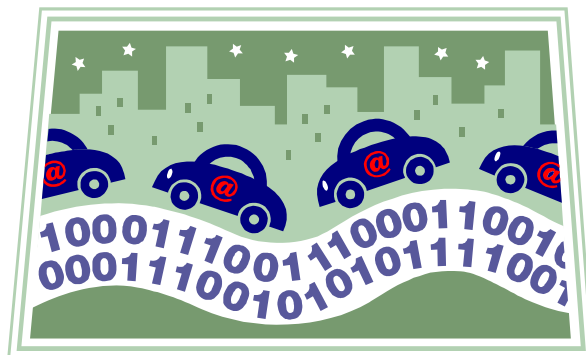


# Centers for Medicare & Medicaid Services

## AM I A COVERED ENTITY? ...

*... And Does the Transactions and Code Sets Rule  
Apply to Me?*



December 2002

# VOLUME 2, MAP 1

## AM I A COVERED ENTITY PROVIDER?

### AND DOES THE TRANSACTIONS AND CODE SETS RULE APPLY TO ME?

#### INTRODUCTION

This paper from the Centers for Medicare and Medicaid Services (CMS) explores the issues involved in determining whether you are covered by HIPAA and the requirements for covered standard transactions. If you are covered by HIPAA you are referred to as a “covered entity”. The paper provides guidelines to assist you in drawing your HIPAA boundaries, determining when HIPAA compliance is mandatory, when is it voluntary, and the importance of documenting your decision. Take the “test” to determine if you are a covered provider.

**TIP:** It is important for you to know whether or not you are a covered entity, and equally important, what is the covered entity status of the health plans and clearinghouses with which you do business.

Health care providers come in many sizes and shapes. There is no single, simple answer to the covered entity (CE) question. Each provider should “take the covered entity test” individually and draw its own conclusion. Determining your status as a CE (or not) is important because if you are a CE, all of the HIPAA rules apply to you in your provider function; if you are not a CE, then none of the HIPAA rules apply to you (although you may voluntarily adopt them).

A covered entity under HIPAA is a Health Care Provider who transmits any health care information in electronic form in connection with a covered transaction; a Health Plan (e.g., payer, insurer); or a Health Care Clearinghouse. If covered, you must analyze your business processes and determine the best course of action toward compliance.

#### Covered Entities

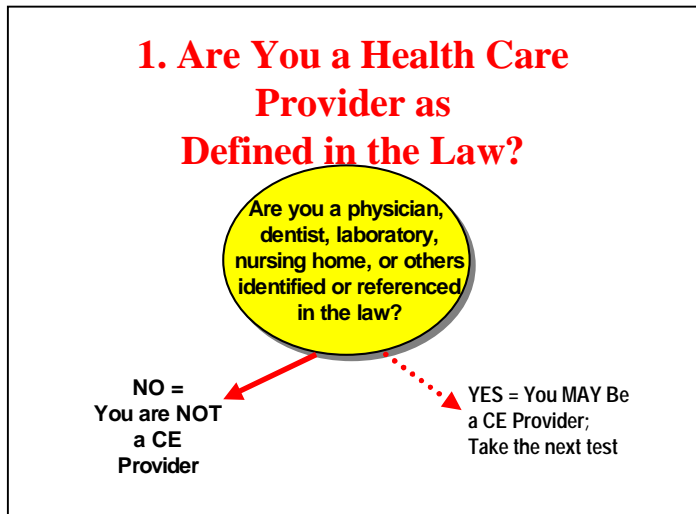
- Health Plan
  - Health Care Clearinghouse
  - Health Care Provider
- 
- Any Covered Entity may hire a Business Associate to meet the requirements of compliance

## HEALTH CARE PROVIDERS SHOULD TAKE THE “ARE YOU COVERED ENTITY PROVIDER” TEST

Health care practitioners such as physicians, dentists, hospitals, laboratories, nursing homes, ambulance companies, pharmacies, and others are covered entities as defined in the Transactions and Code Sets Rule<sup>1</sup>. If you are an atypical provider and are uncertain whether you are a covered entity, contact CMS at 1-866-282-0659.

