

## **LTCC Response to LTC Providers' FAQs Re: HIPAA Privacy Rules**

(Please note – All answers to the FAQs below are based only on the federal law.)

### **GENERAL:**

**Q. When is the deadline for complying with the Health Insurance Portability and Accountability Act (HIPAA) privacy rule?**

A. The privacy rule became effective on April 14, 2003.

**Q. Who is required to be trained under the privacy rule requirements?**

A. All facility employees, students and volunteers must attend the general privacy training. The Long Term Care Consortium (LTCC) has developed a 20 minute privacy training video called "Mission Confidential" to help facilities with their privacy training. The video may be purchased for a nominal fee through the American Health Care Association (AHCA) at 1-800-321-0343. In addition, employees must receive role-based training to address role specific issues relating to handling privacy.

**Q. Who will be monitoring the enforcement of the privacy rule?**

A. The U.S. Department of Health and Human Services, Office for Civil Rights (OCR) has been given the task of enforcing the privacy rule. OCR has stated that initially compliance will be enforced on a complaint basis.

**Q. Does the privacy rule require that providers furnish residents with access to oral information?**

A. **NO.** The privacy rule covers oral communications as well as paper and electronic media. However, the privacy rule only requires providers to furnish individuals with access to protected health information (PHI) about themselves that is contained in their "designated record set." This typically includes paper and/or electronic media, not oral disclosures. The privacy rule does not require providers to track oral disclosures.

**Q. If a resident requests a copy of his or her medical record as permitted by the privacy rule, is he or she required to pay for the copies?**

A. The privacy rule permits the provider to impose reasonable, cost-based fees. The fee may include only the cost of copying (including supplies and labor) and postage, if the resident requests that the copy be mailed. If the resident has agreed to receive a summary or explanation of his or her PHI, the provider may also charge a fee for preparation of the summary or explanation. The fee may not include costs associated with searching for and retrieving the requested information.

**Q. How do the privacy rule requirements for psychotherapy notes apply to long term care (LTC) facilities?**

A. Nursing facility medical records do not fall under the special provisions outlined in the privacy regulations under psychotherapy notes. The privacy rule requirements for psychotherapy notes apply to the records that psychiatrists, psychologists or psychotherapists maintain separately which describe private conversations and therapy between the professional and the patient. The records that nursing facilities maintain are different, and are a description of the treatment and medications given to the resident.

**Q. Does the privacy rule cover employer health information?**

A. HIPAA pertains only to healthcare providers, health plans and clearinghouses. Therefore, generally, the privacy regulation does not apply to the employer unless the employer maintains a self-insured health plan. However, it is considered best practice to keep employee health information confidential and separate from the employee's employment file.

**Q. Is it still permissible to receive information regarding potential admissions for preadmission assessments and evaluations?**

A. **YES.** The privacy rule allows information to be shared for the purpose of "treatment," and defines "treatment" as "the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a resident; or the referral of a resident for health care from one health care provider to another." Therefore, it is permissible to review, copy and/or fax portions of the resident's medical records to evaluate.

**Q. Under the privacy rule, is the Ombudsman still allowed to review a resident's record?**

A. **YES.** Providers are free to discuss the resident's PHI with an Ombudsman, however, if the Ombudsman requires access to the clinical record or copies of the clinical record, the resident must give his or her authorization. The Ombudsman is considered "healthcare oversight" and continues to have the right to access the resident's record as long as:

