

## HIPAA Frequently Asked Questions

The U.S. Department of Health & Human Services' (HHS) Office for Civil Rights updated regulations regarding the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rule in January 2013. Since that time the AOA has received a number of questions from optometrists regarding the new regulations and HIPAA generally. Below is a list of the most frequently asked questions to help optometrists address common HIPAA concerns.

Please note, the AOA provides guidance on HIPAA by citing relevant provisions of the HIPAA regulations and HHS resources. This guidance should not be construed as legal advice. You are encouraged to contact an attorney for legal guidance.

### **Q. Do I need a Business Associate Agreement with a doctor who substitutes for me when I am on vacation or out of the office?**

**A.** No, a business associate agreement is not necessary. A health care provider can share protected health information with another health care provider for treatment purposes without a business associate contract.

References:

[http://www.hhs.gov/ocr/privacy/hipaa/faq/business\\_associates/240.html](http://www.hhs.gov/ocr/privacy/hipaa/faq/business_associates/240.html)

### **Q. Do I need a Business Associate Agreement with the mail delivery person who comes to our office each day?**

**A.** No. You are not required to enter into business associate agreements with the US Postal Service.

References:

[http://www.hhs.gov/ocr/privacy/hipaa/faq/business\\_associates/245.html](http://www.hhs.gov/ocr/privacy/hipaa/faq/business_associates/245.html)

### **Q. Do I need a Business Associate Agreement with the insurance companies that I contract with?**

**A.** Generally, no. If the only relationship between the health plan payer and the provider is one where the provider submits claims for payment to the plan, then the provider is not a business associate of the health plan.

References:

[http://www.hhs.gov/ocr/privacy/hipaa/faq/business\\_associates/253.html](http://www.hhs.gov/ocr/privacy/hipaa/faq/business_associates/253.html)

### **Q. Do I need a Business Associate Agreement with a laboratory to which I send patient prescription information?**

**A.** No. To avoid interfering with an individual's access to quality health care or the efficient payment for such health care, the Privacy Rule permits a covered entity to use and disclose

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protected health information, with certain limits and protections, for treatment, payment, and health care operations activities.

“Treatment” generally means the provision, coordination, or management of health care and related services among health care providers or by a health care provider with a third party, consultation between health care providers regarding a patient, or the referral of a patient from one health care provider to another. This includes sending patient information to laboratories for fabrication or other treatment purposes.

References:

45 CFR 164.506 “Uses and Disclosures for Treatment, Payment, and Health Care Operations” HHS Office for Civil Rights memorandum, December 3, 2002, Revised April 3, 2003

45 CFR 164.502(e), 164.504(e), 164.532(d) and (e) “Business Associates” HHS Office for Civil Rights memorandum, December 3, 2002, Revised April 3, 2003

**Q. Do I need either an authorization from my patients or a Business Associate Agreement with a third party before engaging in discussions related to the sale of an optometry practice?**

**A.** No. To avoid interfering with an individual’s access to quality health care or the efficient payment for such health care, the Privacy Rule permits a covered entity to use and disclose protected health information, with certain limits and protections, for treatment, payment, and health care operations activities.

“Health care operations” are certain administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment. The term, “Health care operations” means any of the following activities of the covered entity to the extent that the activities are related to covered functions:

“Business management and general administrative activities of the entity, including, but not limited to: ... (iv) The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity...”

References:

45 CFR 164.506 “Uses and Disclosures for Treatment, Payment, and Health Care Operations” HHS Office for Civil Rights memorandum, December 3, 2002, Revised April 3, 2003

45 CFR 164.501 “Definitions

**Q. How do I perform the required HIPAA security analysis? Is there a simple form I can fill out?**

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A security risk analysis can be performed in a number of ways. There is not a one-size-fits-all template for compliance. Optometrists need to determine the best way to achieve compliance, taking into account the characteristics of the optometrist's organization.

Resources that can help providers in determining the best method for performing a security risk analysis are available below:

- <http://www.healthit.gov/sites/default/files/pdf/privacy/privacy-and-security-guide-chapter-2.pdf>
- <http://www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/rafinalguidance.html>
- <http://www.healthit.gov/providers-professionals/achieve-meaningful-use/core-measures/protect-electronic-health-information>
- <http://newsfromaoa.org/2013/03/08/what-you-need-to-know-for-medicare-ehr-audits/>
- <http://www.aoa.org/optometrists/tools-and-resources/hipaa-compliance>

**Q. Where can I find HIPAA training materials for my staff members?**

The Department of Health and Human Services worked with Medscape to put together HIPAA training videos that are available at:

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/training/index.html> Additional HHS HIPAA training resources are also available from the link provided above.

**Q. If I confirm a patient's prescription for a contact lens company that is fulfilling a patient order, do I need to have business associate agreement with the contact lens company?**

**A.** No. Disclosure of protected health information by an optometrist to a distributor of contact lenses for the purpose of confirming a contact lens prescription is considered a disclosure for treatment purposes and is allowable without a business associate agreement.

References:

45 CFR 164.506

**Q. Do I need a business associate agreement with an ophthalmologist's practice that my practice often works with to co-manage patients?**

**A.** No, a business associate agreement is not necessary. A health care provider can share protected health information with another health care provider for treatment purposes without a business associate contract.

References:

[http://www.hhs.gov/ocr/privacy/hipaa/faq/business\\_associates/240.html](http://www.hhs.gov/ocr/privacy/hipaa/faq/business_associates/240.html)

If your HIPAA question was not answered in the above please direct your question to [askthecodingexperts@aoa.org](mailto:askthecodingexperts@aoa.org)

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