



Physicians Caring for Texans

## Accessing Electronic Information: Know Your Rights

Electronic health record (EHR) vendors may not block or terminate your access to your patient's information.<sup>1</sup>

Physician practices are covered entities under HIPAA, and EHR vendors are business associates. When using an EHR vendor, physicians should have an updated (as of January 2013) and signed business associate agreement on file; TMA has a sample agreement available at [www.texmed.org/HIPAA](http://www.texmed.org/HIPAA).

A business associate may not use protected health information (PHI) in a manner that violates the HIPAA Privacy Rule.<sup>2</sup> Blocking access, including terminating privileges, to PHI that the vendor maintains on behalf of the physician is a violation.

Generally speaking, it is impermissible under the Privacy Rule for an EHR vendor or developer that "turns off" EHR access while a payment dispute is resolved. When an agreement between a physician and a vendor is terminated (by either party), the vendor must return PHI as provided for by the business associate agreement.

A business associate also is required by the HIPAA Security Rule to ensure the confidentiality, integrity, and availability of all electronic PHI that it creates, receives, maintains, or transmits on behalf of a covered entity.<sup>3</sup> This means the PHI must be accessible and usable upon request by the physician practice whether the PHI is maintained in an EHR, cloud, data backup system, database, or other system.<sup>4</sup> In cases where the business associate agreement specifies that PHI is to be returned at termination of the agreement, the vendor must provide the PHI in a format that is reasonable.

Physicians must also be able to provide access of information to their patients. A business associate is required to make PHI available to a physician or as necessary to satisfy the physician's obligation to the patient.<sup>5</sup>

There may be exceptions to the above requirements, such as when a business associate aggregates data from multiple sources that renders the information unreturnable to the practice.

It is important to note that physician practices have a responsibility to ensure availability of their own PHI. A practice is not in compliance if it has contractually agreed to terms in a BAA that prevent the availability of PHI whether in paper or electronic form.<sup>6</sup>

If you believe your technology vendor may be violating HIPAA by blocking access to PHI, you can [file a complaint](#) with the Office for Civil Rights. Before filing a complaint, review your business associate agreement carefully.

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<sup>1</sup> See [www.hhs.gov/hipaa/for-professionals/faq/2074/may-a-business-associate-of-a-hipaa-covered-entity-block-or-terminate-access/index.html](http://www.hhs.gov/hipaa/for-professionals/faq/2074/may-a-business-associate-of-a-hipaa-covered-entity-block-or-terminate-access/index.html).

<sup>2</sup> See 45 C.F.R. §164.502(a)(3).

<sup>3</sup> See 45 C.F.R. §164.306(a)(1).

<sup>4</sup> 45 C.F.R. §164.304.

<sup>5</sup> 45 C.F.R. §§164.502(a)(4)(ii), 164.504(e)(2)(ii)(E), 164.524.

<sup>6</sup> 45 C.F.R. §§164.308(b)(3), 164.502(e)(2), and 164.504(e)(1).