

Business Associate Contract – Suggested Provisions:

- Define that the mental health provider is a “Covered Entity”
- Reason for the agreement is the transfer of “Protected Health Information”
- Terms and conditions should comply with the requirements of the HIPAA Privacy Rule
- The Business Associate can only use and/or disclose PHI as permitted by HIPAA guidelines
- The Business Associate will not use or further disclose PHI apart from what is provided for in the agreement
- The Business Associate will safeguard the information that is received
- The Business Associate has the responsibility to tell the mental health provider about any inappropriate use of the PHI
- The Business associate agrees that all of their Business Associates agree to the same restrictions and conditions
- Business Associates agree to make PHI available to the patient to the extent permitted by the Privacy Rule
- The Business Associate must agree to allow the patient to amend PHI in accordance with regulations
- The Business Associate agrees to provide an accounting of all disclosures when properly requested by the patient
- The Business Associate will allow its operations to be reviewed by DHHS if requested.
- When the Business Associate contract is terminated, the Business Associate should return or destroy all PHI, or extend the protections of the agreement.
- There should be a provision indicating that the practice may terminate the agreement if it is determined that the Business Associate has violated any terms of the agreement
- It should be pointed out that the contract does not create any third-party rights.
- The terms and conditions cannot be amended unless both parties agree.
- If any provision is found to be invalid or unenforceable, the other provisions will stay in effect.
- If either party comes to believe that the agreement in place does not meet the HIPAA guidelines, that party must inform the other party immediately
- 30 days should be allowed to bring the agreement into compliance – failure to do so would give either party the right to terminate the agreement.
- Address any other concerns, such as state law or other concerns.