

HYBRID ENTITIES

A covered entity that provides both health care and non-health care related services may designate itself as a hybrid entity under the Privacy Rule, if certain requirements are met. (See Section 164.504) If the entity does not designate itself as a hybrid entity, then the entire organization, including the parts of the organization that perform non-health care related services, must comply with the Privacy Rule. The purpose of the hybrid entity rule is to permit entities to focus privacy protections on the limited parts of the organization that use and disclose protected health care information. The hybrid entity rules require that an organization limit use of protected health information to those individuals who perform covered functions and to develop “firewalls” prohibiting disclosure to other individuals within the organization who do not perform covered functions.

I. Single Legal Entities

In order to qualify as a hybrid entity, the organization must be a single legal entity that is covered by the regulation and designates health care components. Most Domestic Violence Service Agencies (“DVSAs”) that are covered entities will likely provide medical or health care services and be subject to the Privacy Rule, if at all, as covered health care providers. If an organization employs a covered health care provider, the entire entity is covered but may designate the health care provider or health services as the health care component.

Entities that designate themselves as a hybrid entity must identify and designate the components that are part of one or more “health care components” of the covered entity. (Section 164.504(c)(3)(iii)). A health care component includes any part of the organization that (1) performs covered functions (i.e. health care), (2) that would otherwise be a business associate if it were a separate entity or (3) that creates or receives protected health information from or on behalf of the component that performs covered functions.

A covered entity must ensure that the health care component complies with several requirements, including

- that the health care component does not disclose protected health information to another component where it would otherwise be prohibited from doing so if the two components were separate entities, and
- that any individual who performs duties for both a health care component and another component do not use or disclose health care information outside of the health care component.

(Section 164.504(c)(2))

II. Affiliated Separate Legal Entities

Legally separate covered entities may designate themselves as a single covered entity if all of the covered entities are under common ownership or control. Common control “exists if an entity has the power, directly or indirectly, significantly to influence or direct the actions or

policies of another entity.” (Section 164.504). Common control “exists if an entity or entities possess an ownership or equity interest of 5 percent or more in another entity.” (Section 164.504),

For example, a Domestic Violence Service Agency that coordinates health care services with other legal entities, such as counselors or other healthcare providers, may qualify as affiliated entities provide they meet the common ownership and control requirements.