<ul style="list-style-type: none"> <li>• he/she has the permission of the resident or the resident’s legal representative;</li> <li>• the resident is unable to give consent and has no legal representative;</li> <li>• access is necessary to investigate a complaint; or</li> <li>• the resident’s legal guardian refuses permission and the Ombudsman has reasonable cause to believe that the guardian is not acting in the best interest of the resident.</li> </ul>
<p>The disclosure must be tracked in the Accounting of Disclosures log. Various states may have more stringent regulations pertaining to the Ombudsman’s rights and access so its important to review your state regulation.</p>
<p><b>Q. Are the following types of insurance covered under the privacy rule: long/short term disability, workers compensation or automobile liability that includes coverage for medical payments?</b></p>
<p><b>A. NO.</b> These types of insurance are not health plans and are not covered under HIPAA.</p>
<p><b>NOTICE OF PRIVACY PRACTICES (NPP) FOR PHI</b></p>
<p><b>Q. When does the resident have to sign the NPP?</b></p>
<p><b>A.</b> Many providers have incorporated the NPP into the admissions process. The NPP is given to the resident upon admission to the facility. If a facility has a single sheet for resident signature or a checklist to be used for the various admission processes, the acknowledgment of receipt of the NPP can be a part of the checklist. Otherwise, the acknowledgement of receipt may be a separate page, the last page of the NPP or otherwise incorporated into the NPP. Whichever method the provider chooses, the acknowledgment page is where the resident signs to acknowledge receipt.</p>
<p>If the provider cannot obtain the acknowledgement at the time of admission, then the provider must have a process in place to document the attempts that were made to obtain the signed acknowledgement and the reason that this acknowledgement could not be obtained. This may be as simple as a progress note or a note on the unsigned acknowledgment form.</p>
<p><b>Q. Are the attending physicians at the facility required to give the resident a NPP to sign?</b></p>
<p><b>A. YES.</b> As a provider, each attending physician has an obligation under the law to present the resident with a copy of their NPP when they conduct their first visit with the resident at the facility. It is the physician’s responsibility as a provider to do this and not the responsibility of the facility. The exception to this would be an organized health care arrangement (OHCA) between the provider and the physician.</p>
<p><b>Q. Is it necessary to give the NPP to residents who have been admitted prior to the privacy rule effective date of April 14, 2003?</b></p>
<p><b>A. YES.</b> OCR has clarified that residents admitted prior to the privacy rule effective date must sign a NPP. This must have been completed for all existing residents in house by April 14, 2003. The NPP should be reviewed with the resident and/or their legal representative and a signed acknowledgement of receipt obtained.</p>
<p><b>Q. Does the privacy rule require a nursing facility to obtain a new acknowledgment of receipt if the facility changes its privacy policy?</b></p>
<p><b>A. NO.</b> A covered provider with a direct treatment relationship with the resident is required to make a good faith effort to obtain an individual’s acknowledgment of receipt of the notice only at the time the facility first gives the notice to the individual—that is, at the first service delivery. For subsequent revisions to the NPP, the provider is required to post the NPP on their website if they have one, use it for all residents admitted after the effective date of the revised NPP, have it available within the facility, make it available on request to other residents or interested parties or have it posted in their facility.</p>
<p><b>Q. Does the privacy rule require its business associates (BA) to create their own NPP?</b></p>
<p><b>A. NO.</b> However, a provider must ensure through its contract with the BA that the BA’s uses and disclosures of PHI and other actions are consistent with the provider’s privacy practices as stated in their NPP.</p>
<p><b>Q. What is the provider’s obligation to its residents when they receive NPPs from insurance companies and other federal programs (such as Medicare or Medicaid)?</b></p>
<p><b>A.</b> The provider’s obligation is the same as for handling any mail received for a resident; however, providers are not obligated to keep a copy of the notice or to acknowledge receipt of the notice in the medical record.</p>
<p><b>Q. Is the facility required to post their entire NPP at the facility or may they post just a brief description of the notice?</b></p>

