



# Guidance for Type of Agreement in Exchanging Protected Health Information (PHI) / Personally Identifiable Information (PII)

Wisconsin Department of Health Services  
 Division of Enterprise Services  
 P-01041 (05/2015)

Question	Answer	
<p>1 Are you considered a health care component for the purposes of complying with HIPAA?</p> <p><i>Note: Please check this link if you're unsure or check with your privacy officer. Also, after you have reviewed the questions and are still unsure how to handle the data request, please contact the Department Privacy Officer.</i></p> <p><a href="http://dhsweb.dhs.wisstate.us/security/HIPAA/PDFs/DHS_Hybrid_Entity_Summary_2013_11.pdf">http://dhsweb.dhs.wisstate.us/security/HIPAA/PDFs/DHS_Hybrid_Entity_Summary_2013_11.pdf</a></p>	<p>If <b>YES</b>, go to question 2.</p>	<p>If <b>NO</b>, go to question 8.</p>
<p>2 Is the data being disclosed considered PHI includes <b>any of</b> the following elements:</p> <ol style="list-style-type: none"> <li>1. Name.</li> <li>2. All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census: (1) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and (2) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.</li> <li>3. All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older.</li> <li>4. Telephone numbers.</li> <li>5. Fax numbers.</li> <li>6. Electronic mail addresses.</li> <li>7. Social security numbers.</li> <li>8. Medical record numbers.</li> <li>9. Health plan beneficiary numbers.</li> <li>10. Account numbers.</li> <li>11. Certificate/license numbers.</li> <li>12. Vehicle identifiers and serial numbers, including license plate numbers.</li> <li>13. Device identifiers and serial numbers.</li> <li>14. Web Universal Resource Locators (URLs).</li> <li>15. Internet Protocol (IP) address numbers.</li> </ol>	<p>If <b>YES</b>, go to question 3.</p>	<p>If <b>NO</b>, the data is considered de-identified and there is no reasonable basis for individuals to be identified.  <b>No agreement is needed.</b>  <b>STOP</b></p>

Question	Answer	
16. Biometric identifiers, including finger and voice prints. 17. Full face photographic images and any comparable images. 18. Any other unique identifying number, characteristic, or code and the covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.		
3 Is PHI being disclosed to a person or entity in the capacity as a member of your program area that is needed to complete their job?	If <b>NO</b> , go to question 4.	If <b>YES</b> , this is not a business associate relationship. <b>No agreement is needed.</b> <b>STOP</b>
4 Is PHI being disclosed to <ul style="list-style-type: none"> <li>• A health care provider for treatment purposes, or</li> <li>• A health plan for payment purposes, or</li> <li>• A government agency pursuant to an official investigation (e.g., CMS, OIG, DOJ)?</li> </ul>	If <b>NO</b> , go to question 5.	If <b>YES</b> , this is not a business associate relationship. <b>No agreement is needed.</b> <b>STOP</b>
5 Does the data being disclosed include any data elements from the following list? <ol style="list-style-type: none"> <li>1. Name</li> <li>2. Telephone numbers;</li> <li>3. Fax numbers;</li> <li>4. Electronic mail addresses;</li> <li>5. Social security numbers;</li> <li>6. Medical record numbers;</li> <li>7. Health plan beneficiary numbers;</li> <li>8. Account numbers;</li> <li>9. Certificate/license numbers;</li> <li>10. Vehicle identifiers and serial numbers, including license plate numbers;</li> <li>11. Device identifiers and serial numbers;</li> <li>12. Web Universal Resource Locators (URLs);</li> <li>13. Internet Protocol (IP) address numbers;</li> <li>14. Biometric identifiers, including finger and voice prints;</li> <li>15. Full face photographic images and any comparable images.</li> <li>16. Any other unique identifying number, characteristic, or code and the covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.</li> </ol>	If <b>YES</b> , go to question 6.	If <b>NO</b> , go to question 7.

