of the UNCHCS Business Associate Agreement Form must remain in compliance with the HIPAA privacy regulations. UNCHCS Facilities who amend the UNCHCS Business Associate Agreement Form shall remain responsible for ensuring that the Business Associate Agreements in use at their facilities are in compliance with this UNCHCS policy and procedure as well as the HIPAA privacy regulations. UNCHCS Facilities are encouraged to seek legal counsel to review any modifications to the UNCHCS Business Associate Agreement Form as appropriate.

3. Documentation. Each entity’s Purchasing Department or its designee will maintain a database of its Business Associates available for review and inspection by the UNCHCS Privacy Office. Such database must be kept current at all times and list all contracts where the UNCHCS facility is also serving as a business associate for another covered entity.

4. Execution and Maintenance of Business Associate Agreements. The Purchasing Departments at UNCHS Facilities or their designees will ensure the execution of Business Associate Agreements with designated Business Associates and will maintain originals of such Agreements. Each Purchasing Department or its designee will institute a tracking system which will document the execution of a Business Associate Agreement with each designated Business Associate.

C. Obligations in the Event of a Business Associate fails to execute a Business Associate Agreement or there is a Violation of Material Term by Business Associate. In the event a Business Associate Agreement cannot be obtained with an outside entity that UNCHCS considers to be a Business Associate, then after consultation with the entity’s Privacy Officer and/or legal department, then the applicable Purchasing Department or its designee will coordinate with the department utilizing the services of the Business Associate to initiate termination of the relationship with such designated Business Associate. The termination will be communicated by the Purchasing Department or its designee to other departments affected by the termination.
If at any time, a UNCHCS Facility obtains knowledge that a Business Associate has violated a material term or obligation under the UNCHCS Business Associate Agreement, the UNCHCS Facility shall immediately notify the UNCHCS Legal Office and the UNCHCS Privacy Office. The UNCHCS Facility shall also be required to notify the Business Associate and in such notification communicate to the Business Associate that the Business Associate is required to immediately remedy the breach.

If the Business Associate’s violation cannot be remedied to the satisfaction of the UNCHCS Facility, the Business Associate Agreement and all further disclosures of PHI to the Business Associate shall immediately be terminated by the UNCHCS Facility.

D. UNCHCS Facilities acting as a BAA. A UNCHCS Facility may be a Business Associate of another covered entity governed by HIPAA.

E. Documentation. Copies of all Business Associate Agreements shall be documented and maintained for at least six (6) years.

III. Definitions

**Business Associate** – is a person or entity who performs, or assists Facility in the performance of, a function or activity involving the use or disclosure of PHI. A list of common services that give rise to a business associate agreement are listed in this section below.

- Typical Business Associate activities include, but are not limited to, claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, re-pricing, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.
- Health care providers who receive PHI relating to the treatment of a patient are not Business Associates. Workforce members are not Business Associates. Third parties with only incidental access to PHI, such as janitorial staff, are not Business Associates.

**Business Associate Agreement** – A written contract entered into between one or more Facilities and an external party that contains specific terms and conditions as required by the HIPAA Privacy Rule governing the use and disclosure of PHI by business associates. A Business Associate Agreement can be both a stand-alone document or incorporated into the terms and conditions of an underlying agreement.

IV. References

45 C.F.R. §§ 164.314(a)(3), 164.502(e)(1), 164.504(e)

V. Related Policies/Forms

UNCHCS BAA - For Use as Business Associated
UNCHCS BAA - For Use as Covered Entity

Attachments:

UNCHCS BAA - For Use as Business Associated
UNCHCS BAA - For Use as Covered Entity
## Approval Signatures

<table>
<thead>
<tr>
<th>Step Description</th>
<th>Approver</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
<td>Jerylyn Williams: VP Chief Audit &amp; Comp Officer</td>
<td>01/2019</td>
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<tr>
<td>SYSTEM Site Administrator</td>
<td>Emilie Hendee: HCS-Sr Attorney</td>
<td>01/2019</td>
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<tr>
<td></td>
<td>David Behinfar: HCS-Privacy Dir</td>
<td>01/2019</td>
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</tbody>
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## Applicability

Caldwell Memorial Hospital, Chatham Hospital, Johnston Health, Nash Health Care, UNC Health Care System, UNC Lenoir Health Care, UNC Medical Center, UNC Physicians Network, UNC Rex Healthcare, UNC Rockingham Health Care, Wayne Memorial Hospital