<p><b>A.</b> Nursing facilities are required to post their entire NPP at the facility in a clear and prominent location. The privacy rule, however, does not prescribe any specific format for the posted notice, just that it include the same information that is distributed directly to the individual. The provider may choose how they want to display the NPP. They may choose to have the NPP published in a poster version, post a copy of the NPP (all pages do not have to show, but all pages must be accessible), frame the NPP so that all the pages are visible at once or come up with another creative method of posting.</p>
<p><b>Q. It is common to collect information over the phone on a new resident prior to admission. Does the privacy rule prohibit this practice if the resident has not yet received or acknowledged the NPPs?</b></p>
<p><b>A. NO.</b> When the nursing facility contacts a prospective resident or his or her representative to collect information in anticipation of an admission, the privacy rule’s requirement for providing the notice and obtaining the resident’s acknowledgment of the notice may be satisfied at the time the individual arrives at the facility.</p>
<p><b>Q. Can the facility’s NPPs be used to cover physicians, dentists, podiatrists, and other providers?</b></p>
<p><b>A. NO.</b> Under the privacy regulations, the nursing facility, the physician treating the resident, dentists, podiatrists, etc., all have an independent treatment relationship with the resident as their patient. The only alternative is to form an Organized Health Care Arrangement (OHCA) and issue one joint notice covering all of the providers. However, for most providers, this is an impractical alternative because each individual provider takes the resident’s information back to his or her respective office to do billing, etc. Thus, the nursing facility is unaware of the privacy practices and/or safeguards that each provider has in place and whether those providers use third parties to perform certain functions on their behalf.</p>
<p><b>PERSONAL REPRESENTATIVES:</b></p>
<p><b>Q. Who qualifies as a personal representative under the privacy rule?</b></p>
<p><b>A.</b> A personal representative is anyone having <u>legal</u> authority to make health care decisions on behalf of a resident. That legal authority is derived from state or other law. Examples of personal representatives include an appointed health care power of attorney, a general power of attorney or a court-appointed legal guardian.</p> <p>Under the privacy rule, a personal representative “stands in the shoes” of the resident and can access the resident’s medical records, receive disclosures of PHI about the resident and generally discuss the resident’s health and treatment with providers.</p>
<p><b>Q. Does the privacy rule change the way in which a resident grants another individual a health care power of attorney?</b></p>
<p><b>A. NO.</b> Nothing in the privacy rule changes the way in which a resident grants another person a power of attorney for health care decisions. The process for designating another individual as the resident’s health care power of attorney is mandated by state or other law.</p>
<p><b>Q. Are there any limitations or exceptions to a personal representative’s access rights under the privacy rule?</b></p>
<p><b>A. YES.</b> A personal representative’s rights are limited by the scope of the legal rights conferred on the personal representative by the resident. If the power of attorney or guardianship is limited, for example, to decisions concerning administering artificial life support, then the holder’s access to the resident’s medical records and health information is limited to information relevant to that decision. If the power of attorney or legal guardianship is unlimited in scope, however, then the personal representative will have full access to the resident’s medical record. There is a narrow exception to the general rule that allows a personal representative access to all of the resident’s medical records and health information when a physician or other provider reasonably believes that the resident has been or may be subjected to domestic violence, abuse or neglect by the personal representative or that treating a person as a resident’s personal representative could endanger the resident, in which case disclosure may be denied.</p>
<p><b>Q. Can a family member of a deceased resident obtain health information about the resident that may be relevant to the family member’s own health care?</b></p>
<p><b>A. YES.</b> The privacy rule recognizes that a deceased resident’s PHI may be relevant to a family member’s health care and provides two ways for a surviving family member to obtain PHI of a deceased relative. First, a provider may disclose a deceased resident’s PHI, without authorization, to a health care provider who is treating the resident’s surviving relative. Second, a provider must treat a deceased resident’s legally authorized executor or administrator to act on the behalf of the deceased resident, as a personal</p>

