



Lucie H. Ingram
Associate General Counsel
501-686-7608
501-686-7736 Fax

Office of General Counsel
4301 West Markham Street, #860
Little Rock, AR 72205-7199
501-686-7608

MEMORANDUM

TO: Arkansas e-Link

FROM: Lucie H. Ingram

DATE: February 7, 2014

RE: HIPAA's Mere Conduit Exception

Arkansas e-Link is not a business associate for the purposes of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") because it is a "mere conduit" for the transmission of PHI. Pursuant to 42 CFR 160.103, a business associate includes any entity that "provides data transmission services with respect to protected health information to a covered entity and that requires access on a routine basis to such protected health information." Accordingly, entities providing data transmission services are business associates only if they have actual access to PHI and such access is routine. An entity that only temporarily stores the transmitted data and whose access is random and infrequent is a "mere conduit" and not a business associate. (78 Fed. Reg. 5571.) Arkansas e-Link transmits data containing PHI for its member institutions that are entities covered by HIPAA. However, Arkansas e-Link does not routinely access or maintain ongoing storage of that PHI. (78 Fed. Reg. 5571-5572.) As such, Arkansas e-Link is not subject to HIPAA liability and obligations as a business associate and is not required to execute a business associate agreement.