

How to Structure Your Practice for Success: Employees VS Contractors

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Our Discussion Objectives

- Understand the mechanisms for HIPAA Security compliance for either an employee or contractor structure
- Identify the responsibility parameters and risks of each structure with regard to HIPAA Security compliance
- Consider which structure is the best fit for your “risk tolerance threshold” and culture goals for your practice
- Choose an employment structure that supports HIPAA Security compliance *and* managing that structure in a way that’s copacetic with employment law classifications

HIPAA Security Compliance

The traditional model: employees

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TECH

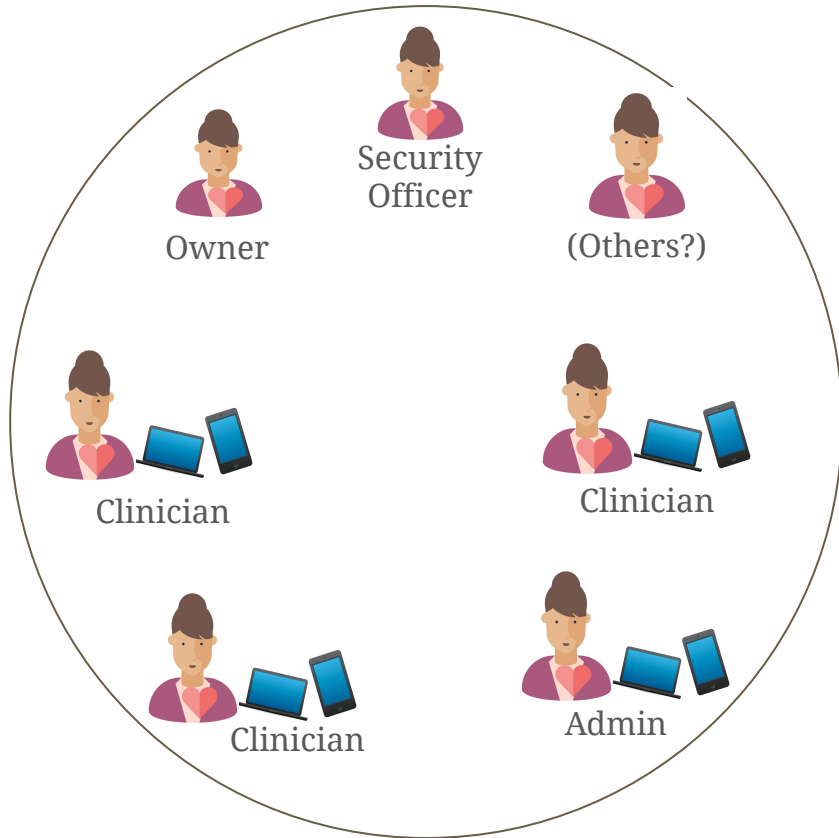


HIPAA Security Compliance in 4 Easy Steps

1. Assign leadership and oversight roles, e.g. the Security Officer.
2. Perform a “thorough and accurate” security risk analysis.
3. Develop a risk mitigation plan and ongoing risk management plans.
4. Develop an official set of security policies and procedures which cover all of the Security Rule’s standards and all the measures (technical, physical and administrative) you developed as part of your risk management plan.

For reconciling employment law requirements and HIPAA Security compliance requirements, the key items we’ll be considering are policies and procedures (and who/how they can be applied)

Really, It's About Culture (and P&Ps, Of Course)



- Develop P&Ps that don't just enforce security rules but also support the team in upholding security and keeping the circle whole and secure.
- Provide the technical solutions and assistance that the team needs to do their job well.
- Protect your culture from toxic attitudes or behaviors.

Culture Club

- What kind of culture do you want to create with your organization?
- Employee-based practices can be grown to your intention.
(Control/Collaboration)
- Contractor-based practices often grow organically, rather than through a set intention. (Independence/Autonomy)

Employment Law and HIPAA Security Compliance

Contractor Considerations

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HIPAA Security and Contractors

HIPAA doesn't care about tax-related designations like "contractor" and "employee." It just cares about "Workforce" vs. "Business Associate."

But...

Can you require contractors to comply with all your security policies and procedures without violating employment law?

What are the relevant factors? (Federal edition)

- The IRS (the Feds) use “factors of control” to determine worker classification. Those factors are: behavioral, financial, and type of relationship.
- *Behavioral* control is what’s relevant to the employee vs. HIPAA compliance requirement consideration.
- **What does behavioral control mean?**
 - Behavioral = “Does the company control or have the right to control what the worker does and how the worker does his or her job?” If yes, you have an employee -- *not* a contractor.

Thus, the contractor classification challenge:

To comply with HIPAA:

You *must* be able to control how your workers do their job. In other words, they must be governed by and subject to your policies and procedures.

How can this be done if you can't exert "behavioral control" over contractor clinicians?!

Making a Safe Circle With Contractors the PCT Way

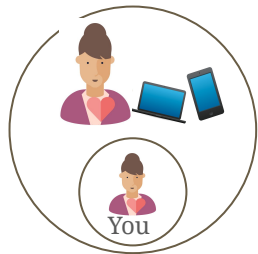
Contractor Clinician's Practice



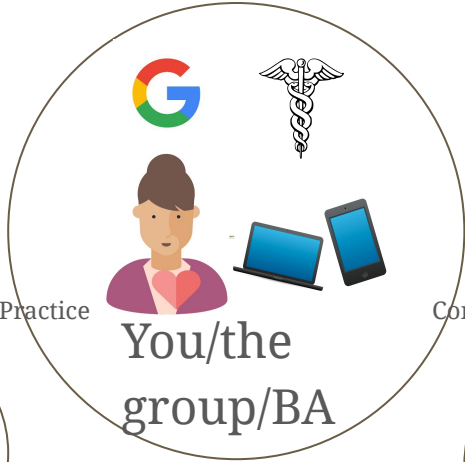
Contractor Clinician's Practice



Contractor Clinician's Practice



Contractor Clinician's Practice



1. Contractor clinicians are running their *own* practices (they are the HIPAA covered entities)
2. The group is supplying managed *services* to the contractors as a HIPAA Business Associate (the group is still subject to HIPAA as a BA)
3. The group and each of the contractors enter into a Terms of Service agreement regarding the security of the group's resources, in addition to a BAA.
4. Contractors are responsible for 100% of their own compliance activities.

Getting More Help

Conclusions:

- Set up the structure of your relationship with clinicians in a way that complies with employment law *and* allows for secure circles -- whether that's one or many.
- Select a structure that will provide for the culture setting control that you want and need to realize your vision for your practice and that fit with your “risk tolerance threshold.”
- Implement the necessary mechanisms for your selected employment structure that address HIPAA Security compliance while remaining copacetic with employment law

References

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