representative.
<b>Q. Does the privacy rule address when a personal representative may not be the appropriate person to control a resident's PHI?</b>
<b>A. NO.</b> The privacy rule defers to state and other laws that address the fitness of a person to act on a resident's behalf. However, a provider does not have to treat a personal representative as the resident if he/she reasonably believes, in the exercise of professional judgment, that the personal representative would in some way endanger the resident.
<b>INCIDENTAL USES AND DISCLOSURES:</b>
<b>Q. Are LTC providers required to prevent any incidental use or disclosure of PHI?</b>
<b>A. NO.</b> The privacy rule does not require that all risk of incidental use of disclosure be eliminated to satisfy its standards. Rather, the rule requires only that providers implement reasonable safeguards to limit incidental uses or disclosures.
<b>Q. Is it necessary to enclose nurse's stations or build walls to protect incidental disclosure of information from being overheard?</b>
<b>A. NO.</b> The privacy rule does not require structural changes to be made to facilities. Instead it is required that reasonable safeguards be put in place to protect the privacy of PHI. This would include being aware of surroundings when discussing confidential information and conducting conversations in private areas when possible.
<b>Q. Can health care providers engage in confidential conversations with other providers or with the resident, even if there is a possibility that they could be overheard?</b>
<p><b>A. YES.</b> The privacy rule is not intended to prohibit providers from talking to each other and to their residents. Provisions of the rule requiring providers to implement reasonable safeguards that reflect their particular circumstances and exempting treatment disclosures for certain requirements are intended to ensure that providers' primary consideration is the appropriate treatment of their residents.</p> <p>The privacy rule recognizes that oral communications often must occur freely and quickly in treatment settings. Thus, providers are free to engage in communications as required for quick, effective, and high quality health care. The privacy rule also recognizes that overheard communications in these settings may be unavoidable and allows for these incidental disclosures.</p> <p>For example, the following practices are permissible under the privacy rule, if reasonable safeguards are taken to minimize the chance of incidental disclosures to others who may be nearby:</p> <ul style="list-style-type: none"> <li>• Health care staff may orally coordinate services at nursing stations.</li> <li>• Nurses or other health care professionals may discuss a resident's condition over the phone with the resident, a provider, or a family member.</li> <li>• A health care professional may discuss test results with a resident or other provider in a joint treatment area.</li> <li>• A physician may discuss a resident's condition or treatment regimen in the resident's semi-private room.</li> </ul> <p>In these circumstances, reasonable safeguards could include using lowered voices or talking apart from others when sharing PHI. However, in an emergency situation or where a resident is hearing impaired, such precautions may not be practicable. LTC providers are free to engage in communications as required for quick, effective, and high quality health care.</p>
<b>Q. Does the privacy rule require semi private rooms to be retrofitted to private rooms or soundproof barriers to avoid any possibility that a conversation is overheard?</b>
<p><b>A. NO.</b> The privacy rule does not require these types of structural changes be made to facilities. Providers must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI. This standard requires that providers make "reasonable" efforts to prevent uses and disclosures not permitted by the rule. OCR does not consider facility retrofitting to be a requirement under this standard.</p> <p>Fore example, the privacy rule does not require the following types of structural or systems changes:</p> <ul style="list-style-type: none"> <li>• Private rooms;</li> <li>• Soundproofing of rooms; or</li> <li>• Encryption of telephone systems.</li> </ul>

LTC providers must implement reasonable safeguards to limit incidental and avoid prohibited uses and disclosures. The privacy rule does not require that all risk of PHI disclosure be eliminated.

Providers must review their own practices and determine what steps are reasonable to safeguard their resident information. In determining what is reasonable, providers should assess potential risks to resident privacy, as well as consider such issues as the potential effects on resident care, and any administrative or financial burden to be incurred from implementing particular safeguards. Providers also may take into consideration the steps that other prudent health care and health information professionals are taking to protect resident privacy.

Examples of the types of adjustments or modifications to facilities or systems that may constitute reasonable safeguards are:

- In an area where multiple resident-staff communications routinely occur, use of cubicles, dividers, shields, curtains or similar barriers may constitute a reasonable safeguard, rather than separate rooms.
- Nursing facilities should ensure that areas housing resident files are supervised or locked.

