

When a covered entity, such as a doctor, uses a certified Telecommunications Relay Service to contact patients with hearing or speech impairments, is the Relay Service a business associate of the doctor?

Answer:

Under the Privacy Rule, a covered entity such as a doctor can contact a patient using a Telecommunications Relay Service (TRS), without the need for a business associate contract with the TRS. The sharing of protected health information between a covered health care provider and a patient through the TRS is permitted by the Privacy Rule under 45 C.F.R. 164.510(b), and a business associate contract is not required in these circumstances.

By way of background, the TRS enables telephone communication for people with hearing or speech impairments by using a communications assistant (CA) who transliterates conversations. The TRS CA relays information, which may include protected health information, between a text telephone (also known as “TTY”) user and another person communicating via voice. The CA must communicate what is said by the parties without alteration. The Federal Communications Commission (FCC), pursuant to the Americans with Disabilities Act (ADA), certifies all State TRS programs, which in turn contract with one or more TRS providers. All TRS providers must comply with standards for operators established by the FCC pursuant to Title IV of the ADA, including protecting the privacy of all relayed communications. The TRS is a public service that is available without cost to all persons and businesses, none of whom need to employ, contract with or otherwise establish business relationships with the TRS. Thus, when performing these services, the TRS is not acting for or on behalf of the covered entity and is not the covered entity’s business associate.

As permitted by [45 C.F.R. 164.510\(b\)](#), protected health information can be shared during a telephone communication using the TRS because the individual will have an opportunity to agree or object to disclosures of protected health information to the CA. The following typical scenarios describe how this opportunity can be provided in the course of, or prior to, using the TRS:

- Where the individual initiates the call through the TRS, it is reasonable for a covered health care provider to infer from these circumstances that the individual has identified the CA as involved in the individual’s care, and that the individual does not object to the disclosure. See [45 C.F.R. 164.510\(b\)\(2\)\(iii\)](#).
- Where the need for use of the TRS becomes apparent prior to a call being placed, such as when, during an office visit, the individual gives the health care provider his or her TTY number, the opportunity to agree or object to the TRS can be provided at that time. See [45 C.F.R. 164.510\(b\)\(2\)](#).

- Even where the covered health care provider initiates a call using the TRS without the individual's prior agreement, the individual will have an opportunity to agree or object at the outset of the call. Typically, the CA will begin the call by identifying the service to the party called, and if that party is unfamiliar with the TRS, the CA will briefly explain how the service operates. This initial contact by the CA provides the individual with the opportunity to agree to the disclosure by proceeding with the call using the TRS, or to object by terminating the call. See 45 C.F.R. 164.510(b)(2)(i)-(ii).

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