

Frequently Asked Questions: Health Insurance Portability and Accountability Act (HIPAA) ACGME

Question	Answer
Is the ACGME a Business Associate (BA)? Aren't accrediting agencies exempt from the HIPAA requirements?	<p>The HIPAA Privacy Rule explicitly states that accrediting entities with which a covered entity shares protected health information (PHI) are Business Associates under the rule and must comply with its requirements.</p> <p>See http://www.hhs.gov/ocr/privacy/hipaa/faq/business_associates/238.html for more information.</p>
How exactly does a Sponsoring Institution share PHI with the ACGME?	<p>A Sponsoring Institution may share PHI with the ACGME in a few different ways:</p> <ol style="list-style-type: none"> a. When the ACGME conducts a site visit, whether for accreditation purposes (including complaint investigation) or as part of the Clinical Learning Environment Review (CLER) Program, Field Representatives have access to PHI. Depending on the purpose and scope of the visit, Field Representatives will be in patient areas and will be exposed to PHI (for example, while observing end-of-shift patient transition). Other times, program-related personnel will share PHI with the Field Representative that they believe is relevant to the visit. Field Representatives do not record any PHI except in the very unlikely event that it is relevant to the resulting report. b. Programs in specialties or subspecialties for which residents/fellows are required to submit Case Logs in the ACGME Case Log System share electronic PHI (ePHI) through the system. c. On occasion, the ACGME will receive PHI from a program in or in response to a complaint submitted to the ACGME. This PHI may be ePHI depending on the format the complainant and/or program uses to communicate with the ACGME.
What institutions are required to enter into an ACGME Business Associate Agreement (BAA)?	<p>The ACGME is required to enter into a BAA with all Sponsoring Institutions that are covered entities, as that term is defined by HIPAA. Each new Sponsoring Institution applying for Initial Accreditation is required to complete a BAA as part of its application process through the Accreditation Data System (ADS). A BAA template is also on the ACGME website at www.acgme.org/about/legal/commitment-to-data-privacy/. This BAA covers the receipt of PHI by the ACGME from the Sponsoring Institution and all of its clinical and participating sites.</p> <p>Typically, there is no need for the ACGME to enter into a separate BAA with a specific clinical site, as the disclosure of PHI to the ACGME is controlled by the BAA between the ACGME and the clinical site's Sponsoring Institution. However, in the event a clinical site's Sponsoring</p>

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	Institution is not a covered entity, the clinical site may find that a Clinical Site Business Associate Agreement is required to ensure that the ACGME has full access to program-related information for accreditation purposes. A Clinical Site Business Associate Agreement template can be found on the ACGME website at www.acgme.org/about/legal/commitment-to-data-privacy/ .
Who should execute the BAA on behalf of the Sponsoring Institution?	It is up to the covered entity to determine who is authorized to bind the covered entity to the ACGME BAA; the ACGME does not mandate who the signatory must be.
What happens if the Sponsoring Institution does not execute an ACGME BAA?	The ACGME has always required that Sponsoring Institutions ensure the ACGME has access to all information it may deem necessary for accreditation. If the lack of a BAA from a Sponsoring Institution or a clinical site impedes the ACGME's ability to access information and therefore its ability to perform its accreditation function, the appropriate Review Committee will consider the extent and nature of the impediment and determine the course of action to take, up to and including adverse accreditation action, just as it would if there were an impediment for reasons unrelated to HIPAA compliance.
Is PHI submitted to the ACGME electronically?	Yes. Some of the information transmitted through the Case Log System is PHI. In addition, on rare occasion, complaints and responses to complaints submitted all or in part by email contain PHI.
If, in its role as a Sponsoring Institution, an organization is not a covered entity, does the organization need to sign a BAA with the ACGME?	No. A BAA is not required with an entity that is not a covered entity. However, it is the Sponsoring Institution's obligation to ensure that the ACGME (including its CLER Program) has the necessary access to perform its accreditation services. If ACGME personnel are not provided with the necessary access, the accreditation status of the Sponsoring Institution and its programs may be affected.
Will the ACGME need access to the ACGME BAA during every site visit for every program?	No. ACGME Field Representatives will verify the existence of a valid BAA prior to arriving on site.
What will happen if, because of HIPAA, the ACGME is refused access to information that it deems necessary to perform its accreditation function during a site visit or otherwise?	<p>The ACGME has always required Sponsoring Institutions to ensure that the ACGME has access to program-related information under the oversight of the Sponsoring Institution and its clinical sites, subject to the confidentiality and other provisions of ACGME Policies and Procedures, in order to conduct its accreditation services. Although HIPAA has introduced additional protections to a sponsoring Institution regarding this access, it has not changed the Sponsoring Institution's obligation to provide access.</p> <p>If the ability to access information needed to appropriately perform the accreditation function is impeded for any reason during a site visit or otherwise, the ACGME will consider the extent and nature of the impediment, and will determine the course of action to take, up to and including adverse accreditation action, just as it would if there were an impediment for reasons unrelated to HIPAA compliance.</p>

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Must a covered entity use the ACGME BAA, or can it use its own?	It is important that the ACGME remain as consistent as possible while interacting with Sponsoring Institutions across the country. Therefore, the ACGME will only use its own BAA.
If a Sponsoring Institution or participating site has signed BAAs with the ACGME in the past, how do institutional personnel know if they need to sign another one?	<p>If the Sponsoring Institution has executed one of the following documents or sets of documents, there is no need to sign a new BAA:</p> <ul style="list-style-type: none"> • ACGME Business Associate Agreement Template dated 4/2019, or the ACGME Business Associate Agreement Template Clinical Site dated 4/2019 • ACGME Business Associate Agreement Template dated 8/1/2014, or the ACGME Business Associate Agreement Template Clinical Site 8/1/2014 • ACGME Amended BAA 2013 • ACGME Amended BAA 2007 and the ACGME Final Rule Amendment • ACGME Amended BAA 2005 and the ACGME Final Rule amendment <p>If an institution is unsure which document it has executed, it can execute a new BAA to replace whatever existing BAA may be in place. Access the most current BAA on the ACGME website at www.acgme.org/about/legal/commitment-to-data-privacy/.</p>
Whom should institutions contact with additional questions?	Email additional questions to hipaa@acgme.org . Responses will be sent as soon as possible.