

# Protecting Confidentiality in Healthcare Education Programs

Save to myBoK

This practice brief has been retired. It is made available for historical purposes only.

For decades, medical education programs and student affiliations have served as an important means of preparing students to move into professional roles contributing to our nation's healthcare services. The value of real world experience is evident, as individuals are guided and mentored to deal with human lives directly and indirectly after graduation. Didactic and hands-on education approaches are an immeasurably valuable combination for learning. Multiple types of academic healthcare programs are structured to include both methods of instruction, among them programs in HIM, nursing, medical doctor programs, osteopathic doctor programs, physical therapy, occupational therapy, and laboratory technology.

The high national incidence of hospital medical errors enumerated by the Institute of Medicine's November 1999 report "To Err is Human" encourages serious reflection on the importance of high-quality educational programs. Healthcare employers commonly seek recruits with demonstrated experience, but seasoned individuals are not always available due to healthcare worker shortages. Educational programs include practical experience sought by employers. The need for high-quality, meaningful educational programs cannot be overstated.

An important element of educational programs is the expectation for protection of trainee-acquired confidential information. Federal privacy regulations implemented through HIPAA in April 2003 have prompted covered entities (CEs) to re-evaluate affiliation practices and raise new concerns about organizational risk from exposing the trainee population to protected health information (PHI).

Traditionally, patient privacy rights have been protected through affiliation agreements between university or college medical education programs and healthcare practice sites. Commonly, a confidentiality statement has broadly addressed the trainee obligation in a secondary manner, placing it in the shadow of the more focused concern—physical liability protection. This brief will address HIPAA privacy and security rule interpretations related to educational program affiliations where students/trainees are exposed to PHI.

## Legal and Regulatory

### State and Federal

Prior to HIPAA, healthcare organizations/education affiliation sites have been governed by privacy guidance within state laws, healthcare licensing acts, and applicable federal regulations. Like all healthcare workers, students have been required to adhere to these laws through compliance with organizational policies, procedures, and practices on which they were based. Because many state privacy laws are more stringent than HIPAA privacy regulations, state laws preempt the privacy rule and must continue to be upheld via an organization's administrative directives, even as HIPAA requirements are added.

### HIPAA Privacy Regulations

The privacy rule reminds us approximately 180 times of the intention that CEs implement "reasonable" privacy procedures and practices. The overarching spirit of the rule is to protect privacy rights at the same time appropriate healthcare activities continue uninterrupted.

The topic of education programs is not conveniently located within the privacy and security standards. However, considered collectively, several definitions and references create comfortable and safe conditions for addressing confidentiality concerns

within educational program affiliations. These HIPAA considerations work in tandem with state and federal privacy obligations previously in place for healthcare organizations:

### 1. Trainees are part of the healthcare work force

Privacy rule definitions describe “work force” as “employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.”

### 2. Education programs are part of healthcare operations

In Section 164.501, Definitions, the privacy rule addresses training programs in the definition of “healthcare operations”: “Healthcare operations means any of the following activities of the covered entity to the extent that the activities are related to covered functions...conducting training programs in which students, trainees, or practitioners in areas of healthcare learn under supervision to practice or improve their skills as healthcare providers.”

Standard 164.508, “uses and disclosures for which an authorization is required,” further clarifies the acceptability of the use of psychotherapy notes in training programs without authorization: “Authorization required: psychotherapy notes...except: (B) Use or disclosure by the covered entity for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling.”

The December 3, 2002, Privacy Guidance similarly reiterates the expectation of PHI-sharing with students and trainees when addressing minimum necessary applicability to training programs. It states that “Covered entities can shape their policies and procedures for minimum necessary uses and disclosure to permit medical trainees’ access to patients’ medical information, including entire medical records.”

### 3. Most training program relationships do not require business associate agreements

From stated provisions, it can also be concluded that when students are considered part of the work force, compliance with the business associate standards is not required. The privacy rule defines a business associate as “with respect to a covered entity, a person who, on behalf of such covered entity or of an organized healthcare arrangement...but other than in the capacity of a member of the work force...performs or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information...” The absence of a business associate agreement indicates the work force definition applies.

When students are directly supervised by college or university instructors rather than staff, and the work force definition of “under the direct control of such entity” is not met, affiliate organizations should evaluate the appropriateness of a business associate agreement. When direct training responsibility is shared by academic instructors and affiliate staff, the affiliate may choose the approach best suited to the circumstances, a business associate agreement or a work force/operations approach with use of an affiliation agreement.

When students are instructed exclusively by university staff within a university teaching hospital setting, a business associate agreement may not be necessary if the hospital and university are considered components of the same organization.

