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Why is it important for a Covered Entity as defined by HIPAA - HITECH to execute BUSINESS ASSOCIATE AGREEMENTS?

If a Covered Entity contracts for services with a **BUSINESS ASSOCIATE** it must enter into a Business Associate Agreement that complies with HIPAA - HITECH requirements. (See 45 CFR § 164.502(e), 45 CFR §164.504(e), 45 CFR § 164.308 and generally, 45 CFR § 164.306)

How does a Covered Entity decide if another is a "BUSINESS ASSOCIATE" as defined by HIPAA - HITECH?

In deciding if an entity is a **BUSINESS ASSOCIATE** as defined by HIPAA - HITECH, start with HIPAA's definition of Protected Health Information (**PHI**).

PHI is defined as "individually identifiable health information" about a person which means that it is information maintained or transmitted in any form that is:

1. Health information, including demographic information, collected from the person;
2. Created or received by a health care provider, health plan, employer, or health care clearinghouse; and,
3. Relates to:
 - A. the past, present, or future physical or mental health or condition of that person;
 - B. the provision of health care to the person;
 - C. the past, present, or future payment for the provision of health care to person; and
4. Specifically identifies the person or is information that provides a reasonable basis to believe that it can be used to identify the person.

(See 45 CFR § 160.103 and note that there are some limited exceptions to this definition).

BUSINESS ASSOCIATES are defined as persons or organizations, not members of the Covered Entity's workforce, which provide services to the Covered Entity involving the use or disclosure of **PHI**. (Note, this also applies to an Organized Health Care Arrangement defined by HIPAA regulations in which the Covered Entity participates.)

Examples of Business Associate functions or activities involving the use or disclosure of **PHI** include:

- claims processing or administration,
- data analysis, processing or administration,
- utilization review,
- quality assurance,
- billing,
- benefit management,
- practice management,
- repricing,
- legal, actuarial, accounting, consulting, management, administrative, accreditation, or financial services,
- data aggregation (which means the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities) or to or for an organized health care arrangement in which the Covered Entity participates, of individually identifiable health information from such Covered Entity or arrangement, or from another business associate of such Covered Entity or arrangement, to the person.

(See 45 CFR § 160.103 and note that a Covered Entity may be a business associate of another covered entity. Also a Covered Entity participating in an organized health care arrangement does not become a business associate of other covered entities participating in such organized health care arrangement.)

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