

ASPR TRACIE Technical Assistance Request

Request Receipt Date (by ASPR TRACIE): 29 November 2021

Response Date: 9 December 2021

Type of TA Request: Complex

Request:

ASPR TRACIE received a request asking if healthcare coalitions can be considered a business associate under the Health Insurance Portability and Accountability Act (HIPAA). This healthcare coalition member noted that their coalition performs preparedness and response activities in conjunction with hospitals and other healthcare entities in their jurisdiction.

Response:

The ASPR TRACIE Team reached out to Subject Matter Experts at the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) for a response. HHS OCR provided the following response:

The HIPAA Privacy Rule (45 CFR Part 160 and Part 164, Subparts A and E) applies to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA. Collectively, these entities are referred to as covered entities.

In general, a business associate is a person or organization, other than a member of a covered entity's workforce, that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. Business associate functions or activities on behalf of a covered entity include claims processing, data analysis, utilization review, and billing.

When a covered entity uses a contractor or other non-workforce member to perform business associate services or activities, the Privacy Rule requires that the covered entity include certain protections for the information in a business associate agreement. In the business associate contract, a covered entity must impose specified written safeguards on the individually identifiable health information used or disclosed by its business associates. Moreover, a covered entity may not contractually authorize its business associate to make any use or disclosure of protected health information that would violate the Privacy Rule.

The definition and examples of business associates can be found at the following website: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>.

Additional information on business associate contracts can be found at the following website: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>.