



Business Associate Agreements (BAA) Data Use Agreements (DUA) What's The Difference

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What is Protected Health Information (PHI)?

Individually identifiable health information

Including billing and demographic information

Transmitted or maintained in any form or medium

Examples would be Account Numbers, Telephone Numbers, etc.

What is a Business Associate (BA)?

Person or entity who provides certain functions, activities or services on behalf of the University that involve the University's PHI

Examples

A consultant who does hospital utilization reviews

Attorney who has PHI access as he provides legal services to a healthcare provider

What is a Business Associate Agreement (BAA)?

Stand alone written agreement/arrangement that specifies each party's responsibilities when it comes to PHI. Or

BAA language can be included in the specific agreement language

Whether exchanging or having access to PHI

Can be a stand alone agreement or language that is included in the Prime Agreement

The BAA serves to clarify and limit, as appropriate, the permissible uses and disclosures of protected health information by the business associate, based on the relationship between the parties and the activities or services being performed by the business associate. A business associate may use or disclose protected health information only as permitted or required by its business associate contract or as required by law.

What is a Data Use Agreement (DUA)?

Contractual document used for the transfer of data that has been developed by nonprofit, government or private industry, where the data is nonpublic or is otherwise subject to some restrictions on its use

Agreement can only be used if dealing with a Limited Data Set.

DUA must

- Establish the permitted uses and disclosures of the LDS;

- Establish who is permitted to use or receive the LDS;

- Not use the information other than as permitted by the DUA

- Report any unauthorized use of data;

- Not use the information to contact the individuals; and

- Not use the information in any way that would violate HIPAA rules

What is a Limited Data Set (LDS)?

A Limited Data Set is PHI that does not directly identify the patient, but contains certain identifying information

Refers to PHI that excludes 16 categories of direct identifiers and may be used or disclosed, for purposes of research, public health, or health care operations

Without obtaining either an individual's Authorization or a waiver or an alteration of Authorization for its use and disclosure, with a data use agreement

<https://compliance.ouhsc.edu/hrpp/OUHSC/Researchers-Toolkit/Forms-Templates#203141064-research-privacy-forms-hipaa>

The following identifiers have to be removed in order to be considered a LDS:

Names

Postal address information, other than town, city, state and zip code

Telephone numbers

Fax numbers

Electronic mail addresses

Social Security Numbers

Medical records numbers

Health plan beneficiary numbers

Account numbers

Certificate/license numbers

Vehicle identifiers and serial numbers

Device identifiers and serial numbers

Web Universal Resource Locators (URLs)

Internet Protocol (IP) address numbers

Biometric identifiers, including fingerprints and voiceprints

Full-face photographs and comparable images

What is a Data Sharing Agreement?

A data-sharing agreement is a formal contract that clearly documents what data are being shared and how the data can be used

Covers all data, not just PHI. Such an agreement serves two purposes.

First, it protects the agency providing the data, ensuring that the data will not be misused

Second, it prevents miscommunication on the part of the provider of the data and the agency receiving the data by making certain any questions about data use are discussed

What Should Be Addressed In A Data-sharing Agreement?

Time Period of agreement

Intended use of the data

Constraints on use of the data

Data confidentiality

Data security

Methods of data-sharing

Financial costs, if any, of data-sharing

Processing through SoonerTrack

BAA and Data Sharing Agreements– do not have the document type in SoonerTrack

route as an ICA, if related to an existing agreement

route as a Research Agreement, if it truly is a stand alone agreement

DUA – is a specific document type in SoonerTrack

relate to primary agreement in the ticket, if applicable

Final Thoughts

Most of the time when we need a BAA, DUA or DSA

It should be associated with a grant or contract we already have in place

Usually the applicable language is included within the service, research or clinical trial agreement

Need IRB #

Verify Informed Consent allows the transfer of patient information

Resources

OUHSC IRB/HRPP Forms for PHI and DUA

<https://compliance.ouhsc.edu/hrpp/OUHSC/Researchers-Toolkit/Forms-Templates#203141064-research-privacy-forms-hipaa>

OUHSC Combined HIPAA Policies

<https://apps.ouhsc.edu/hipaa/secured/policies.asp>

OUHSC Business Associate Decision Chart

<https://apps.ouhsc.edu/hipaa/secured/BAALINK.asp>

QUESTIONS?

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