

Health Information Compliance Alert

Reader Questions: Who Signs Whose BAA?

Question: We have decided to use a clearinghouse for our transactions. The company we've chosen has submitted a business associate agreement (BAA) for us to sign. Do we, as a covered entity, need to sign this agreement, or should we submit a BAA to them?

Nebraska Subscriber

Answer: "This is an enormous problem, and there is no right answer," explains **Kirk Nahra**, an attorney with **Wiley Rein & Fielding** in Washington, DC. However, "your obligation is to make sure the right things are in the contract," he adds.

This focus on content is important because the "business associate agreement binds both parties," says attorney **Kevin Troutman** of New Orleans-based **Fisher & Phillips**.

Therefore, both your organization and your business associate must "negotiate until you reach a point where you feel the agreement covers everything and is fair to both sides," Troutman suggests.

The bottom line: Most of your business associates will have the minimum necessary information in their contracts. Make sure that you, as the customer, hammer out an agreement catered to your facility, Troutman advises.

However, no matter who initiates the contract, "if it is complete and has what the company cares about, then it's fine to sign it," Nahra asserts.