

New HIPAA Regs: How Do You Define Your Practice's Business Associates?

Jaime Doherty, Esq., of Pecore & Doherty health law firm provided the following guidelines. Hear more about BAs and NPPs at the Compliance Conference on 9/19/13 when he speaks at length about HIPAA

1. To be a HIPAA Business Associate (BA), the individual or entity usually has to be performing a service on behalf of the Covered Entity provider that actually involves access to Protected Health Information (PHI). This CMS guidance on identifying BAs is helpful:

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/businessassociates.html>

2. Under the HIPAA definition of Business Associate, cleaning people would not be BAs because their job does not entail access to PHI. However, the provider still has an obligation to implement "reasonable safeguards" to prevent the cleaning people from having unauthorized access to the PHI (e.g., shredding PHI documents containing PHI before they are put in the trash). Even if a cleaning person did accidentally see some PHI, it might be an "inadvertent" and thus non-reportable unauthorized disclosure under HIPAA, but the provider would still have to do a breach analysis to determine what might have to be done to address the situation.

3. An Information Technology (IT) person or company, answering service or accountant who had access to PHI in the ordinary course of performing their duties would need a BA agreement, but if they did not have access to PHI, they would not.

4. Labs are Covered Entities under HIPAA when they provide laboratory services, so generally no BA Agreement is necessary for provider-to-provider transfers of PHI for treatment purposes if the lab is just providing lab services. If the lab is providing other non-lab services to the provider (e.g., administrative services, data analysis involving PHI, etc.), they may need a BA Agreement. There is some good guidance at:

http://www.cap.org/apps/cap.portal?_nfpb=true&cntvwrPtl{actionOverride}=%2Fportlets%2FcontentViewer%2Fshow&_windowLabel=cntvwrPtl{actionForm.contentReference}=hipaa%2Fhipaa_articles.html&_state=maximized&_pageLabel=cntvwr

5. Providers often inquire about the availability of a "short form" BA Agreement, but with the increased HIPAA enforcement and substantial potential penalties, we recommend that they use a more comprehensive standard template, it's fairly easy to just insert the parties names and a couple of other details about the underlying service arrangement and it provides more complete protection.