



Idaho State University

POLICIES AND PROCEDURES

HIPAA Hybrid Entity

ISUPP 1090

POLICY INFORMATION

Policy Section: *Governance/Legal*

Policy Title: *HIPAA Hybrid Entity*

Responsible Executive (RE): *General Counsel*

Sponsoring Organization (SO): *Office of General Counsel*

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I. INTRODUCTION

Idaho State University (ISU or University) is a state institution of higher education providing both general education and specialized programs. ISU is a single legal entity comprised of multiple and distinguishable departments, clinics, programs, and functions, some of which provide both Covered Functions and non-covered functions under HIPAA, including Business Associate functions (collectively “Health Care Components” or “HCC”), as these terms are defined below. ISU, pursuant to 45 CFR §§ 164.103 and 164.105 elects to be a “Hybrid Entity” and designates certain internal units as covered Health Care Components.

II. DEFINITIONS

- A. **Covered Entity:** Any health plan, healthcare clearinghouse, or healthcare provider that transmits PHI in electronic form in connection with a Covered Transaction.
- B. **Covered Functions:** Functions that a Covered Entity performs which makes it a health plan, healthcare provider, or healthcare clearinghouse.
- C. **Covered Transaction:** The transmission of information between two parties to carry out financial or administrative activities related to healthcare and includes: healthcare

claims or equivalent encounter information; healthcare payment and remittance advice; coordination of benefits; healthcare claim status; enrollment and disenrollment in a healthcare plan; eligibility for a health plan; health plan premium payments; referral certification and authorization; first report of injury; health claims attachments; healthcare electronic funds transfers (EFT) and remittance advice; or other transactions that the Secretary of the Department of Health and Human Services may prescribe by regulation.

- D. **Electronic PHI (ePHI):** Any PHI that is maintained or transmitted in electronic media and may be accessed, transmitted, or received electronically.
- E. **HIPAA:** The Health Insurance Portability and Accountability Act of 1996, as amended, the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH).
- F. **Hybrid Entity:** A single legal entity that conducts both covered and non-covered functions and designates Health Care Components in accordance with HIPAA.
- G. **Health Care Component:** Any University school, department, program, clinic, or function that: (1) meets the definition of a HIPAA Covered Entity, if it were a separate legal entity; (2) performs Covered Functions; or (3) for purposes of this policy is a Business Associate. These components will be designated by the Hybrid Entity in accordance with 45 CFR § 164.105(a)(2)(iii)(C).
- H. **Protected Health Information (PHI):** Individually identifiable Protected Health Information transmitted by or maintained in electronic media or any other form of medium, excluding education records covered by the Family Education Rights and Privacy Act (FERPA) as amended, employment records held by the Covered Entity as an employer, and information about a person who has been deceased for more than 50 years.
- I. **Business Associate:** A University school, department, program, clinic, or function that creates, receives, maintains, or transmits PHI to perform certain functions or activities on behalf of a University Health Care Component, or provides any function that involves the disclosure of PHI including but not limited to legal, accounting, consulting, management, administrative, or financial services.
- J. **Workforce Members:** Employees, authorized volunteers, trainees, students, 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. This includes, for example, full-time, part-time, regularly scheduled contract workers, and members of the Board of Trustees.

III. POLICY STATEMENT

It is ISU's policy that its Health Care Components comply with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and related regulations. HIPAA protects individually identifiable information regarding an individual's health and the provision of healthcare to that individual. Such information is referred to as "Protected Health Information" or "PHI." HIPAA applies to entities that perform healthcare related functions, including entities that provide healthcare services ("Covered Entities").

ISU performs a wide array of functions and activities, some of which involve the provision of healthcare services that are subject to HIPAA. HIPAA regulates the use and disclosure of Protected Health Information by Covered Entities and imposes administrative, technical, and physical standards, including implementation specifications, to ensure that PHI is kept secure. To implement these requirements, all University healthcare Workforce Members must follow written procedures to secure the privacy of patient information.

Under HIPAA, an organization with both HIPAA-covered and non-covered functions may elect to be a Hybrid Entity. With that designation, HIPAA requirements apply only to the entity's Health Care Components, which are engaged in Covered Functions, and do not apply to non-covered functions. A Covered Entity that chooses to designate its Health Care Components in this manner, must include any component that would meet the definition of a Covered Entity or a Business Associate if such component were a separate legal entity. This includes, for example, units that provide legal, accounting, data aggregation, or administrative services for internal Health Care Components where such services involve the sharing of PHI (45 CFR § 160.103 definition of Business Associate). Health care components also may include a component only to the extent that it performs Covered Functions. 45 CFR § 164.105 (a)(2)(iii)(D).

By adopting this policy, ISU designated itself to be a Hybrid Entity under 45 CFR §§ 164.103 and 164.105.

