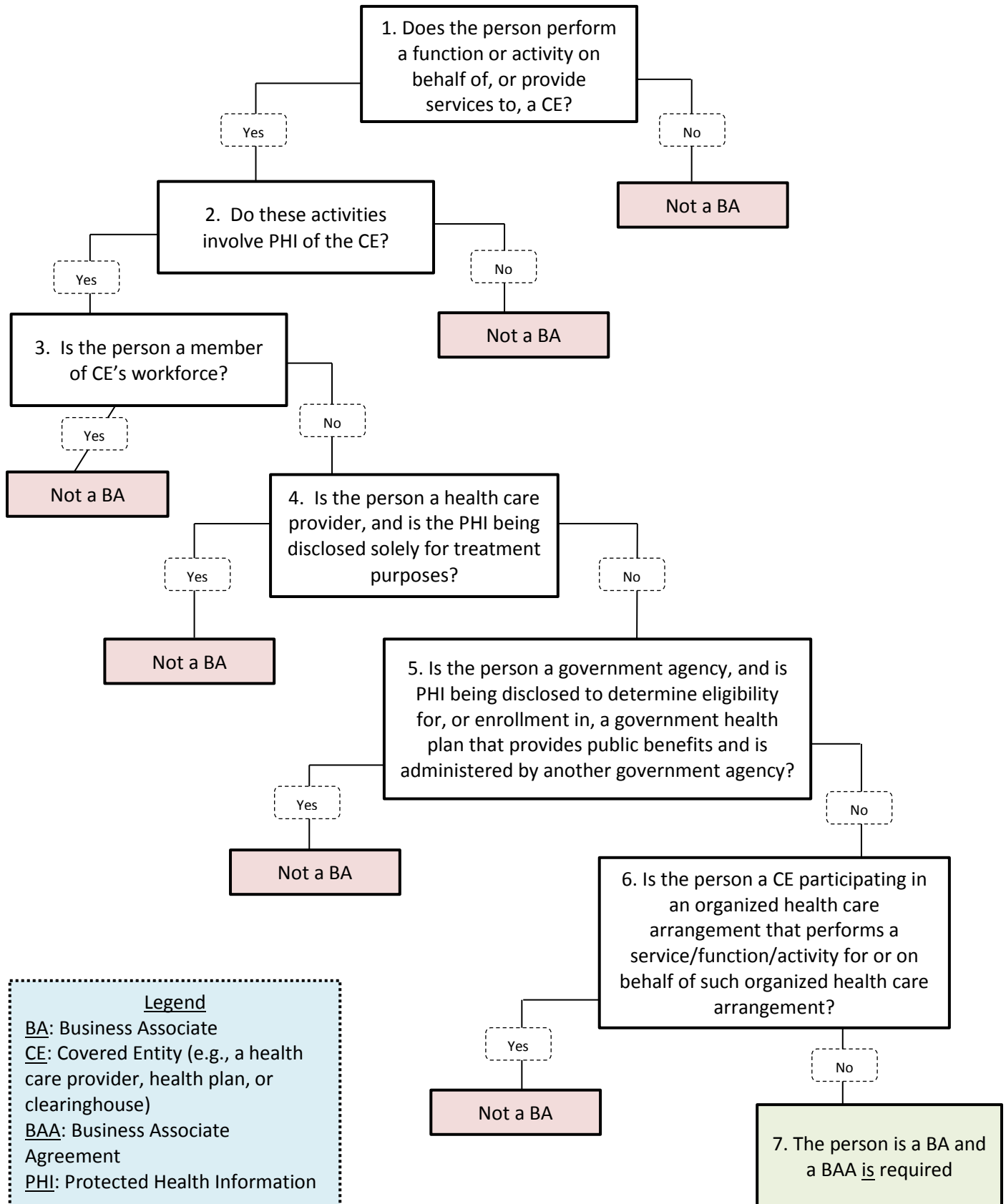


How to Identify a “Business Associate”

For Health Care Providers



Instructions for Boxes 1-7

- 1) **Functions/Activities** include claims processing or administration, data analysis, processing, or administration, utilization review, quality assurance, patient safety activities, billing, benefit management, practice management, and repricing.

Services include legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

*Note that the potential BA can be an individual or entity, and a CE may be a BA of another CE.

*Remember that the person must be acting *for or on behalf of* a CE, not on its own behalf. For example, when a health care provider discloses PHI to a health plan for payment purposes, there is no BA relationship. This is because both are acting on its own behalf as a CE, not as the ‘business associate’ of the other.

- 2) **Protected Health Information (PHI)** means individually identifiable health information that is: (a) transmitted electronically; (b) maintained electronically; or (c) transmitted or maintained in any other form or medium. Individually identifiable health information (IIHI) is information that is a subset of health information, including demographic information collected from an individual, and:

- a) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- b) Relates to the past, present, or future physical or mental health or condition or an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - i) That identifies the individual; or
 - ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

PHI *excludes* IIHI: (a) In education records covered by FERPA; (b) In records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (c) In employment records held by a CE in its role as an employer; and (d) Regarding a person who has been deceased for more than 50 years.

- 3) **Workforce** includes employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a CE, is under the direct control of such CE, whether or not they are paid by the CE.
- 4) Examples include:
- a) A hospital is not required to have a business associate agreement with the specialist to whom it refers a patient and transmits the patient’s medical chart for treatment purposes;
 - b) A physician is not required to have a business associate agreement with a laboratory when disclosing PHI for the treatment of the individual.
 - c) A hospital laboratory is not required to have a business associate contract with a reference laboratory when disclosing PHI or treatment of the individual.
- 5) This includes the Medicare program.
- 6) **An organized health care arrangement** includes an arrangement or relationship in which participants are clinically integrated and an organized system of health care in which participating entities engage in certain joint activities. The full definition can be found at 45 CFR 160.103.
- 7) If the person is a BA, the CE and the BA must enter into a ***business associate agreement*** that ensures that the BA will appropriately safeguard PHI.

See the Template Business Associate Agreement and/or the Business Associate Checklist to verify that the Business Associate agreement satisfies HIPAA requirements.

For more information on BAs, see policy [Enter], “Disclosing Information to Business Associates.”