

## § 164.106

(1) Covered functions; or  
(2) Activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities.

(b)(1) *Standard: Affiliated covered entities.* Legally separate covered entities that are affiliated may designate themselves as a single covered entity for purposes of subparts C and E of this part.

(1) *Implementation specifications:*

(i) *Requirements for designation of an affiliated covered entity.* (A) Legally separate covered entities may designate themselves (including any health care component of such covered entity) as a single affiliated covered entity, for purposes of subparts C and E of this part, if all of the covered entities designated are under common ownership or control.

(B) The designation of an affiliated covered entity must be documented and the documentation maintained as required by paragraph (c) of this section.

(ii) *Safeguard requirements.* An affiliated covered entity must ensure that:

(A) The affiliated covered entity's creation, receipt, maintenance, or transmission of electronic protected health information complies with the applicable requirements of subpart C of this part;

(B) The affiliated covered entity's use and disclosure of protected health information comply with the applicable requirements of subpart E of this part; and

(C) If the affiliated covered entity combines the functions of a health plan, health care provider, or health care clearinghouse, the affiliated covered entity complies with § 164.308(a)(4)(ii)(A) and § 164.504(g), as applicable.

(c)(1) *Standard: Documentation.* A covered entity must maintain a written or electronic record of a designation as required by paragraphs (a) or (b) of this section.

(2) *Implementation specification: Retention period.* A covered entity must retain the documentation as required by paragraph (c)(1) of this section for 6 years from the date of its creation or

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the date when it last was in effect, whichever is later.

[68 FR 8375, Feb. 20, 2003]

### § 164.106 Relationship to other parts.

In complying with the requirements of this part, covered entities are required to comply with the applicable provisions of parts 160 and 162 of this subchapter.

### Subpart B [Reserved]

### Subpart C—Security Standards for the Protection of Electronic Protected Health Information

AUTHORITY: 42 U.S.C. 1320d-2 and 1320d-4.

SOURCE: 68 FR 8376, Feb. 20, 2003, unless otherwise noted.

#### § 164.302 Applicability.

A covered entity must comply with the applicable standards, implementation specifications, and requirements of this subpart with respect to electronic protected health information.

#### § 164.304 Definitions.

As used in this subpart, the following terms have the following meanings:

*Access* means the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource. (This definition applies to “access” as used in this subpart, not as used in subpart E of this part.)

*Administrative safeguards* are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the covered entity's workforce in relation to the protection of that information.

*Authentication* means the corroboration that a person is the one claimed.

*Availability* means the property that data or information is accessible and useable upon demand by an authorized person.

*Confidentiality* means the property that data or information is not made available or disclosed to unauthorized persons or processes.

*Encryption* means the use of an algorithmic process to transform data into