ISU further designates its Health Care Components, whose functions are subject to HIPAA, as those identified in Attachment A. The University may update Health Care Components by amendment to Attachment A, independent of a full revision to ISUPP 1090 *Hybrid Entity*.

IV. AUTHORITY AND RESPONSIBILITY

ISU retains oversight of the HCC and ensures that the designated HCC complies with the applicable HIPAA requirements (See 45 CFR § 164.105(a)(2)(iii)). Oversight, implementation, and enforcement of this policy are through the HIPAA Compliance Officer. The HIPAA Compliance Officer will implement reasonable and appropriate policies and procedures to comply with HIPAA.

V. PROCEDURES TO IMPLEMENT

- A. ISU has determined that it performs both Covered Functions (e.g., outpatient services, including medical and dental care) and non-covered functions (e.g., academic departments conducting teaching activities), and has designated itself as a Hybrid Entity.
 - 1. Attachment A: lists the ISU Health Care Components, including business associate-like division(s) that are designated as part of the Health Care Component.
 - 2. Attachment A: designating ISU's Health Care Components shall be retained for at least six (6) years following any decision to terminate any division or department from the Health Care Components. Designations should be retained indefinitely for on-going Health Care Components.
- B. Hybrid Entity safeguard requirements: As a Covered Entity that is a Hybrid Entity, ISU must ensure that a Health Care Component of the entity complies with the applicable requirements of HIPAA. Firewalls must be implemented between healthcare functions and non-healthcare functions. ISU shall operationally segregate all non-covered functions from the Covered Functions. In particular, ISU will ensure that:
 - 1. Each Health Care Component does not disclose Protected Health Information ("PHI") to another non-health care component of the Covered Entity in circumstances in which HIPAA would prohibit such disclosure if the Health Care Component and the non-health care component were separate and distinct legal entities; this includes the separation of academic and research functions from Health Care Component functions, even if performed by the same person.
 - 2. Business associate-like departments or divisions designated as part of the Health Care Component:
 - a. Do not use or disclose PHI that it creates or receives from or on behalf of the Health Care Component in a way that is prohibited by HIPAA's Privacy and Security Standards; and
 - b. Complies with the HIPAA Privacy and Security Standards.
 - 3. Where possible, staff and office space should be segregated between covered and non-covered functions.
 - 4. ISU recognizes that healthcare functions performed within a covered Health Care Component must be separated from academic or other functions of ISU performed by personnel. If a person performs duties for both the Health Care Component in the capacity of a member of the workforce and also performs work for another component of the entity in the same capacity with respect to that component, such Workforce Members must not use or disclose PHI created or received in the course of or incident

to the member's work for the Health Care Component in a way prohibited by HIPAA regulations.

- C. ISU has established a HIPAA Compliance Officer. The HIPAA Compliance Officer is authorized to develop and implement procedures for all Covered Entities at ISU and for those ISU departments that provide Covered Functions. The HIPAA Compliance Officer is also responsible for receiving and responding to complaints related to PHI; ensuring Workforce Members are trained appropriately; auditing workforce compliance with all policies and procedures; implementing sanctions against Workforce Members; and for maintaining overall compliance with HIPAA regulations throughout all Health Care Components and those departments that perform Covered Functions.
- D. The HIPAA Compliance Officer is responsible for the implementations of policies and procedures to ensure compliance with the HITECH Act throughout all healthcare.
- E. ISU will maintain a HIPAA Advisory Committee (HAC) that is responsible for approving all procedures as relates to the creation, storage, and transmission of ePHI or PHI within any ISU Covered Entity, or ISU department that performs any Covered Function. The HAC is composed of University employees whose area of responsibility directly relates to the oversight of the University's efforts to provide healthcare services in accordance with applicable laws and regulations. The HAC will meet at least monthly.

VI. RELATED LAWS, RULES, AND POLICIES

- A. 45 CFR § 164.103
- B. 45 CFR § 164.105

VII. ATTACHMENTS

Attachment A – ISU Health Care Component Designation

Attachment A

ISU Health Care Component Designation

The following business associate-like department(s) are considered part of the Health Care Components of ISU:

- A. ISU Information Technology Services personnel assigned to the ISU Health Care Components
- B. Office of General Counsel insofar as they perform services for the ISU Health Care Components
- C. ISU business or financial departments insofar as they perform services on behalf of ISU Health Care Components

The following clinics, departments, and programs are considered Health Care Components of ISU:

- A. Audiology Clinic
- B. Bengal Pharmacy (Pocatello, Arco, and Challis)
- C. ISU Athletic Training Department
- D. Dental Hygiene Clinic (Pocatello)
- E. Dentistry Clinics (Pocatello and Meridian)
- F. Physical and Occupational Therapy Clinics (Pocatello and Meridian)
- G. Speech, Language, and Hearing Clinics (Pocatello and Meridian)
- H. University Health Center
- I. ISU Meridian Health Care
- J. ISU Integrated Mental Health
- K. ISU Nutrition Clinic