

**Washington State Health Care Authority**  
**Health Record Bank (HRB) Grant Solicitation**  
**Answers to Questions**  
**Received June 26, 2008 through June 30, 2008**

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**Question:**

When a provider pushes an individual's data to the HIE [HRB], in response to enrollment and request by a particular consumer, must that HIE [HRB] be a covered entity, or has HIPAA obligation been removed by the consumer's request?

**Answer:**

Health record banks are not HIPAA covered entities unless they are being operated by organizations that are already HIPAA covered entities for other reasons. In the former case, once medical information has been deposited in an HRB pursuant to a consumer request, it is no longer covered by HIPAA. (It is, however, covered by the Stored Communications Act (18 USC, chapter 121, sections 2701-11), which provides that no information may be released to a private party without the consent of the subscriber. Note that this protection is stronger than HIPAA, since there are no exceptions for treatment, etc.).

In the latter case, if a HIPAA-covered entity (such as a health plan) operates an HRB, then HIPAA applies. Since HIPAA allows release of information WITHOUT consent for treatment, payment, or healthcare operations, such an HRB could not really provide consumer control of the information. This would conflict with one of the key requirements of the solicitation (section XI, 7(f) "Consumer owner of the HRB account will have the capability to administer (i.e., set, view, maintain, and/ or modify) access control for all data managed by the HRB.") A proposal for an HRB operated by a HIPAA-covered entity would be at a serious disadvantage to other applications that meet all the requirements of the solicitation.

Therefore, to meet the solicitation requirements, the organization operating the HRB should NOT be a HIPAA covered entity. Guidance for determining if an organization is a HIPAA covered entity can be found at:

[http://www.cms.hhs.gov/HIPAAGenInfo/06\\_AreYouaCoveredEntity.asp](http://www.cms.hhs.gov/HIPAAGenInfo/06_AreYouaCoveredEntity.asp)