**Q. May nursing facility staff, including certified nurse aides, discuss residents with a family member?**

**A. YES.** The privacy rule permits providers to disclose limited information to family members, friends or other persons regarding an individual's care, unless the resident has indicated otherwise. For example, a provider may let a family member know that a resident is in therapy; that he or she did not eat very well that day or that he or she has a pressure sore.

**Q. May nursing facilities leave messages regarding residents on an answering machine?**

**A. YES.** However, to reasonably safeguard the resident's privacy, care should be taken to limit the amount of information disclosed on the answering machine. For example, consideration should be given to leaving only the caller's name and telephone number and asking the family member or individual to call back.

In situations where a resident has requested that the provider communicate with him or her in a confidential manner, such as by alternative means or at an alternative location, the provider must accommodate that request, if reasonable. For example, the federal government considers a request to receive mailings from the provider in a closed envelope rather than by postcard a reasonable request from the resident.

**Q. Is it still permissible to use diet cards on the residents' trays?**

**A. YES.** Diet cards are used in LTC as a method of assuring proper treatment. The cards should be retrieved from the trays and shredded before being discarded.

**Q. Can residents be paged over the PA system?**

**A. YES.** Paging is permissible if the only information given is the resident's name and/or room # as it is listed on the facility directory.

**Q. Are nursing facilities prohibited from maintaining resident medical charts at bedside, or from engaging in other customary practices where the potential exists for resident information to be incidentally disclosed to others?**

**A. NO.** The privacy rule does not prohibit providers from engaging in common and important health care practices; nor does it specify the specific measures that must be applied to protect an individual's privacy while engaging in these practices.

Providers must implement reasonable safeguards to protect an individual's privacy. In addition, providers must reasonably restrict how much information is used and disclosed, where appropriate, as well as who within the entity has access to PHI. Providers must evaluate what measures make sense in their environment and tailor their practices and safeguards to their particular circumstances.

For example, the privacy rule does not prohibit providers from engaging in the following practices, where reasonable precautions have been taken to protect an individual's privacy:

- Maintaining resident charts at bedside, displaying resident names on the outside of resident charts, or displaying resident care signs at the resident bedside or at the doors of rooms. *Possible safeguards may include:* reasonably limiting access to these areas, ensuring that the area is

