

March 29, 2022

New Guidance Clarifies HHS's Position on Business Associates and HIPAA Transactions

On March 22, the Department of Health and Human Services (HHS) issued [guidance letter GL-2022-03](#) regarding HIPAA-covered entities' responsibility to require that business associates comply with HIPAA's requirements related to standards for electronic transactions, code sets, unique identifiers and operating rules. The guidance is both a clarification of HHS's read of HIPAA and also a signal to covered entities to ensure compliance by their business associates.

The guidance sets forth the general rule that requirements related to standards for electronic transactions, code sets, unique identifiers and operating rules apply only to covered entities. However, the guidance also states that HIPAA requires covered entities to require their business associates to comply as well. HHS notes that, effectively, this means that when a covered entity engages a business associate to conduct all or part of a transaction for which a standard has been adopted on behalf of the covered entity, the business associate must comply with the applicable standard's requirements.

The guidance also illustrates how HHS's National Standards Group (NSG) may enforce business associate noncompliance. NSG may find a covered entity noncompliant if its business associate's action or inaction is noncompliant with an applicable HIPAA Administrative Simplification requirement. The guidance explains, for example, that if a health plan engages a business associate to transmit remittance advices to healthcare providers and the remittance advices do not use the adopted standard, the health plan may be found noncompliant for failure to conduct a transaction using the adopted standards. NSG may also find the health plan noncompliant for failure to require the business associate to comply with the applicable standard.

Would you like to receive our *Day Pitney C.H.A.T. Newsletter*? Sign up [here](#).

Authors



Alex P. Garens

Partner

Boston, MA | (617) 345-4872

agarens@daypitney.com



Alexandra MacKenzie
Pearsall

Senior Associate

Parsippany, NJ | (973) 966-8154

apearsall@daypitney.com



Erin Magennis Healy

Partner

Parsippany, NJ | (973) 966-8041

ehealy@daypitney.com



John F. Kaschak

Associate

Parsippany, NJ | (973) 966-8034

jkaschak@daypitney.com



Kritika Bharadwaj

Partner

New York, NY | (212) 297-2477

kbharadwaj@daypitney.com



Mindy S. Tompkins

Partner

Hartford, CT | (860) 275-0139

mtompkins@daypitney.com



Richard D. Harris

Partner

Hartford, CT | (860) 275-0294

New Haven, CT | (203) 752-5094

rdharris@daypitney.com



Susan R. Huntington

Partner

Hartford, CT | (860) 275-0168

Washington, D.C. | (202) 218-3909

shuntington@daypitney.com



Thomas A. Zalewski

Partner

Parsippany, NJ | (973) 966-8115

tzalewski@daypitney.com



William J. Roberts

Partner

Hartford, CT | (860) 275-0184

wroberts@daypitney.com