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**A NATIONAL HIPAA SUMMIT
AUDIOCONFERENCE**

**Legal Requirements For Vendor
And Clearinghouse HIPAA
Compliance; Business Associate
Agreements**

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To Be or Not to Be – That is the Question!

- **Step One: Know thyself**
 - **Covered Entity**
 - **Business Associate**
 - **Both a Covered Entity and a Business Associate**



Covered Entities

- A health plan
- A health care clearinghouse
- A health care provider who transmits any health information in electronic form in connection with a covered transaction



Health Care Clearinghouse

“ . . . a public or private entity, including billing services, repricing companies, community health management information systems or community health information systems, and ‘value added networks and switches, that”

- 1. Processes nonstandard format or data into standard transaction.**
- 2. Receives standard transaction and processes into nonstandard format or data for the receiving entity**



What's Not a Health Care Clearinghouse

- Telecommunications entities
 - Telephone Companies
 - Internet Service Providers
- Health plans and providers unless they perform a clearinghouse function for another entity that is not designated as an affiliated single covered entity



Business Associates

“with respect to a *covered entity*, a person to whom the covered entity discloses *protected health information* so that the person can carry out, assist with the performance of, or perform on behalf of, a function or activity.”



Examples of Business Associate Services

- Legal
- Actuarial
- Accounting
- Consulting
- Management/Administrative
- Accreditation
- Data aggregation
- Financial Services



Who is Not a Business Associate

- A member of the covered entities own workforce
- A covered entity participating in an organized health care arrangement that performs a function for or on behalf of the organized health care arrangement



Multiple Personalities

A covered entity may be a business associate of another covered entity.



Clearinghouses as Business Associates

- In most instances, clearinghouse will receive PHI as a business associate of another covered entity
- Are responsible for abiding by the terms of their business associate contract
- Are not subject to certain requirements in the Final Privacy Rule
- Are in violation of the Privacy rule when they violate their BA contract



Clearinghouse as Business Associate not subject to:

- **Specified procedural requirements**
- **Obtaining consent, individual authorization or agreement**
- **Privacy notice**
- **Individual rights for access, amendment, and accounting for disclosures**
- **Administrative requirement**



Business Associate Contracts

- **Many forms circulating around including Appendix to the NPRM, 67 Fed.Reg. at page 14809 (3/27/2002)**
- **Transition Rule proposed that would allow for BA contracts for pre-existing relationships to be in place at earlier of renewal/modification of contract or April 14, 2002.**
- **Requirement of covered entity as part of their obligation to ensure protection of PHI from uses and disclosures not permitted under HIPAA**



Covered Entity Perspective

- **Manage risk and avoid liability**
- **Business Associate held to a higher level of accountability**
- **Indemnification and other assurances from Business Associate beyond what is required under the standard for business associate contracts**
- **Uniformity of BA contracts**



Vendor Perspective

- **Contract limited to terms required under 42 CFR 164.504(e)**
- **Least restrictions on its use and disclosure of PHI obtained from the covered entity**
- **Minimize liability; no indemnification**
- **Uniformity of BA contracts; consistency with subcontracts**