

Temporary Staff as Workforce or Business Associates? A Q&A for Hospitals

Under the HIPAA privacy rule, if a hospital hires a temporary staffing agency, for example, to provide temporary nurses, is a business associate agreement required with each individual temporary staff person or with the staffing agency?

Under the HIPAA privacy rule, there are two different ways to comply with respect to temporary staff. First, a hospital may treat temporary staff as part of the hospital's workforce. The privacy rule defines workforce as including "persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity." Temporary staff are subject to the hospital's policies and procedures, and under the control of the hospital, when working on the hospital's premises. Therefore, they may be considered part of the hospital's workforce and a business associate agreement with temporary staff would not be required. The hospital would be required to train such temporary staff, however, regarding the hospital's HIPAA policies and procedures. Temporary staff must be prohibited from disclosing protected health information to the temporary staff agency.

As an alternative, if the hospital desires to contract out its HIPAA training of temporary staff, including training regarding its policies and procedures, or if the temporary staffing agency will receive protected health information, the hospital may treat temporary staff as business associates of the hospital, rather than as part of its workforce. In such case, the hospital would be required to enter into a business associate agreement with the temporary staffing agency. An agreement with each temporary staff person would not be required. In its business associate agreement with the agency, the hospital can require that the agency inform the temporary staff of their obligations regarding protected health information. Nevertheless, it is a good idea for hospitals with temporary staff that routinely access, use or disclose protected health information to provide some basic training to such staff regarding relevant hospital policies and procedures.