



# Ensuring cloud service providers comply with HIPAA

**Question:** I maintain electronic health records in my private counseling practice and am considered a “covered entity” by the Health Insurance Portability and Accountability Act (HIPAA). A colleague told me that the federal government has recently issued some type of document regarding cloud computing and storage. Can you shed some light on this?

**Answer:** Your colleague is correct. On Oct. 6, the U.S. Department of Health and Human Services (HHS) issued “Guidance on HIPAA & Cloud Computing,” which can be found at [hhs.gov/hipaa/for-professionals/special-topics/cloud-computing/index.html](http://hhs.gov/hipaa/for-professionals/special-topics/cloud-computing/index.html).

What has surprised some HIPAA experts is that under this guidance, cloud service providers that only *store* encrypted electronic protected health information (in other words, they do not maintain the key to decrypt that information) are still considered to be “business associates” under HIPAA. Therefore, they are obligated to comply with HIPAA rules. Although the guidance itself is

not technically a law or rule, it would be given considerable weight in any enforcement action against a counselor or other health care provider who is a HIPAA covered entity, as well as the business associate of the provider.

What this new guidance means to you as a HIPAA covered entity is that you must ensure that any cloud service provider you use to maintain (i.e., process or store) electronic protected health information complies with HIPAA rules. To that end, you should have valid business associate contracts with such entities in which they agree to take certain steps to protect the information and notify you in the event of a breach. HHS has not specified which cloud-based service providers comply with the HIPAA regulations; the government leaves it to providers to vet the services of any cloud service providers with whom they may wish to engage.

Additional information on business associate contracts and sample agreements are available on the HHS website.



The question addressed in this column was developed from a deidentified composite of calls made to the Risk Management Helpline sponsored by the American Counseling Association. This information is presented solely for educational purposes. For specific legal advice, please consult your own local attorney. ♦

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## From the President

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I appointed the ACA Presidential Advisory Group on the Roles and Opportunities for School Counselor Educators to offer as much support as possible from ACA to our school counseling community. I appointed this group long before I attended Reach Higher or met Bill Mendoza. But as I sat in the room at the White House Convening and listened to him, I knew without a doubt that one of the first issues I was going to discuss with the advisory group at our December meeting would be invisible populations in schools

and how we can listen and offer hope through our work as counselors. Once that path is open to everyone, we will offer sustainability through inclusion.

As promised last month, I'd like to share the titles of two presidential featured sessions at the upcoming ACA 2017 Conference & Expo. I am very enthused about these two sessions: “Quelling the Fires of Academia: The Role of Counselors in Addressing Racial Tension and Violence on College Campuses,” presented by Courtland Lee, Nicole Pulliam and Dawn Norman; and

“Silence Still Equals Death: Counseling College Students on HIV, STIs and Dating,” presented by Les Kooyman and William Hight.

Want more information? See the program link for the ACA 2017 Conference at [counseling.org/conference/sanfrancisco2017/session-events-2017/education-session-tracks](http://counseling.org/conference/sanfrancisco2017/session-events-2017/education-session-tracks). Join us in San Francisco, please!

Very best,  
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