<p>supervised, escorting non-employees in the area, or placing resident charts in their holders with identifying information facing the wall or otherwise covered, rather than having health information about the resident visible to anyone who walks by.</p> <ul style="list-style-type: none"> <li>In resident logs, such as whiteboards, at a nursing station. <i>Possible safeguards may include:</i> Insure that the nursing station whiteboard is not readily visible to the public, or any other safeguard, which reasonably limits incidental disclosures to the general public.</li> </ul>
<p><b>Q. Nursing facilities customarily display residents' names next to the door of the rooms that they occupy. Does the privacy rule allow nursing facilities to continue this practice?</b></p>
<p><b>A. YES.</b> The privacy rule explicitly permits certain incidental disclosures that occur as a by-product of an otherwise permitted disclosure. The disclosure of such information to other persons (such as other visitors) that will likely also occur due to the posting is an incidental disclosure.</p>
<p><b>Q. May mental health practitioners or other specialists provide therapy to residents in a group where other residents and family members are present?</b></p>
<p><b>A. YES.</b> Disclosures of PHI in a group therapy setting are treatment disclosures and, thus, may be made without an individual's authorization. Furthermore, the privacy rule generally permits a provider to disclose PHI to a family member or other person involved in the individual's care. Where the individual is present during the disclosure, the provider may disclose PHI if it is reasonable to infer from the circumstances that the individual does not object to the disclosure. Absent countervailing circumstances, the individual's agreement to participate in group therapy or family discussions is a good basis for inferring the individual's agreement.</p>
<p><b>Q. Are nursing facilities required to document incidental disclosures permitted by the privacy rule, in an accounting of disclosures provided to an individual?</b></p>
<p><b>A. NO.</b> The privacy rule includes a specific exception from the accounting standard for incidental disclosures permitted by the rule.</p>
<p><b>Q. Do the privacy rule provisions permitting incidental use and disclosure apply to discussions among health care providers or only to treatment situations?</b></p>
<p><b>A.</b> The provisions apply universally to incidental use and disclosure, and not just to incidental use and disclosure resulting from treatment communications or communications among health care providers. For example:</p> <ul style="list-style-type: none"> <li>An administrative staff member may be told to bill a resident for a particular item and/or service, and may be overheard by one or more persons.</li> <li>An employee discussing a resident's health care claim on the phone may be over heard by another employee who is not authorized to handle resident information.</li> </ul> <p>If reasonable efforts have been made to avoid being overheard and the information has been reasonably limited, an incidental use or disclosure resulting from such conversations would be permissible under the privacy rule.</p>
<p><b>Q. Is a provider required to prevent any incidental use or disclosure of PHI?</b></p>
<p><b>A. NO.</b> The privacy rule does not require that all risk of incidental use or disclosure be eliminated to satisfy its standards. Rather, the rule requires only that providers implement reasonable safeguards to limit incidental uses or disclosures.</p>
<p><b>Q. Is it necessary to purchase shredders and locked containers, or make other alterations to the facility to comply with HIPAA privacy rules?</b></p>
<p><b>A. NO.</b> While shredders are not required, they are an easy way for providers to protect certain PHI. However, providers may determine for themselves the "reasonable" safeguards to be implemented in their facility.</p>
<p><b>Q. Does the privacy rule require providers to remove the facility directory?</b></p>
<p><b>A. NO.</b> Facility directories can be publicly posted and can list the resident name and location (not the medical condition). This is the equivalent of residents of an apartment complex having their apartment number listed at the apartment complex's entrance.</p>
<p><b>Q. Does the privacy rule require providers to remove "shadow boxes" in Alzheimer's units?</b></p>
<p><b>A. NO.</b> This is a patient care issue and incorporated into treatment of the resident.</p>
<p><b>Q. Do providers have to stop using whiteboards that contain PHI?</b></p>
<p><b>A. NO.</b> However, a nursing facility should reposition whiteboards so that they are not readily viewable by unauthorized persons. Also, every effort should be made to limit the amount of PHI on the boards to the</p>

