



Hosted by the Digital Medicine Society (DiMe) and the American Telemedicine Association (ATA), IMPACT is a pre-competitive collaboration of leading digital health companies, investors, payers, and consultants dedicated to supporting virtual first care (V1C) organizations and their commitment to patient-centric care.

Language matters. Terms used throughout this resource are defined in the [Glossary of Terms](#).

## Contract Body: Business Associate Agreement

Where V1C services and payers are both The Health Insurance Portability and Accountability Act (HIPAA) covered entities (as is typically the case) and their interactions and data exchanges fall within the stated HIPAA uses of Treatment, Payment, or Operations (TPO) definition, many contracts won't need a business associate agreement (BAA). However, there are some unique situations where a BAA is necessary — specifically where data is being exchanged between the two parties for a use not related to TPO. Two key moments in the member/participant experience where one or the other party may prefer to use a BAA are:

1. A payer's disclosure to the V1C of a member list so that the V1C can tell individuals they are eligible for a participation in the V1C service; or,
2. Where a payer is sharing a member eligibility list with a V1C solution to enable authorization for coverage of a qualified V1C participant.

Recruitment for a research project needing approval by an Institutional Review Board (IRB) is another instance where a BAA may be required.

In most cases, because the V1C and payer are each operating as a covered entity, using Protected Health Information (PHI) for their own treatment, payment, and operations purposes, a BAA should not be necessary. If a BAA is needed, the parties should justify it by explicitly defining the scope of the activities it covers and providing sound rationale for why it is needed. The BAA itself is typically appended as an exhibit or it is signed as a separate document entirely by the two parties. This section is then included in the contract to state general principles on how that exhibit or standalone document will be integrated into the relationship.

### V1C CONSIDERATION: **BAAs**

- If a payer is sharing a promotion or eligibility file with a V1C service, and the V1C is composed of a PC and a MSO, the master contract with the payer typically exists between the V1C professional corporation (PC) and the payer, but sometimes is between the V1C management services organization (MSO) and the payer.
- For promotion activities, the MSO typically conducts that activity, and the contract should appropriately contemplate the necessary arrangement (e.g. a

BAA may be needed to cover the MSO if the contract is between the V1C, PC, and the payer).

- If this is the case, this section would reference that arrangement.

IDEAL ★★★	ACCEPTABLE ★★★☆
<p>No BAA is needed because the payer and the V1C solution are each covered entities, using and disclosing PHI to each other for treatment, payment and operations purposes</p> <ul style="list-style-type: none"> <li>• Eligibility data is being retained by the payer (with V1C pinging the eligibility database as needed)</li> <li>• V1C is conducting outreach to invite a plan member to join their service with messaging that includes features of the solution for a given disease and explicitly does not mention the payer name and coverage of that service by the payer. A provider can <u>legitimately get a list</u> of people from a payer and then do outreach as the provider's TPO [(c)(4)(i)], as part of healthcare operations</li> </ul> <p>Select cases where a BAA may be needed and conventionally is in place, include:</p> <ul style="list-style-type: none"> <li>• V1C is conducting outreach that references payer name and coverage of that service by the payer to invite a plan member to join their service</li> <li>• Exchange of data to support program evaluation for purposes outside of TPO (see <u>Contract Exhibit: Data</u> for more detail on what may qualify here)</li> </ul>	<p>A BAA is needed to cover any promotion activity being conducted by a V1C service</p> <p>A BAA is needed to cover eligibility data being transferred from the payer to the V1C service because no payer exchange exists</p>

..... *Phase 1* .....>

..... *Phase 2* .....>

BAA as needed for eligibility and

BAA will likely need to be modified if

<p>promotion</p>	<p>V1C intends to conduct a Return on Investment (ROI) analysis with data disclosed by a payer. This area can be complex depending what member data may be included and who the intended recipient of that payer data is. Per <a href="#">Contract Exhibit: SOW - Program Evaluation</a> and <a href="#">Contract Exhibit: Data</a> sections, the parties should fully define the goals of the ROI analysis and then consult with counsel to structure the agreement appropriately.</p>
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**QUICK LINKS: [GUIDE TO PAYER - VIRTUAL FIRST CARE \(V1C\) CONTRACTING](#)**

Overview

[Payer-V1C Contract Fundamentals](#)

[How To Use The Guide to Payer-V1C Contracting](#)

[Glossary of Terms](#)

Contract Body

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