

October 1, 2010

**USE OF ACKNOWLEDGEMENT AGREEMENTS WHEN DISCLOSURE OF
PROTECTED HEALTH INFORMATION (PHI) IS MADE TO AFFILIATED
EDUCATIONAL INSTITUTIONS**

1. PURPOSE: This Veterans Health Administration (VHA) Directive provides policy for use of an Acknowledgement Agreement (see Att. A) when Protected Health Information (PHI) is disclosed to affiliated educational institutions for the purpose of health care operations, but not treatment or payment.

2. BACKGROUND

a. The Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rule requirements at title 45 Code of Federal Regulations (CFR) Parts 160 and 164 allow disclosure of PHI without prior written authorization from the individual for purposes of treatment, payment, and health care operations.

b. Business Associate is defined in the HIPAA implementing regulations, 45 CFR 160.103 as a person who performs, or assists in the performance of a function or activity involving the use or disclosure of PHI.

(1) Business Associate Agreements (BAAs) were established in VHA to comply with the requirements of the Privacy and Security Rules regarding the use and disclosure of PHI to business associates.

(2) In addition, BAAs were recommended for disclosures consequent to certain VHA administrative operations, such as participation in educational programs or for conducting quality assurance activities in conjunction with an academic affiliate.

(3) The Office of Academic Affiliations, under guidance from the VHA Information Access and Privacy Office, created guidelines to encourage VHA facilities to sign BAAs with academic affiliates to cover disclosures under health care operations. However, the vast majority of academic affiliates did not consider themselves "Business Associates" and refused to sign these agreements.

c. Over the past year, additional discussions with the Department of Health and Human Services (HHS) Office for Civil Rights have led VHA to the conclusion that these disclosures may be authorized without a BAA if made for the purposes of health care operations. As a substitute for BAA, VA Form 10-0490, Acknowledgement of Receipt of Department of Veterans Affairs Protected Health Information by Affiliated Educational Institutions (see Att. A), conveyed

THIS VHA DIRECTIVE EXPIRES ON OCTOBER 31, 2015

VHA DIRECTIVE 2010-046

October 1, 2010

by this Directive now serves as the appropriate vehicle to bind behavior between VHA and affiliated educational institutions if PHI must be transmitted without prior written authorization for the purpose of health care operations.

d. VHA PHI may be transferred to the affiliated educational institution for health care operations in three distinct ways:

(1) Shared trainees may be required to submit PHI data directly to the affiliated educational institution.

(2) Shared faculty members may be required to submit PHI directly to the affiliated educational institution.

(3) There may be direct institution to institution transmission of PHI.

e. Affiliated educational institutions need PHI for the administration of educational programs, quality assurance activities, and other assessments, such as:

(1) To assess the competency of trainees and staff.

(2) To assess the number and types of patients from which trainees learn, or that staff members care for.

(3) To comply with clinical and/or education accreditation standards.

(4) For academic or disciplinary actions involving trainees or staff for which individually-identifiable patient information is relevant.

(5) To assess and improve the quality of care during training and learning activities.

f. The use of this Acknowledgement Agreement ensures that when affiliated educational institutions receive VHA PHI for purposes of educational program administration, quality assurance activities, or other assessments, they must collect, store, and protect this information according to applicable HIPAA and VA standards. Although VHA facilities and their affiliated educational institutions are encouraged to exchange de-identified data whenever such data is sufficient, affiliated educational institutions may either choose to, or be required to, use VHA PHI. **NOTE:** *If the VHA and affiliated educational institution have committed to exchange only de-identified data (whether in electronic or paper format) then this policy is not applicable and the attached agreement does not need to be executed.*

g. The use of this Acknowledgement Agreement does not authorize the disclosure of title 38 United States Code (U.S.C.) 5705 and 7332 protected information or other categories of information not covered under the HIPAA Privacy and Security Rules. This Acknowledgement Agreement does not cover research-related data. **NOTE:** *The use of PHI for research purposes is described in VHA Handbook 1200.12 and in VHA Directive 1200.*

3. POLICY: It is VHA policy that an agreement entitled “Acknowledgement of Receipt of Department of Veterans Affairs Protected Health Information by Affiliated Educational Institutions” VA Form 10-0490 (see Att. A) must be signed and executed before PHI is conveyed to an affiliated educational institution for the purposes of health care operations.

4. ACTION

a. **Facility Director.** The facility Director is responsible for ensuring that VA Form 10-0490 (see Att. A), is signed and executed before PHI is conveyed to an affiliated educational institution for the purposes of health care operations.

b. **Facility Chief of Staff.** The facility Chief of Staff is responsible for assigning roles and responsibilities to the facility Designated Education Officer (DEO) and the facility Quality Management Officer (QMO) as delineated in subparagraphs 4c and 4d, and maintaining appropriate oversight of facility processes to implement the terms of this Directive.

c. **Facility Designated Education Officer (DEO).** The facility DEO is responsible for:

(1) Determining for each facility-affiliated educational institution whether PHI is required to be submitted (by trainees, shared faculty members, or directly) and the minimum necessary data set required. *NOTE: PHI required to be submitted directly to an accrediting body such as to the Accreditation Council for Graduate Medical Education (ACGME) is covered by a BAA directly with the accrediting body and not by this acknowledgement agreement.*

(2) Determining for each facility-affiliated educational institution to which PHI is disclosed, whether PHI disclosure can be reduced or eliminated.

(3) Ensuring that a VA Form 10-0490 (see Att. A) is signed by each affiliated educational institution if VHA PHI is being disclosed to the institution for the purpose of health care operations.

(4) Ensuring that these agreements are reviewed periodically, and kept on file until they are scheduled in Records Control System (RCS) 10-1, for each affiliated educational institution which requires that PHI be disclosed.

(5) Ensuring that shared trainees and shared faculty members understand their responsibilities regarding the transmission of PHI to the affiliated educational institution.

c. **Facility Quality Management Officer (QMO).** The facility QMO is responsible for collaborating with the facility DEO to assess the need for disclosure of PHI for quality management activities and other assessment processes.

(1) The facility QMO has primary responsibility for assessing the need for disclosing PHI for staff assessment activities, while the DEO retains primary responsibility for assessing the need for disclosing PHI for trainee assessment activities.

VHA DIRECTIVE 2010-046

October 1, 2010

(2) Jointly, the QMO and DEO are responsible for ensuring that the agreements are reviewed periodically, kept on file until they are scheduled in RCS 10-1, and that shared trainees and shared faculty members understand their responsibilities regarding the transmission of PHI to the affiliated educational institution.

5. REFERENCES: RCS 10-1.

6. RESPONSIBLE OFFICE: The Office of Academic Affiliations (14) is responsible for the contents of this Directive. Questions may be referred to (202) 461-9490.

7. RECISSIONS: None. This VHA Directive expires on October 31, 2015.

Robert A. Petzel, M.D.
Under Secretary for Health

DISTRIBUTION: E-mailed to the VHA Publication Distribution List 10/4/2010

ATTACHMENT A

**VA FORM 10-0490, ACKNOWLEDGEMENT OF RECEIPT OF DEPARTMENT OF
VETERANS AFFAIRS PROTECTED HEALTH INFORMATION BY AFFILIATED
EDUCATIONAL INSTITUTIONS**

Department of Veterans Affairs (VA) Form 10-0490, Acknowledgement of Receipt of Department of Veterans Affairs Protected Health Information by Affiliated Educational Institutions, can be found on the VA Forms Web sites: <http://www.va.gov/vaforms/> and <http://vaww.va.gov/vaforms/>