

THE NUTS AND BOLTS OF BUSINESS ASSOCIATE AGREEMENTS

When to use a BAA and how to get one

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Nowadays, most psychologists are using business, technical or professional services provided by external entities or individuals to support their practices and increase efficiency. Telephone answering services, cloud storage providers and collections agencies are typical examples. Under the Health Insurance Portability and Accountability Act (HIPAA), you can disclose a patient's protected health information (PHI) to these "business associates"—as long as they sign a Business Associate Agreement (BAA). This article offers an overview of business associates and BAAs.

WHO IS A BUSINESS ASSOCIATE?

A business associate is an organization or person outside of your practice that handles your patients' PHI in order to provide services to you or on your behalf. For example, your practice's certified professional accountant is considered a business associate if he or she has access to your patients' identifying information, such as their full names or account numbers, that may be used for billing for services.

WHO IS NOT A BUSINESS ASSOCIATE?

Service providers that have no access to your patients' personal information are not considered a business associate, so no BAA is required. Janitorial and cleaning services would fall into this category. HIPAA also excludes the following from the business associate definition: A) private mail couriers (such as FedEx) and the U.S. Postal Service; and B) banks and credit card companies (as long as they only process patient payments for you and do not provide additional services, such as sending invoices to patients, tracking payments, etc.).

WHAT ABOUT EMAIL PROVIDERS?

The Department of Health and Human Services (HHS) has not specifically stated whether it considers email providers (e.g., Gmail) to be business associates. APA staff's analysis of HHS guidance, however, suggests that these providers would likely be considered business associates. Therefore, if you plan to use email to communicate and share PHI with your patients, we strongly recommend that you work with a service provider that is HIPAA-compliant and will sign a BAA. (See sidebar for some vendors that will sign BAAs.)

WHAT IS A BAA?

A BAA is a written contract that specifies each party's responsibilities to protect PHI that you disclose to the business associate. It sets out the uses and disclosures of PHI the business associate is permitted to make and obligates them to protect the privacy and security of patients' information. It also requires them to take other steps relating to that protection, such as notifying you of possible HIPAA violations, like data breaches.

WHY SHOULD YOU HAVE ONE?

You should have a BAA because HIPAA compliance requires it. HHS has levied large fines against health care providers who ignored this requirement and did not have an appropriate BAA with their business associates. Having a BAA also provides benefits to you and your patients. BAAs not only describe and limit the ways in which business associates are permitted to handle patients' personal information, they also obligate business associates to implement policies and procedures to protect that information. And if a business associate has a breach that exposes PHI, the BAA requires the business associate to notify you and take other steps to address the situation.

WHEN SHOULD YOU GET ONE?

Both you and the business associate should sign a BAA before starting to work together. It is strongly recommended that you research any organizations or people you want to do business with to ensure that they are also HIPAA-compliant and will sign a BAA. If you believe you are working with a business associate and you do not have a BAA, you should try to remedy the situation as soon as possible. If the business associate will not sign a BAA, you may want to consider working with a different company or vendor.

WHERE CAN I GET A BAA?

HHS has a sample BAA on its website. Many business associates may also have their own BAA that will meet HIPAA requirements. If a business associate asks you to sign their BAA, however, you should read it carefully and potentially consult with a local attorney. •

Vendors Who Will Sign a BAA

As of late 2018, the vendors listed below will sign BAAs. By providing this list we do not endorse or vouch for the compliance or quality of any of the listed companies. Psychologists are encouraged to research and speak to vendors to make their own informed decisions.

CLOUD STORAGE

Carbonite
MozyPro
Sookasa
ClearData

TEXTING

OhMD
ohmd.com

pMD
pmd.com/hipaa-compliant-messaging-products

Backline from DrFirst
drfirst.com/products/backline/secure-texting-healthcare/

EMAIL

Hushmail for Healthcare
hushmail.com/business/healthcare/hipaa-compliant-email/

PauBox
paubox.com



Almost half of the nearly **30 million people living with diabetes** in the United States experience **mental health challenges.**

You can make a difference.

Enroll in the Mental Health Provider Diabetes Education Program.

Diabetes is a growing epidemic in the United States—1 out every 11 Americans has type 1 or type 2 diabetes. Living with diabetes brings a unique set of health and emotional challenges, which can include difficulty managing the disease, physical burdens associated with diabetes, and feelings of frustration, hopelessness, and distress. A growing number of people with diabetes also experience comorbid depression, anxiety, and disordered eating.

The ADA and APA have partnered in developing a two-part continuing education program about diabetes for licensed psychologists.

This course will help you identify mental health issues associated with diabetes and how to treat them.

Benefits of completing this program include:

- American Diabetes Association professional membership
- Up to 12 CE credits
- Eligibility for listing in the **Mental Health Referral Directory**

Register online: professional.diabetes.org/mentalhealth.

February 22, 2019 in New York

This program sponsored by a grant from The Helmsley Charitable Trust



**Mental Health Provider
Diabetes Education Program**