



# HIPAA conduit exception

If you transmit healthcare documents on a regular basis using a provider that claims the ‘conduit exception’, then you need to understand the risks. In January 2013, the HHS announced the HIPAA Omnibus Final Rule to strengthen the privacy and security protections for health information. The Rule set new requirements for business associates (BA), and also defined the ‘conduit exception’.

The Exception expressly states in the preamble that “The conduit exception is a narrow one...” You can see from the excerpts of the Exception below that conduit does not apply to business associates that regularly transmit PHI on behalf of a covered entity (CE).

## HIPAA conduit exception<sup>1</sup>

**...The conduit exception is a narrow one and is intended to exclude only those entities providing mere courier services, such as the U.S. Postal Service or United Parcel Service and their electronic equivalents, such as internet service providers (ISPs) providing mere data transmission services.**

This distinction is important because some vendors ask their HIPAA regulated customers to select a HIPAA conduit setting inside of their messaging portal. This setting triggers the provider to take specific steps when handling PHI, including automatically deleting all messages and calls after 30 days, disabling SMS messaging, voicemail and fax images, as well as message notification emails. The conduit setting gets the provider off the BAA hook. It also means they are not HIPAA compliant.

The HIPAA privacy and security rules have very specific guidelines for storing electronic patient records. The list below summarizes the HIPAA audit requirements for both covered entities and business associates for data storage and handling:<sup>2</sup>

1. Procedures must exist for recovering documents from emergency or disastrous events.
2. Procedures exist to create and maintain exact copies of PHI.
3. Develop data backup and storage procedures.
4. Implement methods for final disposal of PHI.

It is clear that any entity that regularly exchanges PHI is not a conduit, and is subject to HIPAA rules and audits.

**Be certain that your chosen provider has data storage and recovery policies and procedures, otherwise you will be subject to fines if you are audited.**

<sup>1</sup> U.S. Department of Health and Human Services Audit Procedures; <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/index.html>

<sup>2</sup> U.S. Department of Health and Human Services Audit Procedures; <http://www.hhs.gov/ocr/privacy/hipaa/enforcement/audit/protocol.html>

## Business Associate requirements

The final Omnibus Rule also expanded the definition of a business associate to include subcontractors that create, receive, maintain or transmit PHI on behalf of another BA. The Rule further states that all business associates must sign a BAA to ensure that they, and their covered entity customers, are compliant. **No BAA means you and your business associate are not HIPAA compliant and are subject to fines.**

The definition of the business associate was expanded to include:

- Health information organizations
- E-prescribing gateways
- A person or entity that provides data transmission services for PHI exchange on behalf of a CE and requires access to such information on a routine basis
- Personal health record (PHR) vendors

## What does it all mean to you?

1. Claiming the conduit exception prevents storage of information, therefore the business associate and its covered entity client are not HIPAA compliant because no storage of transmission history means no ability to audit PHI.
2. Providers that transmit PHI are considered business associates, and therefore required to sign a BAA
3. If you don't have a BAA with a business associate you are not compliant.

Sfax requires all healthcare providers and anyone handling PHI to have a signed BAA. Contact us and we'd be delighted to provide one for you.

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