

COMPLIANCE POLICY

The Smile Way Group

POLICY/PROCEDURE TITLE	Business Associate Agreements		
POLICY/PROCEDURE NUMBER	CC-116		
DEPARTMENT	Corporate Compliance Department		
Original Issue Date	7/19/2018		
Next Scheduled Review Date	10/26/2023		
Last Review Date	3/09/2023		
Revision Date History	10/2022 policy updated to include DPP and The Smile Way Group, responsibilities clarified, appendixes added; 3/2023 added SNYO and WA DPP.		
APPLIES TO			
<input checked="" type="checkbox"/>	SAP: ReachOut Healthcare America Ltd. dba Smile America Partners	<input checked="" type="checkbox"/>	MI: Michigan Dental Outreach, P.C. dba Michigan Dental Outreach
<input checked="" type="checkbox"/>	AZ: Arizona Mobile Dental, PC dba Big Smiles	<input checked="" type="checkbox"/>	MO: Nevin K. Waters D.D.S., P.C. dba Big Smiles
<input checked="" type="checkbox"/>	CA: Elliot Paul Schlang, DDS, Professional Corporation dba Big Smiles	<input checked="" type="checkbox"/>	NC: Theodore F. Mayer, DDS P.A. dba Smile North Carolina
<input checked="" type="checkbox"/>	GA: Shurett Dental Group, P.C. dba Shurett Dental Group	<input checked="" type="checkbox"/>	NY: Big Smiles Dental New York, PLLC
<input checked="" type="checkbox"/>	GA: Mark Shurett, DDS, PC dba Help A Child Smile	<input checked="" type="checkbox"/>	NY: Smile New York Outreach, LLC
<input checked="" type="checkbox"/>	IL: Elliot P. Schlang, D.D.S. P.C. dba Smile Illinois	<input checked="" type="checkbox"/>	OH: Elliot P. Schlang DDS, Dental Outreach PLLC dba Ohio Dental Outreach
<input checked="" type="checkbox"/>	IN: Elliot P. Schlang DDS, Dental Outreach PLLC dba Indiana Dental Outreach	<input checked="" type="checkbox"/>	PA: Big Smiles Pennsylvania P.C. dba Smile Pennsylvania
<input checked="" type="checkbox"/>	KS: Nevin K. Waters D.D.S., PA dba Big Smiles	<input checked="" type="checkbox"/>	UT: Big Smiles Utah, P.C. dba Big Smiles
<input checked="" type="checkbox"/>	KY: Big Smiles Kentucky PSC dba Big Smiles	<input checked="" type="checkbox"/>	VA: Big Smiles Virginia PC dba Smile Virginia
<input checked="" type="checkbox"/>	MA: Elliot P. Schlang DDS Big Smiles Massachusetts P.C. dba Smile Massachusetts	<input checked="" type="checkbox"/>	WA: Michael LaCorte Dentistry, PC dba Big Smiles
<input checked="" type="checkbox"/>	MD: S.K. Pesis D.D.S., Big Smiles Maryland, PC dba Smile Maryland	<input checked="" type="checkbox"/>	WV: Elliot P. Schlang DDS, Inc. dba Smile West Virginia

I. PURPOSE:

ReachOut Healthcare America, LTD d/b/a Smile America Partners (“SAP”) and its affiliated Dental Professional Practices (“DPPs”) (hereinafter collectively referred to as “The Smile Way Group”) will follow established guidelines to identify vendors/business relationships which meet the HIPAA definition of “business associate” that require Business Associate Agreements (BAAs).

II. SCOPE:

This policy applies to all employees of Smile America Partners who work with outside vendors in the course and scope of their employment.

III. POLICY:

The Smile Way Group is committed to safeguarding the privacy of protected health information (PHI). The Smile Way Group will identify its vendors/business relationships to determine whether a BAA is necessary pursuant to HIPAA. In the event a BAA is required, the BAA must be executed before The Smile Way Group discloses PHI to the vendor/consultant providing the services pursuant to the BAA. This policy applies to all members of The Smile Way Group’s workforce charged with the responsibilities for identifying the need for BAAs and/or executing and managing such BAAs.

IV. PROCEDURE:

A. Responsibility for Obtaining Business Associate Agreements

- Board authorized corporate signatories are the only Smile America Partners employees authorized to prepare and process bilateral contracts that require a BAA. The BAA template (Appendix A) is approved by the Chief Compliance Officer for this transaction should be used, unless the Chief Compliance Officer approves the use of the other party's template for this purpose.
- The Chief Compliance Officer, who may consult with legal counsel as necessary, will make the determination as to whether a BAA is required. The Business Associate Decision Tree (Appendix B) can be used as guidance for determining whether a BAA is required. The Business Associate Decision Tree is attached to this policy. This determination process also applies in the case of subcontractors contracting with Smile America Partners' vendors.
- After a determination has been made that a BAA is required, the BAA must be signed by a corporate officer of Smile America Partners. The Corporate Compliance Department is responsible for ensuring that the BAA is signed by a corporate officer of Smile America Partners.
- The Chief Compliance Officer is responsible for sending the BAA to the contracting party and ensuring that the BAA is executed and returned to Corporate Compliance Department at Smile America Partners.
- The Corporate Compliance Department is responsible for keeping the executed BAA on file at O:\Departments\Compliance\10 - HIPAA and Potential Breaches\A. BAA Agreements.

