

1. Payment includes sharing information to achieve reimbursement, and also to determine eligibility for coverage, such as disclosure to collection agencies or disclosure for utilization review requests. The payor is not itself a business associate of the provider, since it performs payment activities on its own behalf, not on behalf of the provider.
 2. Health care operations include the administrative tasks required to operate a health care practice, such as quality assessment and improvement, peer review, legal, auditing and compliance, business management, general administrative functions, and customer service. Operations also include training of students and residents. It also may include fundraising and marketing functions that are permissible under the HIPAA Privacy Rule without an authorization. (See USC HIPAA policies FM - 401 and FM – 402 for further information.) Finally, operations also include de-identification of health information or creation of a limited data set of health information. (See USC HIPAA policies GEN – 105 and RES – 301 for further information).
- C. Excluded from Definition of Business Associate. A person or organization is not a Business Associate if he/she or it is:
1. an employee of USC;
 2. a Health Care Provider (e.g., hospital medical staff) to which USC discloses Protected Health Information³ in connection with the treatment of a patient;
 3. a third party employee who performs a substantial proportion of activities at USC and whom USC treats as a member of its workforce for the purpose of complying with the HIPAA Privacy Rule;
 4. Any other individuals (e.g., certain volunteers) who USC designates as members of its workforce for purposes of complying with the HIPAA Privacy Rule; or
 5. Individuals who may obtain incidental disclosures of Protected Health Information, where access to Protected Health Information would be de

ii. Provides, other than in the capacity of a member of USC's workforce, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for USC, or to or for an organized health care arrangement in which USC participates, where the provision of the service involves the disclosure of individually identifiable health information from USC or from another business associate of USC, to the person or entity.

³ Protected Health Information is defined as identifiable information that relates to the individual's past, present or future physical or mental health condition or to payment for health care.

minimum, if at all and where receipt of such Protected Health Information is not part of the individual's job duties for USC (e.g., a cleaning service).

- D. Business Associate Analysis. If (1) the third party is performing payment or health care operation services on behalf of USC or is performing one of the other activities specified in footnote 2 of this policy, and (2) USC is sharing its Protected Health Information with the third party in order for the third party to perform payment or health care operation services on USC's behalf, then the third party most likely qualifies as a Business Associate.
- E. Required Elements and Provisions of Business Associate Contracts.⁴ The typical business associate agreements "flow down" certain required provisions of the Privacy Rule to the business associate. The HIPAA Privacy Rule states that a Business Associate Agreement must:
1. Establish the permitted and required uses and disclosures of such information by the Business Associate. The contract may not authorize the Business Associate to use or further disclose the information in a manner that would violate the requirements of the HIPAA Privacy Rule, if done by USC;
 2. Prohibit the Business Associate from further use or disclosure of the information other than as permitted or required by law;
 3. Require the Business Associate to use appropriate safeguards to prevent use or disclosure of the information other than as provided for by its contract;
 4. Report to USC any use or disclosure of the information not provided for by its contract of which it becomes aware;
 5. Ensure that any agents, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of USC, agrees to the same restrictions and conditions that apply to the Business Associate with respect to such information;
 6. Make Protected Health Information available to patients who request access, as defined by the HIPAA Privacy Rule and USC's policies (see USC HIPAA Policy PAT-601);
 7. Make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with the

⁴ USC has developed a template business associate contract, which can be found at <http://policies.usc.edu>. USC also has a template for when USC serves as a business associate of a third party. Please contact the Office of General Counsel if you need further assistance regarding the negotiation of these agreements.

HIPAA Privacy Rule and USC's policies (See USC HIPAA Policy PAT - 602);

8. Make available the information required to provide an accounting of disclosures in accordance with the HIPAA Privacy Rule and USC's policies (See USC HIPAA Policy PAT - 603);
9. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of, USC available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining USC's compliance with the HIPAA Privacy Rule;
10. At termination of the contract, if feasible, return or destroy all Protected Health Information received from, or created or received by the Business Associate on behalf of USC, that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
11. Require termination in the event that USC becomes aware of a breach of the agreement by the Business Associate that goes uncorrected.
12. Business Associates are not required to complete USC's HIPAA education program. However, USC, through its faculty practice plan corporations and other clinical units may request that their business associates complete USC's education program as a condition to providing access to USC protected health information.

F. Transition Provisions.

1. The HIPAA Privacy Rule requires that USC, its faculty practice plan corporations and other clinical units execute compliant Business Associate Contracts by April 14, 2003. However, if USC had an existing contract or written agreement with a Business Associate prior to October 15, 2002 and the contract or arrangement is not renewed or modified before April 14, 2004, USC is not required to execute a HIPAA compliant Business Associate Contract until April 14, 2004. This transition provision does not apply to oral arrangements.
2. During this transition period, USC, its faculty practice plan corporations and other clinical units still are responsible for ensuring that the Business Associate can provide the information necessary to enable USC to fulfill its obligation to provide the patient access to Protected Health Information, to amend Protected Health Information held by a Business Associate, to receive

an accounting of disclosures by a Business Associate, and to mitigate improper disclosures. USC, its faculty practice plan corporations and other clinical units are required to ensure that all Business Associate contracts entered into after October 15, 2002 are HIPAA compliant.

- G. Enforcement of Contract; Compliance Oversight. If USC, its faculty practice plan corporations and other clinical units learn 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 Business Associate Contract, USC should first take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, then USC shall: (1) if feasible, terminate the contract or arrangement; or (2) if termination is not feasible, report the problem to the Secretary of the U.S. Department of Health and Human Services.