minimum necessary.
<b>Q. If the state requires consent to use or disclose health information, does the privacy rule take away this protection?</b>
<b>A. NO.</b> If the state law is more stringent than the federal privacy rule in protecting the resident’s privacy, the state law will prevail.
<b>Q. Does a physician need a resident’s written authorization to send a copy of the resident’s medical record to a specialist or other health care provider who will treat the resident?</b>
<b>A. NO.</b> Consulting with another health care provider about a resident is within the privacy rule’s definition of “treatment” and, therefore, is permissible. In addition, a health care provider is expressly permitted to disclose PHI about an individual to a health care provider for the provider’s treatment of the individual.
<b>Q. Are appointment reminders allowed under the privacy rule without authorizations?</b>
<b>A. YES.</b> Appointment reminders are considered part of the treatment of a resident and, therefore, can be made without an authorization.
<b>Q. Does the privacy rule permit a provider or its collection agency to communicate with parties other than the resident (e.g., spouses or guardians) regarding payment of a bill?</b>
<b>A. YES.</b> The privacy rule permits a provider or a business associate (BA) to disclose PHI as necessary to obtain payment for health care, and does not limit to whom such a disclosure may be made. However, the privacy rule also requires a “minimum necessary” amount of information be disclosed for such purposes, as well as abiding by any reasonable requests for confidential communications and any agreed to restrictions on the use or disclosure of PHI.
<b>Q. Does the privacy rule prevent health plans and providers from using debt collection agencies? Does the privacy rule conflict with the Fair Debt Collection Practices Act (FDCPA)?</b>
<b>A. NO.</b> The privacy rule permits providers to continue to use the services of debt collection agencies. Debt collection is recognized as a payment activity within the “payment” definition. Through a BA arrangement, the provider may engage a debt collection agency to perform this function on its behalf. Other provisions of the privacy rule, such as the BA and minimum necessary requirements, govern disclosures to collection agencies.  In addition, there is no conflict between the privacy rule and the FDCPA. Where a use or disclosure of PHI is necessary for the provider to fulfill a legal duty, the privacy rule permits such use or disclosure as required by law.
<b>Q. Does the privacy rule prevent providers from reporting to consumer credit agencies or conflict with the Fair Credit Reporting Act (FCRA)?</b>
<b>A. NO.</b> The privacy rule’s definition of “payment” includes disclosures to consumer reporting agencies. These disclosures, however, are limited to the following PHI about the individual: <ul style="list-style-type: none"> <li>• name and address,</li> <li>• date of birth,</li> <li>• social security number,</li> <li>• payment history, or</li> <li>• account number.</li> </ul> In addition, disclosure of the name and address of the health care provider or health plan making the report is allowed. The provider may perform this payment activity directly, or may carry out this function through a third party, such as a collection agency, under a business associate arrangement.  The privacy rule permits uses and disclosures by the provider or its business associate as may be required by the FCRA. Therefore, there is a conflict between the privacy rule and legal duties imposed on data furnishers by FCRA.
<b>MIMINUM NECESSARY:</b>
<b>Q. How do providers determine the minimum necessary information that can be used, disclosed or requested for a particular purpose?</b>
<b>A.</b> The privacy rule requires a provider to make “reasonable” efforts to limit use, disclosure of, and requests for PHI to the “minimum necessary.” This means that long term care providers must evaluate their particular

practices and enhance protections, as necessary, to eliminate inappropriate access to PHI. Providers should carefully consider and develop facility policy/procedures that appropriately limit access to PHI without sacrificing the quality of care to the resident.
<b>Q. Does the minimum necessary requirement prohibit medical residents, medical students, nursing students and other medical trainees from accessing patients' medical information in the course of their training?</b>
<b>A. NO.</b> The privacy rule definition of "health care operations" provides for conducting training programs in which students, trainees or practitioners learn, under supervision, to practice or improve their skills as health care providers. Nursing facilities can shape their policies and procedures for minimum necessary uses and disclosures to permit medical trainees access to patients' medical information, including entire medical records.
<b>Q. Does the minimum necessary standard apply to uses or disclosures that are authorized by an individual?</b>
<b>A. NO.</b> Uses and disclosures that are specifically authorized by an individual are exempt from the minimum necessary requirements.
<b>Q. Are providers required to make a minimum necessary determination about whether or not to disclose certain information to federal or state agencies for an individual's application for benefits?</b>
<b>A. NO.</b> These disclosures must be authorized by the resident and, therefore, are exempt from the privacy rule's minimum necessary requirements. For example, disclosures to the Social Security Administration (SSA), or its affiliated state agencies, for purposes of determining resident eligibility for disability benefits, is only made subject to an individual's completed SSA authorization form.
<b>Q. Can long term care providers disclose PHI that another health care provider created in the current medical chart?</b>
<b>A. YES.</b> The privacy rule permits a long term care provider to disclose a complete medical record to appropriate individuals, including those portions that were created by another health care provider.
<b>BUSINESS ASSOCIATES:</b>
<b>Q. What is a business associate?</b>
<b>A.</b> The privacy rule defines a business associate as a person or entity that performs certain functions or activities that involve the use or disclosure of PHI on behalf of a nursing facility, and is not an employee of the provider. Examples of business associate services include legal, actuarial, medical record consultants, management, administrative, JCAHO accreditation and financial.
<b>Q. When is another health care provider a business associate of a nursing facility?</b>
<b>A.</b> The privacy rule explicitly allows a nursing facility to disclose PHI to another health care provider for treatment purposes without a business associate contract. There are instances, however, in which another health care provider is a business associate of the nursing facility. For example, a physician may contract with a nursing facility to assist in their billing. In this case, a business associate contract would be required before the nursing facility could allow the physician access to PHI. The nursing facility would be acting as a "third party biller" in this situation.
<b>Q. Are nursing facilities liable for, or required to monitor, the actions of its business associates?</b>
<b>A. NO.</b> The privacy rule requires nursing facilities to enter into written contracts or other arrangements with business associates to protect the privacy of PHI; but nursing facilities are not required to monitor or oversee the means by which their business associates carry out privacy safeguards or the extent to which business associates abide by the requirements of the contract. That being said, however, if a nursing facility finds out about a material breach or violation of the contract by its business associate, it must take reasonable steps to cure the breach or end the violation, and, if unsuccessful, terminate the contract with the business associate. If termination is not feasible (e.g., where there are no other viable business alternatives for the provider), the nursing facility must report the problem to HHS, OCR, as soon as possible.
<b>Q. Instead of entering into a contract, can a nursing facility work with a business associate that is certified by a third party or "self-certified?"</b>
<b>A. NO.</b> A nursing facility is required to enter into a contract with a business associate.
<b>Q. Are accreditation organizations a business associate of the nursing facility they accredit?</b>
<b>A. YES.</b> The privacy rule explicitly defines organizations that accredit nursing facilities as business associates. Just like other business associates, accreditation organizations provide a service to the nursing facility, which requires the sharing of PHI. As an alternative to the business associate contract, nursing