Question		Answer	
6	Does the requestor of the data performs certain functions or activities that involve the use or disclosure of protected health information on behalf of DHS, or provides services to DHS?	<p>If <b>YES</b>, this is a business associate relationship and data will only be disclosed for the purposes of health care operations*.</p> <p><b>You need a Business Associate Agreement (BAA) signed prior to disclosing PHI to the third party.</b></p> <p><i>Note: Keep in mind the HIPAA minimum necessary standard – only disclose the minimum amount of data that is needed to accomplish the purpose for the disclosure.</i></p> <p><b>STOP</b></p>	<p>If <b>NO</b>, you cannot disclose the data.</p> <p><b>STOP</b></p>
7	<p>The data requested is considered a limited data set (LDS). Will the LDS be used only for health care operations, public health or research purposes?</p> <p><b>Note:</b> An LDS may contain, for example:</p> <ul style="list-style-type: none"> <li>▪ Dates of birth</li> <li>▪ Dates of death</li> <li>▪ Dates of service</li> <li>▪ Town or city</li> <li>▪ State</li> <li>▪ Zip code</li> </ul>	<p>If <b>YES</b>, you need a <b>Data Use Agreement (DUA) for PHI signed prior to disclosing PHI to the third party.</b></p> <p><b>STOP</b></p>	<p>If <b>NO</b>, you cannot disclose the data.</p> <p><b>STOP</b></p>
<b>If disclosing PII – continue on to item #8.</b>			
8	<p>Will you be disclosing PII?</p> <p>PII includes:</p> <ul style="list-style-type: none"> <li>▪ Name,</li> <li>▪ Address</li> <li>▪ Telephone number</li> <li>▪ Email address,</li> <li>▪ Social security number</li> <li>▪ Health condition(s) associated with name and other identifiable information provided to Public Health by health care providers, counties, etc.</li> <li>▪ The data set includes small variables that could potentially lead to re-identification of an individual.</li> </ul>	<p>If <b>YES</b>, a Data Use Agreement for PII is needed.</p> <p><b>STOP</b></p>	<p>If <b>NO</b>, go to question 9.</p>
9	Will you be disclosing aggregated data and there are small count variables in the data set?	<p>If <b>YES</b>, a Data Use Agreement for PII is needed.</p> <p><b>STOP</b></p>	<p>If <b>NO</b>, no agreement is needed.</p> <p><b>STOP</b></p>

# Definitions

**Business Associates (BA)** is a person or organization that performs a function or activity on behalf of a covered entity, but is not part of the covered entity's workforce. A business associate can also be a covered entity in its own right. [45 CFR 160.103].

**Business Associate Agreement (BAA)** is a written contract between the business associate and the DHS health care component outlining the responsibilities of the business associate with respect to the protection of Individually Identifiable Health Information being shared or disclosed.

**Data Use Agreement (DUA)** is an agreement into which the covered entity enters with the intended recipient of a limited data set that establishes the ways in which the information in the limited data set may be used and how it is protected.

**Health Care Component (HCC)** is a component of a covered entity that performs covered functions that qualify the component as a health care provider, health plan, or health care clearinghouse.

**Health care operations** includes any of the following activities of the covered entity to the extent that the activities are related to covered functions: (1) conducting quality assessment and improvement activities, population-based activities, and related functions that do not include treatment; (2) reviewing the competence or qualifications of health care professionals, evaluating practitioner, provider, and health plan performance, conducting training programs where students learn to practice or improve their skills as health-care providers, training of non-healthcare professionals, accreditation, certification, licensing, or credentialing activities, (3) underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or benefits; (4) conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; (5) business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and (6) business management and general administrative activities of the entity.[45 CFR 164.501].

**Individually Identifiable Health Information** is information that is a subset of health information, including demographic information collected from an individual, and is created or received by a health care provider, health plan, employer, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**Payment** is the activities undertaken by (i) a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (ii) a health-care provider or health plan to obtain or provide reimbursement for the provision of health care; and (2) the activities relate to the individual to whom health care is provided and include, but are not limited to (i) determinations of eligibility or coverage and adjudication or subrogation of health benefit claims, (ii) risk adjusting amounts due based on enrollee health status and demographic characteristics; (iii) billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance) and related health-care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges; (iv) utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and (v) disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement: (a) name and address; (b) date of birth; (c) social security number; (d) payment history; (e) account number; and (f) name and address of the health-care provider or health plan.

**Personally identifiable information (PII)** is any information that can be used to identify, contact, or locate an individual, either alone or combined with other easily accessible sources. It includes information that is linked or linkable to an individual, such as medical, educational, financial and employment information. Examples of data elements that can identify an individual include name, fingerprints or other biometric (including genetic) data, email address, telephone

number or social security number. Public health data would also be considered PII as it is not subject to HIPAA and therefore not PHI.

**Protected health information (PHI)** is health information, including demographic information, created, received, maintained, or transmitted in any form or media by the business associate, on behalf of the covered entity, where such information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual, that identifies the individual or provides a reasonable basis to believe that it can be used to identify an individual.

The following identifiers are considered elements of PHI:

1. Name.
2. All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census: (1) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and (2) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.
3. All elements of dates (except year) for dates directly related to an individual, including birth date, admission date,, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older.
4. Telephone numbers.
5. Fax numbers.
6. Electronic mail addresses.
7. Social security numbers.
8. Medical record numbers.
9. Health plan beneficiary numbers.
10. Account numbers.
11. Certificate/license numbers.
12. Vehicle identifiers and serial numbers, including license plate numbers.
13. Device identifiers and serial numbers.
14. Web Universal Resource Locators (URLs).
15. Internet Protocol (IP) address numbers.
16. Biometric identifiers, including finger and voice prints.
17. Full face photographic images and any comparable images.
18. Any other unique identifying number, characteristic, or code and the covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.

**Research** is a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

**Small Data Variable** means a data in a volume and format that makes it accessible, informative and actionable.

**Treatment** is the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

**Workforce member** includes employees, contractors, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.