### 4. Students must be trained in privacy and security relative to the policies, procedures, and practices of the affiliation site and specific trainee position

Training programs are defined in the privacy rule as part of healthcare operations. CEs are required to ensure privacy training for “each new member of the work force within a reasonable period of time after the person joins the covered entity’s work force” and for “each member of the covered entity’s work force whose functions are affected by a material change in the policies or procedures...”

In addition to recognizing security requirements nestled within the privacy rule, the security rule separately provides for “security training for all staff regarding the vulnerabilities of the health information in an entity’s possession and procedures which must be followed to ensure the protection of that information.”

As such, CEs must include all trainees in privacy and security training, including initial, broad awareness training and customized training relative to particular areas of affiliation. If signed confidentiality statements are the practice, trainees should likewise be asked to sign. (See “[Employee/Student/Volunteer Nondisclosure Agreement](#)”.) For the duration of the affiliation relationship, students should be included in periodic and update training relative to paper-based, hybrid, and electronic environments. Documentation of student training should be retained for the required six-year period, as for all training records.

## Recommendations

### General

#### *Unique User Identifiers*

Security rule section 164.312(a)(1) requires the use of unique user identifiers, an important factor within educational programs. Group passwords and employee-shared access are not supportive of a HIPAA-compliant environment where specific accesses must be individually assigned and trackable.

#### *Termination Procedures*

The student segment of the work force must not be overlooked at time of termination. Similar to out-processing steps completed for employees, severance of access to all PHI should be completed immediately at the time of student separation. In addition to discontinuing electronic and physical access, it is recommended that the student be requested to sign a termination confidentiality agreement as a reminder of the ongoing privacy expectation of position-acquired PHI (see “[Termination Nondisclosure Agreement for Employees/Students/ Volunteers](#)”).

#### *Photography*

Use of individually identifiable photographs for teaching purposes requires inclusion of policies in a CE’s notice of privacy practices and patient authorizations. These policies must be carefully developed and administered within educational programs (for more information, refer to AHIMA’s Practice Brief “Patient Photography, Videotaping, and Other Imaging (Updated)” available in the FORE Library: HIM Body of Knowledge at [www.ahima.org](http://www.ahima.org)).

#### *De-identification*

Distinction should be made in the approaches taken for exposing students to PHI at affiliation sites versus within the academic setting. Appropriate methods of de-identification for hard copy records and data scrubbing for electronic data must be applied to PHI adapted for use in classroom instruction. Some academic settings reinforce de-identification efforts by having students sign a confidentiality pledge in the event identifying information is missed in the de-identification process. Likewise, student assignments requiring transport of medical information from the affiliation site to the academic setting should involve only unidentifiable PHI.

#### *Students as Volunteers*

Students who volunteer their time in healthcare organizations would be appropriately guided by the CE, as with any volunteer assignment. As members of the work force, volunteers and students require general and customized privacy and security training for adherence to all related policies, procedures, and practices.

#### *Class Tours*

Often, educators arrange for student tours within healthcare organizations as part of the educational experience. While students are on site, incidental exposure of PHI may occur. Academic programs and affiliate organizations may mutually wish to address confidentiality expectations of students within affiliation agreements to cover these occasions.

## Academic Settings

- Create or update affiliation agreements with liability insurers and legal counsel to address intent of student compliance with all affiliate privacy and security policies and procedures, including HIPAA

- Consider addressing confidentiality expectations for student tours within affiliation agreements if appropriate
- Integrate general, pre-affiliation privacy and security training into course syllabi to pre-condition trainees to the importance of this aspect of the affiliation experience
- Encourage students to be vigilant in applying HIPAA knowledge, including accepting only unidentifiable copies of medical information for projects or samples for use in academic settings
- Anticipate an approach for use in affiliation site recruitment. Be prepared to address hesitation due to HIPAA interpretation concerns. Consider the following sample language: “We have investigated HIPAA issues. HIPAA considers training programs to be part of healthcare operations and defines ‘trainees’ as part of a covered entity’s work force. No business associate agreement is required. Our affiliation agreement continues to require student compliance and has been expanded in the area of confidentiality to encompass the new federal law. Likewise, our program pre-conditions students to the importance of confidentiality by conducting pre-affiliation general training, and we expect student involvement in all privacy and security training and operations directives throughout the affiliation”