B. Record Retention of the Business Associate Agreements

The Corporate Compliance Department is responsible for the following:

1. Obtaining written certification from the business associate that all PHI received from or created or received by the business associate pursuant to the BAA has either been returned or destroyed or otherwise accounted in accordance with the terms of the BAA whenever a BAA expires or by its own terms is terminated before the end of its terms.
2. In accordance with CC 113 Vendor Management and Oversight Policy, bi-annual audits of the accounts payable list will be performed to identify all parties who are business associates of Smile America Partners. The Smile America Partners Controller is responsible for providing a list of current vendors with whom Smile America Partners does business with to the Corporate Compliance Department on a bi-annual basis, occurring in Quarters 1 and 3 of each fiscal year. The Compliance Department will conduct a bi-annual audit upon the submitted list of current vendors to verify that any required BAA are active and resolve any identified deficiencies. The results of the vendor BAA audit will be submitted to the Corporate Compliance Committee bi-annually after completion. A review is also required if there are changes in regulations that result in the need for new or amended agreements.
3. Compiling an inventory list of BAAs with the following information:
 - a. names of the parties to the BAA;
 - b. contact information for the parties,
 - c. initiation date for the BAA;
 - d. date of expiration of the BAA; and
 - e. description of services provided by the business associate.

For vendors entering into a BAA with Smile America Partners after the Original Issue Date of this policy, the information in (a)-(e) above will be collected on intake forms created by the Corporate Compliance Department, to be completed by the vendors, and added to the inventory list. The Corporate Compliance Department is responsible for providing these intake forms to vendors entering into a BAA with Smile America Partners.

4. Maintaining the BAA inventory list including but not limited to adding new agreements, updating existing agreements and archiving old agreements for no less than six years from the termination date of the BAA.
5. Filing all executed BAAs in a central electronic location.
6. Ensuring that the BAA process and its related elements including but not limited to forms and documentation, are reviewed at least annually for updates and compliance with federal and state law.

C. Education

The Corporate Compliance Department will provide education and guidance on BAAs as needed to those charged with responsibilities for identifying the need for BAAs and/or executing and managing such BAAs.

Approvals:

DocuSigned by:

Steve Higginbotham

3/10/2023

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Steve Higginbotham, CEO

DocuSigned by:

Craig Thomas

3/24/2023

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Craig Thomas, CCO & SVP HR

Appendix A: Approved BAA Template (updated 10/2019)

HIPAA BUSINESS ASSOCIATE AGREEMENT (“Agreement”) dated as of [INSERT DATE], between [INSERT COVERED ENTITY] (“Covered Entity”), and [INSERT BUSINESS ASSOCIATE] (“Business Associate”).

Business Associate desires to enter into this Agreement for the purpose of compliance with the Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing administrative simplification regulations, including the HIPAA Standards for Privacy of Individually Identifiable Health Information (45 C.F.R. Part 160 and Part 164, Subpart E) (“HIPAA Privacy Rule”), the HIPAA Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Part 160 and Part 164, Subpart C) (“HIPAA Security Rule”) and the HIPAA Breach Notification Rule (45 C.F.R. Part 160 and Part 164, Subpart D), (collectively the “HIPAA Regulations”).

If, in the provision of services to Covered Entity, Business Associate representatives receive, create, transmit or maintain Protected Health Information (“PHI”) on behalf of Covered Entity, Business Associate shall be bound to the following terms:

1. Permitted Uses and Disclosures. Business Associate may use and disclose PHI in order to perform services (including billing services) for or on behalf of Covered Entity as agreed to by the parties, as Required by Law or as permitted by the HIPAA Regulations, provided that, except as otherwise permitted in this Agreement, Business Associate will not use or disclose PHI in a manner that would violate HIPAA or the HIPAA Regulations if done by Covered Entity. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law. Notwithstanding the foregoing, Business Associate may use or disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that in the case of any such disclosure: (a) the disclosure is Required by Law; or (b) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that (i) the information will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (ii) the person notifies Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached. Business Associate may provide data aggregation services consistent with 45 C.F.R. § 164.501 and may de-identify PHI in accordance with 45 C.F.R. § 164.514.
2. Business Associate’s Obligations. Business Associate shall:
 - (a) ensure that its agents and subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions, requirements and conditions as are applicable to Business Associate as set forth herein, including compliance with applicable provisions of the Security Rule;
 - (b) implement appropriate and reasonable safeguards and comply with the HIPAA Security Rule to prevent use or disclosure of PHI other than as permitted herein;
 - (c) if Business Associate carries out one or more the Covered Entity’s obligations under the HIPAA Privacy Rule, comply with the requirements of the HIPAA Privacy Rule that apply to Covered Entity in the performance of those obligations;
 - (d) report to Covered Entity any use or disclosure of PHI not provided for by this Agreement, including any Breach of Unsecured Protected Health Information, as defined in the

Breach Notification Rule, without unreasonable delay and in no case later than 60 days following the discovery of the Breach.