<p>facilities may disclose a limited data set of PHI, not including direct identifiers, to an accreditation organization, subject to a data use agreement.</p>
<p><b>Q. Is a business associate contract required for a covered entity to disclose PHI to a researcher?</b></p>
<p><b>A. NO.</b> Disclosures from a nursing facility to a researcher for research purposes does not require a business associate contract, even in those instances in which the nursing facility has hired the researcher to perform research on the nursing facility's own behalf. The privacy rule, however, does not prohibit a nursing facility from entering into a business associate contract if the nursing facility is more comfortable having this document.</p>
<p><b>Q. Can a nursing facility share PHI directly with another covered entity's business associate?</b></p>
<p><b>A. YES.</b> Under the privacy rule, a nursing facility is permitted to make a disclosure directly to a business associate, but only in situations in which the business associate is acting on behalf of the other covered entity.</p>
<p><b>Q. Is the U.S. Postal Service, United Parcel Service, delivery truck line employees and/or their management considered business associates of a nursing facility?</b></p>
<p><b>A. NO.</b> The privacy rule does not require a nursing facility to enter into business associate contracts with organizations such as the U.S. Postal Service or certain private couriers and their electronic equivalents that act merely as conduits for PHI. A conduit transports information but does not access it other than on a random or infrequent basis as necessary for the performance of the transportation service or as required by law.</p>
<p><b>Q. Can a resident go to a business associate directly for his or her PHI?</b></p>
<p><b>A.</b> Generally, nursing facilities must include specific provisions in agreements with business associates with respect to individual rights, including the rights of access, amendment, and accounting. With limited exceptions, a nursing facility must provide an individual access to his or her PHI in a designated record set. This includes information in a designated record set of a business associate, unless the information held by the business associate merely duplicates the information maintained by the nursing facility. Nothing in the privacy rule, however, prevents the parties from agreeing that the business associate will provide access to individuals, as may be appropriate where the business associate is the only holder of the designated record set.</p>
<p><b>Q. Is a software vendor a business associate of a nursing facility?</b></p>
<p><b>A.</b> The mere selling or providing of software to a nursing facility does not give rise to a business associate relationship. However, if part of the vendor service mandates access to PHI, then the vendor would be a business associate of the nursing facility. For example, a software company that hosts the software containing patient information on its own server or accesses patient information when troubleshooting the software function is a business associate of the nursing facility.</p>