



HYBRID ENTITY Fact Sheet

How to Perform a Hybrid Entity Assessment


Determination of Health Insurance Portability and Accountability Act, Public Law 104-191 (“HIPAA”) coverage is an essential and important component of a health department’s compliance activities. Health departments may provide HIPAA covered health care services because they operate a hospital or a health clinic, or electronically bill for testing services provided by the state public health laboratory. Health departments may also operate a HIPAA covered health plan, such as Medicaid or a State Children’s Health Insurance Plan.

HIPAA does not apply to traditional public health activities including disease or injury registry functions, vital event reporting and conducting surveillance, interventions, and outbreak investigations. However, absent adoption of a hybrid entity policy, HIPAA applies to the entire health department, including traditional public health activities.

It may be helpful to print both the [Read Me First!](#) and the [Hybrid Entity FAQs](#), as they offer definitions and background for the terms utilized below.

Health departments may choose whether to be completely covered by HIPAA, or to only apply HIPAA where legally required to do so, which is known as becoming a hybrid entity. Understanding where the health department has covered entity components is key to informing this decision. The following eight steps guide assessment:

1. Identify whether your health department is a single legal entity or part of a larger organization, such as an umbrella agency (which provides a variety of other programs and services), or a municipality, or a county. If your health department is free-standing or independent, your health department is probably the legal entity. Confirm with your public health attorney.
2. Obtain your health department’s current organizational chart.
3. Decide how to approach the assessment. Should only the top-level directors be interviewed, as the entire department reports up to them? Or, should interviews occur with all management? Detailed results may enhance accuracy as well as flexibility.
4. Assemble a team to determine whether an organizational component is a:
 - a. Covered entity;
 - b. Business associate; or
 - c. Health care provider that does not bill electronically or utilize other standard electronic transactions.
5. Develop a report reflecting the results of the HIPAA assessment and list all covered entity and business associate components.

- 
6. Evaluate the option of also including health care providers that do not bill electronically or utilize other standard electronic transactions. Consider whether they share PHI with any of the other components already listed in the report. Health departments should weigh the benefits of not needing patient authorization for internal PHI sharing against the additional HIPAA compliance burden, liability and restrictions on data sharing.
 7. Determine whether becoming a hybrid entity is advantageous. Considerations include:
 - a. Breadth of HIPAA coverage across the legal entity;
 - b. Impact on data sharing and public health mission;
 - c. HIPAA compliance burden; and,
 - d. Federal enforcement activity for potential HIPAA violations, including civil monetary penalties, corrective action plans and criminal penalties.
 8. Document the decision and the process. Include the report date; author, title and organization; contributors; and, attach the organizational chart. Retain this report as support for the Hybrid Entity Policy, for as long as the policy is retained.

White papers, tools and guidance that assist in the assessment process are available on the [Resources](#) page. If the legal entity decides to be a hybrid entity, it must adopt a hybrid entity policy in compliance with the HIPAA Privacy Rule, which is detailed on this [Fact Sheet](#). Absent written policy, the HIPAA Privacy Rule requirements apply to the entire legal entity.

SUPPORTERS



Robert Wood Johnson Foundation

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.

This document was developed by Sallie Milam, JD, CIPP/US/G, Deputy Director, Network for Public Health Law – Mid-States Region Office, and reviewed by Denise Chrysler, JD, Director, Network for Public Health Law – Mid-States Region Office. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.