

The Maryland Department of Health and Mental Hygiene (DHMH) and Health Insurance Portability and Accountability Act of 1996 (HIPAA)

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The following is to provide some information about the business associate agreement requirements under Health Insurance Portability and Accountability Act of 1996 as they apply to the Maryland Department of Health and Mental Hygiene.

A business associate agreement is only required when there is a business associate relationship, which arises when any person or organization performs a function or activity that involves health information for a covered entity or that provides a service that involves disclosing health information to a covered entity.¹ A business associate agreement is not required for all exchanges of health information.

Summarized below are issues relating to business associates and DHMH:

- ◆ Only the covered healthcare components of DHMH will be required to determine if they have any business associates, as non-covered components are not required to enter into business associate agreements.²
- ◆ Disclosures between a covered entity and a health care provider concerning the treatment of an individual are excluded from the requirement to have a business associate agreement.³ For example, a business associate agreement is not required for the disclosure of health information from a provider to a laboratory or another provider for the treatment of the individual.⁴
- ◆ Generally, DHMH is not a business associate for its vendors. DHMH does not perform a function or activity on behalf of or provide a service to its vendors. Where the DHMH unit is a covered healthcare component, a vendor may be DHMH's business associate. The DHMH business associate agreement will be executed between the entities.
- ◆ DHMH is not a business associate for its licensees or other entities for which it performs a health oversight function. The Centers for Medicare & Medicaid Services (CMS) concluded that surveyed entities do not need to execute a business associate agreement with health oversight agencies.⁵
- ◆ DHMH is not a business associate for entities required or authorized by law to report health information to DHMH in fulfilling public health activities as for registries or surveillance programs.

¹ 45 CFR 160.103 (business associate definition)

² See Privacy Administrative Requirements Policy <http://www.dhmh.state.md.us/policies/020108.pdf>
Appendix - DHMH HIPAA Covered Healthcare Components at
<http://209.116.251.43/policies/pdf/APPEND-8c.pdf>

³ 45 CFR 164.502(e)(1)(ii)(A)

⁴ OCR HIPAA Privacy, December 3, 2002, Implementation Guidance at pp. 41-42.

⁵ March 14, 2003 letter from CMS to State Survey Agency Directors
<http://cms.hhs.gov/medicaid/lcsp/sc0315.pdf>