



The HIPAA Impact on Organizational Arrangements Reduce the Administrative Burden While Still Maintaining Compliance

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HIPAA impacts every organization designated as a healthcare covered entity. In this three-part whitepaper series, three different organizational arrangements will be discussed and analyzed; affiliated covered entities, hybrid entities, and organized healthcare arrangements. Each has benefits and drawbacks, yet each is designed to alleviate HIPAA administrative burdens. Affiliated covered entities will be discussed first. Hybrid entities and organized healthcare arrangements will be detailed in later whitepapers.

Affiliated Covered Entities

What is an affiliated covered entity?

Affiliated covered entities ("ACE") are legally separate covered entities that are affiliated. For the purposes of HIPAA they can be considered one covered entity rather than many different covered entities. In order to be considered "affiliated," the separate covered entities must have common ownership or control. The common ownership qualification is satisfied if an entity or entities have at least five percent ownership or equity interest in another entity. There is common control if an entity has the power, either directly or indirectly, to significantly influence or direct action or policies of another entity.

Another requirement to keep in mind is that the designation of an ACE must be formally documented. There is no specification on what type of documentation is required, but it would be a good practice to include the ACE designation in the Notice of Privacy Practice. This puts patients on notice that an ACE is in place. The ACE designation documentation must be retained for six years.

An example of an ACE would be a health system that owns its own hospital, owns a specialty medical group, and owns a nursing home facility. Assuming the health system owns at least five percent of the hospital, medical group practice and nursing home facility, they could be considered affiliated covered entities. It is important to note that because this ACE includes various provider types, it has to accommodate HIPAA requirements that may be relevant for only one of the affiliated covered entities.

Benefits of affiliated covered entities

There are many benefits that can come from designating multiple covered entities as an ACE,



- All covered entities within the ACE can use one standard Notice of Privacy Practices;
- An ACE can use one set of policies and procedures for all entities within the ACE;
- One Privacy Officer can serve as the Privacy Officer for the entire ACE;
- One Security Officer can be named for the entire ACE;
- The organizations within the ACE can utilize common training;
- The ACE can execute one Business Associate Agreement for contracting with a common vendor.

Important tips to keep in mind

Designating an ACE can reduce an organization's administrative burden. However, there are some important things to keep in mind when designating an ACE.

First, each designee within the ACE must be a covered entity. If the parent company of the operating companies or providers is not a covered entity it cannot be part of the ACE. Accordingly, if the parent company will have access to PHI, it must execute a business associate agreement with the ACE outlining how it will use and/or disclose PHI on behalf of the ACE.

Secondly, the ACE must have a process for maintaining the current HIPAA documentation of all members. Furthermore, there should be a process for reviewing, updating, and communicating changes to all members.

Finally, members of the ACE can be held jointly and severally liable for HIPAA violations by other members. Meaning, one member can be held liable for the HIPAA violations of another member. Therefore, it is prudent for ACE members to consider entering into indemnification agreements. These could be included in the formal documentation required for ACE formation.

In summary, affiliated covered entities are a crafty way of limiting the HIPAA administrative burden for organizations under common control or ownership. However, an ACE does not fit the needs or structure of every multi-entity organization. In future whitepapers, hybrid entities and organized healthcare arrangements will be analyzed. These types of organizational arrangements have unique benefits which also can reduce the HIPAA administrative burden.



About the Author:

Adam Bullian brings years of regulatory compliance experience in healthcare and HIPAA. He has assisted organizations in creating compliance programs, developing lobbying strategies, and workforce training programs. His commitment to healthcare issues has been apparent throughout his career; from being involved in the earliest state implementation efforts of the Affordable Care Act, to the founding of a non-affiliated political action committee. He holds a Bachelor's Degree in History and Political Science from West Virginia University, and a Juris Doctorate Degree from the West Virginia University College of Law.

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