

EXPANDED BUSINESS ASSOCIATE RULES UNDER HITECH

by: Regina A. Casey, JD, RN

The new privacy rules provide an expanded definition of “Business Associate” to include “... one who, on behalf of a covered entity, creates, receives, maintains or transmits Personal Health Information.” The new definition also extends to any “subcontractor of Business Associate” who creates, receives, maintains or transmits Personal Health Information on behalf of a Business Associate.

Who Are Business Associates?

Claims Processing
Data Analysis
Utilization Review
Billing
Legal (including litigation counsel)
Actuarial
Accounting
Consulting
Data Aggregation
Management
Administrative
Accreditation
Financial Services
E-Discovery Vendors
Copier Technicians (if your copier has memory)
Shredding Services
Computer Support Services
Records subpoenas/duplication services

Not included* – vendors who simply provide transmission services, like digital couriers or “mere conduits” (akin to services provided by the post office). However, those who *store* PHI, even if they don’t intend to actually view it, **are Business Associates (implications for cloud model storage).

What Is Required of Business Associates Under the New Omnibus Rules?

Business Associates and Business Associate subcontractors must:

- Satisfy Business Associate Agreement (BAA) requirements;

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- Maintain written policies and procedures adequate to assess and protect HIPAA Privacy and Security mandates;
- Maintain records as required;
- Submit required compliance reports to the Secretary;
- Cooperate in complaint investigations and compliance reviews; and
- Give the Secretary access to information.

Business Associates must enter into written agreements documenting their agreement to comply with Privacy and Security requirements under the new Omnibus Rule.

Business Associates – Uses of Personal Health Information (PHI):

- Business Associates may use or disclose PHI only as permitted by their BAA or as is required by law;
- Business Associates may not use or disclose PHI in any manner that would violate the Privacy Rule;
- “Minimum necessary” rules apply. Use and/or disclosure of PHI must be limited to that which is minimally necessary to accomplish its purpose;
- Breach notification rules apply in an event of unauthorized access or loss of PHI;
- Business Associate subcontractors are subject to limitations included in agreements between the Covered Entity and their Business Associate.

Business Associates are not in compliance if they know or should have known of a subcontractor’s material noncompliance with HIPAA and they fail to take reasonable steps to cure the breach. If such corrective measures fail, the Business Associate is required to terminate the relationship with the subcontractor.

About the Author:

A shareholder at Wroten & Associates, Regina A. Casey has been defending physicians, hospitals and various other healthcare providers for over 26 years. Previously serving as a litigation partner at an East Coast firm with offices in Maryland and Washington D.C., she then worked with a West Coast medical malpractice defense firm. She has been with Wroten & Associates since it was founded.

Ms. Casey has successfully defended medical malpractice cases in federal and circuit courts in Maryland. She has also tried cases in the U.S. District Court and Superior Court for the District of Columbia, and in California’s Superior Court. She has participated in a number of arbitrations and is a mediation specialist. She has represented physicians in administrative hearings before the Medical Board in Maryland and at hearings to defend physicians’ hospital privileges.

She graduated magna cum laude from Duke University earning a Bachelor of Science in Nursing in 1975. After working as a nurse at the University of Virginia and Georgetown University Hospitals, she earned her Master of Science in Nursing at Catholic University America, where she was a member of the Nursing Honor Society, Sigma Theta Tau. She graduated with honors from the University of Maryland Law School and was admitted to the Maryland Bar in 1986; the District of Columbia Bar in 1987, and the California Bar and U.S. District Court for the Central District of California in 2001.

To learn more about Wroten & Associates, Inc. visit www.wrotenlaw.com . Contact Regina A. Casey directly at rcasey@wrotenlaw.com

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