

BA / Not a BA Checklist

To maintain compliance with the federal HIPAA regulations when disclosing protected health information (PHI), covered entities (CEs) need to know when the person or entity they are disclosing to is their “business associate”(BA) and get written certain “assurances”(a contract, a memorandum of understanding) from each BA . This checklist is designed to help you do this.

For each potential disclosure of protected health information (PHI)to a third party, ask the questions below until you reach “not a BA”, “BA” or “BA / Workforce”.

Is the disclosure to someone else that will be caring for the patient?	Yes	Not a BA		
No				
Is the disclosure to a Health Plan or Government Agency to determine eligibility or enrollment?	Yes	Not a BA		
No				
Is the disclosure to any third party to get payment for services provided to the patient?	Yes	Not a BA		
No				
Is the disclosure required by law?	Yes	Not a BA		
No				
Is the disclosure pursuant to a written authorization from the patient?	Yes	Not a BA		
No				
Is the disclosure to a Personal Health Record (PHR) Vendor?	Yes	Is the PHR offered on your behalf or as part of the your medical record?	Yes	BA
No		No		
		Not a BA		
Is the disclosure via a Health Information Organization, e-prescribing gateway, or other data transmission service?	Yes	Will the vendor have access to the PHI on a “routine” basis as part of its scope of work?	Yes	BA
No		No		
		Not a BA		

The “Workforce” alternative -

When a potential BA is going to be working on the Covered Entity’s premises, following CE policies and procedures, or subject to direction and instructions from the CE, another alternative is to treat the BA and BA employees as members of the CE “Workforce”. No written “assurances” are then required, but workforce members must be trained by the CE.

**BA = Written Contract
Workforce = Training**

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Is the disclosure to a Health Plan sponsor for the purpose of obtaining premium bids or terminating the health plan coverage?	Yes	Not a BA (**disclosure must be limited to summary plan information)		
No				
Will the third party be performing any of the following services for you: Legal Actuarial Accounting Consulting Data aggregation Management Administration Accreditation Financial	Yes	Does delivery of the service require access to PHI?	Yes	BA/Workforce
No		No Not a BA		
Will the third party create, or receive PHI while performing a function “on behalf” of the CE or OHCA ?	Yes	BA / Workforce		
No				
Will the third party maintain or transmit PHI while performing a function “on behalf” of the CE or OHCA ?	Yes	Will the third party’s exposure to the PHI be persistent?	Yes	BA (data warehouse, Iron Mountain)
No		No Not a BA (“mere conduit”, e.g. ISP, Fed Ex, phone company)		
Would disclosure of PHI to the third party be accidental or inadvertent?	Yes	Not a BA (Janitors, copy repair people, etc.)		
No				
Is the disclosure your duty as part of an Organized Health Care Arrangement?	Yes	Not a BA		