

MEMO: Telecommunication Relay Service and the Health Insurance Portability and Accountability Act (“HIPAA”)

Sorenson Communications, LLC and CaptionCall LLC provide video relay service (“VRS”) and internet protocol captioned telephone service (“IP CTS”), respectively. Both VRS and IP CTS are forms of telecommunication relay service (“TRS”) provided pursuant to the Americans with Disabilities Act (“ADA”). TRS services are regulated by the Federal Communications Commission (“FCC”).

The Health Insurance Portability and Accountability Act (“HIPAA”), which is enforced and regulated by the U.S. Department of Health and Human Services (“HHS”), protects personal health information (“PHI”). From time to time, covered entities under HIPAA ask whether a business associate agreement (“BAA”) is necessary in order to use TRS to communicate with a patient.

To address this question, the FCC and HHS have each issued notices stating that sharing PHI between a health care provider and a patient using TRS is permitted under the Privacy Rule of HIPAA and a BAA is not required in these circumstances.

The FCC’s Public Notice indicates that the use of relay services do not violate HIPAA’s Privacy Rule (https://apps.fcc.gov/edocs_public/attachmatch/DA-04-1716A1.pdf). The FCC concluded that communications assistants, such as American Sign Language interpreters, for authorized VRS providers are simply a transparent conduit between two people who communicate through disparate modes (Telecoms. Servs. for Individuals with Hearing & Speech Disabilities, & the Americans with Disabilities Act of 1990, 6 FCC Rcd. 4657 (1991)). In addition, FCC regulations require communications assistants to hold conversation contents in the strictest of confidence, just as conversations that take place over telephone lines are kept confidential (47 C.F.R. § 64.604(a)(2)). As a result, just as the Privacy Rule would not treat a traditional phone call where a covered entity discusses PHI as a disclosure to the telephone carrier’s network, it should not treat a TRS call where a covered entity discusses PHI as a disclosure to the communications assistant.

HHS issued similar guidance clarifying that communication of PHI can occur during TRS calls even though the TRS provider is neither a business associate nor a covered entity. <http://www.hhs.gov/hipaa/for-professionals/faq/500/is-a-relay-service-a-business-associate-of-a-doctor/index.html>. In this notice, HHS indicates that “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” and “when performing [TRS] services, the TRS is not acting for or on behalf of the covered entity and is not the covered entity’s business associate.”

Accordingly, because a BAA is not required, neither Sorenson nor CaptionCall enter BAAs in connection with providing TRS. If you have additional HIPAA-related questions, please contact:

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