

Health Information Compliance Alert

Reader Questions: My Lawyer Said What?

Question: Our office often provides patients' protected health information to our legal representatives. Should we track that disclosure? Do our lawyers need to track any disclosures of PHI that they make?

Answer: "The answer is most likely no," according to experts, as most disclosures are for "three major reasons: treatment purposes, payment purposes or healthcare operations disclosures." Those are not subject to accounting, he says, because disclosure to lawyers is most often protected by a business associate agreement (BAA).

However, **Rosati** notes that the attorneys' obligations to "track the disclosures they make is an open question that is subject to huge debate right now" as the regulation's definition leaves room for interpretation.

In a letter sent to Office for Civil Rights Director **Richard Campanelli**, Rosati reasons that "only disclosures that are made by a lawyer other than those relating to legal representation and that are not otherwise excluded (such as wrongful disclosures) [should] be tracked for accounting to the individual."

The Bottom Line: Once your legal representation signs a BAA, any disclosures you make to them are covered by the regulation. However, if lawyers wrongfully disclose protected health information, that disclosure must be accounted for.