- (e) report to Covered Entity any Security Incident. Specifically, Business Associate will report to Covered Entity any successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI (“ePHI”) or interference with system operations in an information system containing ePHI of which Business Associate becomes aware within ten business days of Business Associate learning of such Security Incident. Business Associate also will report the aggregate number of unsuccessful, unauthorized attempts to access, use, disclose, modify, or destroy ePHI or interfere with system operations in an information system containing ePHI, of which Business Associate becomes aware, provided that: (i) such reports will be provided only as frequently as the parties mutually agree, but no more than once per month; and (ii) if the definition of “Security Incident” under the Security Rule is amended to remove the requirement for reporting “unsuccessful” attempts to use, disclose, modify or destroy ePHI, the portion of this Section addressing the reporting of unsuccessful, unauthorized attempts will no longer apply as of the effective date of such amendment.
- (f) make available to the Secretary of the U.S. Department of Health and Human Services Business Associate’s practices, books and records relating to the use or disclosure of PHI for purposes of determining compliance with HIPAA, subject to any attorney-client or other privileges;
- (g) mitigate to the extent practicable, any harmful effect that is known to Business Associate of uses or disclosures of PHI of which Business Associate becomes aware that do not comply with the terms herein and Business Associate will defend, hold harmless and indemnify Covered Entity and its employees, agents, officers, directors, shareholders, members, contractors, parents, and subsidiary and affiliate entities, from and against any claims, losses, damages, liabilities, costs, expenses, penalties or obligations (including attorneys’ fees), which Covered Entity may incur due to a Breach caused by Business Associate or Business Associate’s subcontractors or agents
- (h) to the extent that Covered Entity and Business Associate agree in writing that Business Associate shall maintain PHI as part of a Designated Record Set, upon Covered Entity’s request, provide access and make amendments to such PHI, in order to meet the requirements under the HIPAA Privacy Rule. Within ten business days of receipt by Business Associate of a request by an Individual to access or amend PHI in a Designated Record Set, Business Associate shall forward such request to Covered Entity;
- (i) maintain an accounting of disclosures as required under the HIPAA Privacy Rule and, upon Covered Entity’s request, provide such information as would be required for Covered Entity to account for disclosures of PHI as required under the HIPAA Privacy Rule;
- (j) when Business Associate ceases to perform services for or on behalf of Covered Entity, destroy all PHI received or, if such destruction of PHI is not feasible, continue to abide by the terms set forth herein with respect to such PHI for as long as Business Associate retains the PHI and not use or disclose the PHI other than for those purposes which make return or destruction infeasible; and

- (k) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity.
3. Covered Entity's Obligations. Covered Entity shall notify Business Associate of any:
 - (a) limitation(s) on the use or disclosure of PHI set forth in Covered Entity's notice of privacy practices, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - (b) changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
 - (c) restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
 4. Term and Termination. The term of this Agreement shall be effective as of the date set forth above and shall terminate when Business Associate ceases to perform services for Covered Entity, except as provided in 2(j) above. Covered Entity may terminate this Agreement if Business Associate fails to cure or take substantial steps to cure a material breach of this Agreement within 30 days after receiving written notice of such material breach from Covered Entity.
 5. Agreement. This Agreement constitutes the entire agreement between the parties relating to the access, use and disclosure of PHI. This Agreement may be amended only in writing signed by Covered Entity and Business Associate. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Arizona, including all matters of construction, validity and performance.
 6. Incorporation by Reference/Amendment. The parties acknowledge that the foregoing provisions are designed to comply with the mandates of HIPAA (as amended by HITECH) and the HIPAA Regulations. Should the provisions of HIPAA or the HIPAA Regulations be amended or supplemented after the date of this Agreement in a manner that imposes requirements on the content of this Agreement, such requirements shall be deemed incorporated herein automatically by reference, and the parties agree to amend this Agreement from time to time as reasonably requested by Covered Entity or Business Associate to explicitly reference such requirements herein.
 7. No Third-Party Beneficiaries. Nothing express or implied in this HIPAA Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.
 8. Miscellaneous. This Agreement hereby amends and is incorporated into any underlying agreement between Covered Entity and Business Associate; to the extent that the provisions of this Agreement conflict with those of an underlying agreement, the provisions of this Agreement shall control. Terms used but not otherwise defined herein (whether or not capitalized) shall have the same meaning as those terms defined in the HIPAA Regulations, including, without

limitation, 45 CFR 160.103, 164.402 and 164.501. This Agreement supersedes and replaces all prior business associate agreements between the parties on the effective date of this Agreement.

BUSINESS ASSOCIATE:

[INSERT BUSINESS ASSOCIATE]

By: _____

Name:

Title:

COVERED ENTITY:

[INSERT COVERED ENTITY]

By: _____

Name:

Title:

Appendix B: Business Associate Decision Tree



Business Associate Decision Tree

This decision tree serves as a guide to help you determine whether a vendor/consultant is a “business associate” under HIPAA, as defined CFR § 160.103.