**YES:** If you answered, “yes” keep going with the test.

**NO:** If you answered “no” – STOP! You are likely NOT covered.



## 2. Do You Perform the Provider Functions Described in the Law?

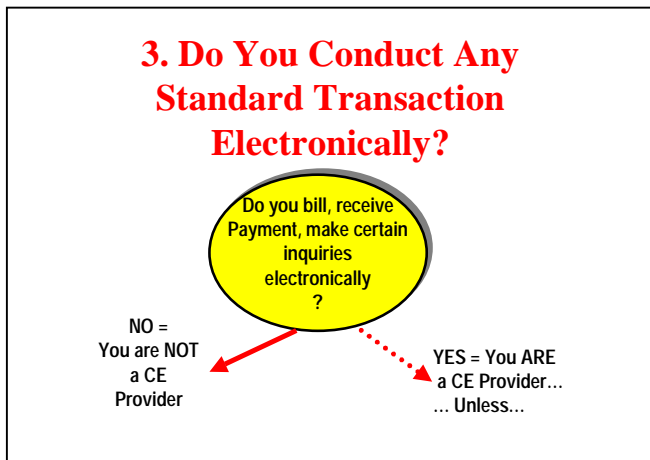


If you are a health care provider as defined above, do you furnish or provide, bill for, or receive payment for health care services? If yes, you may be subject to HIPAA, but there are more steps in the test.

**YES:** If you answered, “yes” keep going with the test

**NO:** If you answered “no” – STOP! You are likely NOT covered.

<sup>1</sup> Sections 1861(s) and 1861(u) of Social Security Act define provider for purpose of HIPAA. See [http://www.ssa.gov/OP\\_Home/ssact/title18/1861.htm](http://www.ssa.gov/OP_Home/ssact/title18/1861.htm).



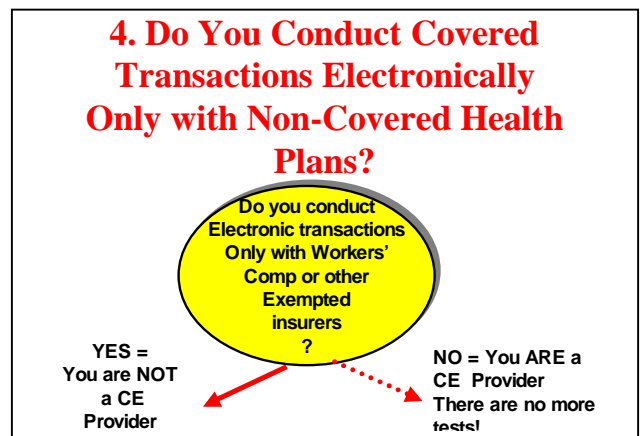
The third test is critical to determine the CE status for the provider. HIPAA standardizes a set of transactions and associated code sets. If you conduct any one of the transactions covered by HIPAA electronically, you are a covered entity under HIPAA. Electronic media include: Direct Data Entry, Internet-enabled transmission, diskettes, tapes, CDs, and electronic data interchange (EDI). If you only conduct these transactions non electronically, i.e., via paper, fax

machine using paper (rather than faxing from a computer), telephone (voice), or automated voice response system, then you are not covered.

**YES:** If you answered “yes to question 3, you are likely a covered entity unless the only partner you conduct these transactions with is not a covered health plan (question 4).

**NO:** If you answered “no” – STOP! You are likely NOT covered.

If you are a CE, then all HIPAA requirements relating to providers will apply to you.



**TIP:** HIPAA does not require you to perform all standardized transactions electronically, however, any covered transactions you do conduct electronically must now be in the HIPAA standardized format.

The transactions conducted by providers that are currently regulated by HIPAA (more are on the way) are<sup>2</sup>

- Claims (institutional, professional, dental, and pharmacy) or equivalent Encounters
- Payment or Remittance Advice
- Eligibility inquiry and response
- Claim status inquiry and response
- Referral Authorization and response

<sup>2</sup> See Part II, 45 CFR Section 160.103.

**Attention Medicare Providers:** Starting October 16, 2003 all providers who bill Medicare will have to do so in the new standardized HIPAA format. However, if you are a small provider as defined by Medicare, you will be permitted to continue submitting paper transactions after this deadline. Medicare defines a “small provider” as a supplier of services having fewer than 25 full-time equivalent employees, or a physician, practitioner, facility, or supplier (other than a provider of services) with fewer than ten full-time equivalent employees. Stay tuned to your Medicare provider bulletins for more information.

**TIP:** Still need help determining if you are a covered health care provider?  
Try our Covered Entity Decision Tool located at:  
<http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp>.