## Affiliation Sites

- Review current and newly offered student affiliation agreements with liability insurers and legal counsel to ensure adequate coverage of student adherence to all organizational privacy and security policies, procedures, and practices
- Consider addressing confidentiality expectations for student tours within affiliation agreements if appropriate
- Ensure that privacy and security policies and procedures are applied for students as for other members of the work force:
  - train students on privacy and security, customizing the training to reflect the affiliation position
  - stress the importance of the ongoing nature of confidentiality, extending throughout the affiliation and after separation
  - Obtain signed confidentiality statements from students during orientation and training and at time of termination if this practice applies to the entire work force (see “[Employee/Student/Volunteer Nondisclosure Agreement](#),” and “[Termination Nondisclosure Agreement for Employees/ Students/Volunteers](#)”)
  - Orient students to the organization’s legal obligation to carry out enforcement policies
  - Maintain documented student training records for six years
- Ensure consistent, unique user identification assignment and monitoring practices for students with electronic access
- Complete termination or out-processing steps at time of student completion of site affiliation
- Recognize special case conditions for use of identifiable photographs in teaching programs (for more information, refer to AHIMA’s Practice Brief “Patient Photography, Videotaping, and Other Imaging (Updated)” available in the FORE Library: HIM Body of Knowledge)

## Affiliation Sites: Business Associate Approach

- Ensure the agreement covers all HIPAA-required elements (refer to AHIMA’s Practice Brief “Letters of Agreement/ Contracts (Updated)” available in the FORE Library: HIM Body of Knowledge for more information)
- Require student/trainee participation in all work force privacy and security training as a condition of the business associate agreement. Ensure customized training as appropriate

## Training Benefits All

For most CEs, becoming HIPAA compliant has required creation or enhancement of policies, procedures, and training practices to ensure operational implementation by the entire work force. By ensuring that these efforts are extended to the student population, those CEs choosing to be affiliation sites establish an equally appropriate environment for protection of PHI in educational activities. Enhancement of affiliation agreements to encompass HIPAA-related expectations enables comfortable arrangements on the part of both academic programs and affiliation sites. Review of agreement content by professional liability insurers and legal counsel of both parties should ensure bilateral concurrence.

Through participation in educational programs, healthcare organizations are contributing to the industry’s need for well-trained graduates and to the perpetuation of healthcare privacy. As members of the work force or as business associates, students

experience the applied law firsthand and live the HIPAA environment, preparing them to serve as privacy advocates within the healthcare industry as employees and practitioners.

## References

“Health Insurance Reform: Security Standards.” 45 CFR Part 164.312(a)(1). *Federal Register* 68, no. 34 (February 20, 2003). Available at <http://aspe.hhs.gov/admnsimp/>.

Hjort, Beth. “Practice Brief: Patient Photography, Videotaping, and Other Imaging (Updated).” *Journal of AHIMA* 72, no. 6 (2001): 64M-Q.

Kohn, L., J. Corrigan, and M. Donaldson, eds.; Committee on Quality of Health Care in America, Institute of Medicine. “To Err is Human: Building a Safer Health System.” Washington, DC: National Academies Press, 2000.

Leape, Lucian L. “Institute of Medicine Medical Error Figures are Not Exaggerated.” *JAMA* 284, no. 1 (2000): 95-97.

Office for Civil Rights. “Guidance Explaining Significant Aspects of the Privacy Rule.” December 3, 2002. Available at [www.hhs.gov/ocr/hipaa/privacy.html](http://www.hhs.gov/ocr/hipaa/privacy.html).

Parker, Susan. “Mining Diamonds in the Rough: How to Hire New Graduates.” *Journal of AHIMA* 74, no. 6 (2003): 58-59.

Rhodes, Harry. “Practice Brief: Letters of Agreement/Contracts (Updated).” April 2003. Available in the FORE Library: HIM Body of Knowledge at [www.ahima.org](http://www.ahima.org).

“Standards for Privacy of Individually Identifiable Health Information; Final Rule.” 45 CFR Parts 160 and 164. *Federal Register* 67, no. 157 (August 14, 2002). Available at <http://aspe.hhs.gov/admnsimp>.

## Prepared by

Beth Hjort, RHIA, CHP

## Acknowledgments

Assembly on Education (AOE)  
AOE Community of Practice Discussion Thread  
Jill Burrington-Brown, MS, RHIA  
Jill Callahan-Dennis, JD, RHIA  
Claire Dixon Lee, PhD, RHIA  
Carol Quinsey, RHIA  
Harry Rhodes, MS, RHIA, CHP  
HIPAA Community of Practice Discussion Thread  
Marsha Steele, RHIA

---

### Article citation:

Hjort, Beth. "Protecting Confidentiality in Healthcare Education Programs (AHIMA Practice Brief)." *Journal of AHIMA* 74, no.8 (September 2003): 64A-D.

---

