



WHO ARE YOUR SUBCONTRACTOR BAS AND WHAT ARE
YOUR RESPONSIBILITIES

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COMPLIANCE CORNER

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The session is being recorded and will be archived in Compliance Corner

***Compliance discussions and responses offer NAHU's interpretation and research regarding application of the provisions of the Patient Protection and Affordable Care Act (PPACA). NAHU is providing this guidance as an informational resource for NAHU members. This general information is not a substitute for legal or tax advice.**

ABOUT YOUR PRESENTER

David Smith

Vice President of Ebenconcepts , one of the Southeast's largest benefits consulting firms. He has nearly 20 years of experience in employee benefits with regulatory, business and industry perspectives. David has spoken extensively about wellness and its nuances and is always highly rated as a speaker before diverse audiences.




Who are Your Subcontractor BAs and What are Your Responsibilities?

PRESENTED BY
David C Smith

WHAT IS A SUBCONTRACTOR BUSINESS ASSOCIATE?

Any person who performs functions or activities on behalf of, or certain services for, a Business Associate that involves the use or disclosure of protected health information.



EXAMPLES OF SUBCONTRACTOR BUSINESS ASSOCIATES

- **Lawyers**
 - **IT Contractors**
 - **Shredding companies**
 - **Email Encryption Provider**
 - **Web Hosts**
 - **Cloud Storage Services**
- 

ARE THESE SUBCONTRACTORS?

- **Cleaning companies**
- **Building management**
- **Printing companies**

What if they refuse
to sign a Subcontractor BA Agreement?



CURRENT BREACHES REPORTED TO HHS

- **Computer Programs and Systems, Inc.** – 25,764 Individuals Affected in Theft 11/26/14
- **Xerox State Healthcare, LLC TX** – 2,000,000 Affected by Unauthorized Access 9/10/14
- **Iron Mountain, Inc.** – 49,714 affected, Improper Disposal of Records 8/15/14
- **Amerigroup Texas, Inc.** – 75,026 affected, Theft Records 4/10/14
- **AdminisTEP, Inc.** – 4,469 affected, Unauthorized Access 11/25/14



Business Associates are involved in 22% of HIPAA Violations!

MAKE A LIST


- **List your Subcontractor Business Associates with contact information**
- **Request that your subcontractors make a list of their subcontractors and provide you a copy**



REQUIREMENTS FOR A SUBCONTRACTOR BUSINESS ASSOCIATE


- **Document Privacy/Security Policies & Procedures**
 - **Protect PHI and ePHI**
 - **Train Employees**
 - **Work with Cover Entity/ Business Associate to send Breach Notifications**
 - **Manage their Subcontractors**
- 

LIABILITY

- **Violations by a Subcontractor Business Associate also affect Business Associate**
 - **Subcontractor Business Associates are liable for...**
 - **Violations they have created**
 - **Violations of a Subcontractor**
- 

COMMON LAW OF AGENCY

This change makes a Covered Entity and Business Associates liable for the mistakes of the Subcontractor Business Associate when the Subcontractor Business Associate is an agent of the Business Associate and is acting in the scope of the agency.



SUBCONTRACTOR BUSINESS ASSOCIATE AGREEMENTS



Identify Your BA Subcontractors

- ✓ These are vendors who have access to your PHI



Review their compliance plans

- ✓ The 2013 HIPAA Omnibus penalizes BA's for Breaches
- ✓ Their Breaches could become your Breaches
- ✓ Review the Subcontractors they use



Collect signed Subcontractor Business Associate Agreements

- ✓ Be sure this Agreement conforms to HIPAA's requirements
- ✓ Be wary of extra provisions that could compromise your agency

WHAT IS A BREACH

PHI that has been **accessed, used, acquired by** or **disclosed to** an unauthorized person HIPAA Rules apply to PHI in any format:

ePHI



Oral



Paper



BREACH EXCEPTIONS



- Unintentional access by an employee
- Inadvertent disclosure by a covered entity or business
associate employee authorized to access PHI to a co-employee
also authorized to access PHI
- Unauthorized access to PHI by a third party who can't
reasonably use the information in its current format, or retain
the disclosed information

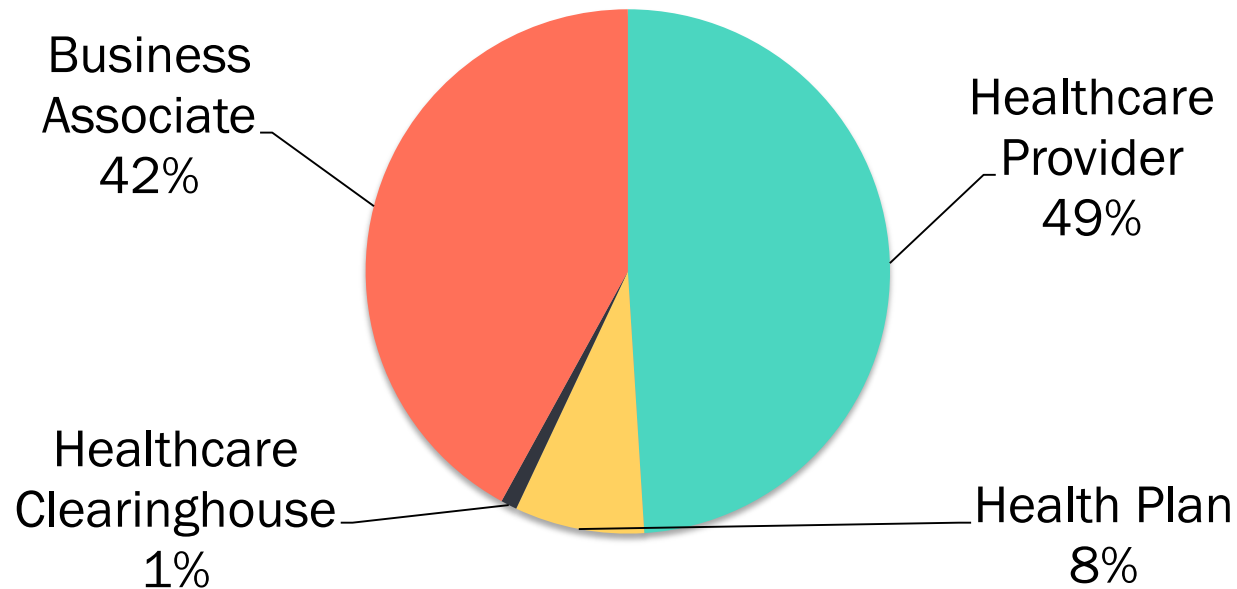
BREACH NOTIFICATION

Notice Requirements:

- **Notify without unreasonable delay and at least within 60-day timeframe**
- **This starts the date one knew, or reasonably should have known about the Breach**

INDIVIDUALS AFFECTED BY BREACHES

Individuals Affected by Breaches in 2012 by Entity Type



Source: "Annual Report to Congress on HIPAA Privacy, Security, and Breach Notification Rule Compliance." 1 Jan. 2013. Web.
<http://www.hhs.gov/ocr/privacy/hipaa/enforcement/compliancereport2011-2012.pdf>

MANAGING YOUR SUBCONTRACTOR BUSINESS ASSOCIATES

- **Periodically review them**
- **They should alert you to changes in how they conduct business**
- **Subcontractor BA should provide updated compliance plan**



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The background consists of several overlapping triangles. A large, light blue triangle occupies the right half of the image. On the left, there is a darker blue triangle and a grey triangle that overlaps with the light blue one. The word "QUESTIONS?" is centered in the white space between the triangles.

QUESTIONS?