### **WHICH HEALTH PLANS ARE COVERED ENTITIES AND WHICH ARE NOT?**

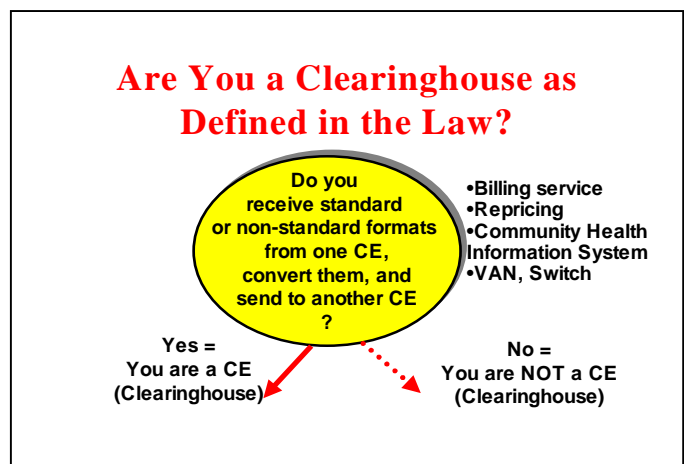
It is important for the provider to know which health plans it conducts transactions with are covered entities and which are not. If the organization is not a CE, then HIPAA will not apply to this business relationship. Some health plans are named in the law, e.g., Medicare, Medicaid, and Indian Health Service. Some health plan organizations are explicitly exempt, e.g., Workers’ Compensation programs, Property and Casualty insurance plans, and prison health systems. Many health plans fall into a catch-all covered entity category because they perform the functions of a health plan, e.g., it pays for medical care. Every provider needs to know the covered entity status of all health plans they do business with.

Health plans that are exempt can still opt to implement HIPAA standards because of the benefits and efficiencies associated with standardization.

**TIP:** Bottom Line – If you are unclear whether your payers are covered entities or not, call them and ask them!

### **WHAT ABOUT CLEARINGHOUSES AND BUSINESS ASSOCIATES?**

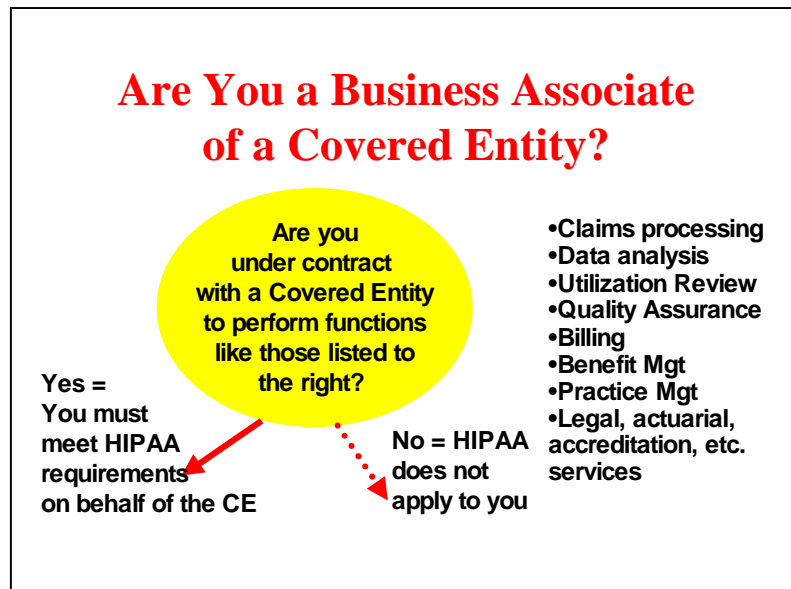
There is a third covered entity under HIPAA with which providers may contract – the Clearinghouse. Providers and health plans can become compliant by using a clearinghouse. A healthcare clearinghouse is an entity that processes or facilitates the processing of information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction, or that receives a standard transaction from another entity and processes or facilitates the processing of that information into nonstandard format or nonstandard



data content for a receiving entity.

**TIP:** Your Third Party Biller (TPB) may not refer to themselves as a “clearinghouse,” however, under HIPAA they may be considered one depending upon the nature of their work.

## **BUSINESS ASSOCIATES OF COVERED ENTITIES**



Both providers and health plans (and even clearinghouses) can contract with a variety of business associates<sup>3</sup> to perform key business functions. A “business associate” is one who conducts an activity involving the use or disclosure of protected health information on behalf of a covered entity.

Since the business associate is an extension of the covered entity, the covered entity must ensure that its business

associates adhere to the HIPAA Administrative Simplification Rules.

The final Privacy Rule requires covered entities to enter into Business Associate Agreements with certain contractors. Typical business associates of providers are clearinghouses, billing services, marketing firms, and legal counsel.

This paper has presented some but not all of the questions providers should be considering. Providers should complete their analysis of their HIPAA status, determine the actions they will take, and move forward with implementation. Contact CMS by logging onto our website at <http://www.cms.hhs.gov/>, e-mailing us at [askhipaa@cms.hhs.gov](mailto:askhipaa@cms.hhs.gov), or calling us at 1-866-282-0659. Or, contact HHS’ Office for Civil Rights for privacy questions by logging onto <http://www.hhs.gov/ocr/hipaa/>, e-mailing them at [OCRPrivacy@hhs.gov](mailto:OCRPrivacy@hhs.gov) or calling them at 1-866-627-7748.

<sup>3</sup> See Part II, 45 CFR Section 160.103 located at <http://www.hhs.gov/ocr/hipaa/privrulepd.pdf> for definition of business associate