



PUBLIC NOTICE

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CLARIFICATION OF THE USE OF TELECOMMUNICATIONS RELAY SERVICES (TRS) AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

The Federal Communications Commission (FCC) has been working with the Department of Health and Human Services (HHS) to clarify that the use of Telecommunications Relay Services (TRS) to facilitate telephone calls between health care professionals and patients, when one of the parties to the call has a hearing or speech disability, does not violate the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA). The Commission has received inquiries on this issue from TRS users and providers. We take this opportunity to clarify that, consistent with HIPAA, a covered entity, such as a doctor or other health care professional, *can* contact a patient using TRS without requiring the TRS facility or individual communications assistants (CAs) to sign a disclosure agreement (what HIPAA generally refers to a “business associate contract”).

As background, TRS, as mandated by Title IV of the Americans with Disabilities Act of 1990, makes the telephone system accessible to individuals with hearing or speech disabilities.¹ This is accomplished through TRS facilities that are staffed by specially trained CAs using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices.

HHS enacted HIPAA in 1996, which included provisions mandating the adoption of federal privacy protections for individual’s health information.² In response to the HIPAA mandate, HHS published the Privacy Rule, stating that as of April 14, 2003 (April 14, 2004, for small health plans), covered entities must implement standards to protect and guard against the misuse of individually identifiable health information.³

Some health professionals have been concerned that contacting patients and discussing health related information via TRS poses a possible violation of the Privacy Rule because a “third party,” the TRS CA, hears the information being discussed as the call is relayed. Some state TRS facilities have informed the FCC that health professionals are requiring all of the facility’s CAs to sign disclosure forms before they will use TRS to contact patients with hearing or speech disabilities.

¹ See 47 U.S.C. § 225.

² See Pub. L. No. 104-191 (1996).

³ See 45 C.F.R. Parts 160 and 164.

We therefore emphasize that all forms of TRS, including “traditional” TTY based relay, Internet Protocol (IP) Relay, Video Relay Service (VRS), and Speech-to-Speech (STS), can be used to facilitate calls between health care professionals and patients without violating HIPPA’s Privacy Rule. For further information on this issue see HHS’s FAQ sheet which is available at www.hhs.gov/ocr/hipaa or on the FCC’s Disability Rights Office’s website at <http://www.fcc.gov/cgb/dro/trs.html>.

The full texts of these documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. These documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI at their web site: www.bcpiweb.com or call 1-800-378-3160.

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