

**Complex Health Care Organization Relationships and the Impact of OCR HIPAA Enforcement Actions**

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**Goals**

- A little bit of teaching
- A lot of analyzing
- Knowledge transfer of analyzing privacy risk in complex legal relationships

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**What we will review**

1. Organized Health Care Arrangements (OHCA's) and Hybrid Entities may exist in your organization
2. Complex organizational changes may impact privacy investigations, breach liability responsibilities and the enforcement actions of the OCR
3. Plan to review and revise HIPAA strategies to more effectively address the complexities encountered by complex health care organizations

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### OHCA

1. What is an Organized Health Care Arrangement (OHCA)?
2. How may an OHCA impact the way an organization:
  - a) Responds to a privacy complaint?
  - b) Conducts an investigation?
  - c) Responds to an OCR inquiry?
  - d) Is impacted by an OCR enforcement action?

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### OHCA: 42 CFR 160.103

Organized health care arrangement means:

- (1) A clinically integrated care setting in which individuals typically receive health care from more than one health care provider;
- (2) An organized system of health care in which more than one covered entity participates and in which the participating covered entities: (i) Hold themselves out to the public as participating in a joint arrangement; and (ii) Participate in joint activities that include at least one of the following:
  - (A) Utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities or by a third party on their behalf;
  - (B) Quality assessment and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or
  - (C) Payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement and if protected health information created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk.
- (3) A group health plan and a health insurance issuer or HMO with respect to such group health plan, but only with respect to protected health information created or received by such health insurance issuer or HMO that relates to individuals who are or who have been participants or beneficiaries in such group health plan;
- (4) A group health plan and one or more other group health plans each of which are maintained by the same plan sponsor; or
- (5) The group health plans described in paragraph (4) of this definition and health insurance issuers or HMOs with respect to such group health plans, but only with respect to protected health information created or received by such health insurance issuers or HMOs that relates to individuals who are or have been participants or beneficiaries in any of such group health plans.

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### FOCUSED: OHCA

Organized health care arrangement means:

- (1) A clinically integrated care setting in which individuals typically receive health care from more than one health care provider;
- (2) An organized system of health care in which more than one covered entity participates and in which the participating covered entities: (i) Hold themselves out to the public as participating in a joint arrangement; and (ii) Participate in joint activities that include at least one of the following:
  - (A) Utilization review;
  - (B) Quality assessment and improvement activities; or
  - (C) Payment activities, if the financial risk for delivering health care is shared, in part or in whole....
- (3) Third parties (ACO, APO)

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### Case Study: OCHA between hospital and medical staff

A patient submits a "HIPAA Complaint" to the hospital privacy officer because a physician (not employed by the hospital) shares the patient's HIV status in the presence of visitors. These visitors were church members that brought the patient to the Emergency Department and the patient reported that she did not want her PHI disclosed to them. The patient also indicated that she is filing a complaint with the OCR.

1. How may an OHCA impact how the privacy officer responds?
2. How may an OHCA impact the investigation?
3. How may an OHCA impact the privacy officer's response to the OCR?
4. How may an OHCA impact any enforcement actions that may be issued by the OCR?

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### Hybrid Entity

1. What is a Hybrid Entity?
2. What are the advantages and disadvantages of a Hybrid Entity designation?
3. How does the Hybrid Entity designation impact the way an organization:
  - a) Responds to a privacy complaint?
  - b) Conducts an investigation?
  - c) Responds to an OCR inquiry?
  - d) Is impacted by an OCR enforcement action?

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### Hybrid Entity: 42 CFR 160.103

- Hybrid entity means a single legal entity:
  - (1) That is a covered entity;
  - (2) Whose business activities include both covered and noncovered functions; and
  - (3) That designates health care components in accordance with paragraph § 164.105(a)(2)(iii)(D).

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## Case Study: Hybrid Entity

A patient, who is also a university medical student, submits a "HIPAA Complaint" to the university hospital privacy officer. The patient reported that she resides on campus in university housing and her roommate is also a medical student. Her roommate expressed her concern and support regarding the patient's recent visit (suicide attempt) at the university hospital emergency department ("ED"). The patient noted that her roommate knew of her seeking mental health services from a university managed counseling service. The patient reported that she never disclosed her medical information to her roommate. The patient also reported that her roommate's boyfriend works as an IT technician for a company that provides IT services for both the hospital and the university. The patient also reported that she is filing a complaint with the OCR.

1. What are the opportunities for a Hybrid Entity?
2. How may a Hybrid Entity designation impact how the privacy officer responds?
3. How may a Hybrid Entity designation impact the investigation?
4. How may a Hybrid Entity designation impact the privacy officer's response to the OCR?
5. How may a Hybrid Entity designation impact any enforcement actions that may be issued by the OCR?

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## Questions?

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