

No Business Associate Agreement is Enough to Result in a \$31,000 Settlement

April 27, 2017

On April 17, 2017, the Center for Children's Digestive Health in Illinois ("CCDH") entered into a resolution agreement with HHS pursuant to which CCDH agreed to pay \$31,000 to settle potential HIPAA privacy rule violations. The primary basis for the settlement was the lack of a business associate agreement between CCDH and one of its business associates, which HHS determined demonstrated a lack of effective control and review of CCDH's HIPAA policies and procedures. FileFax, Inc. ("FileFax") is an Illinois record storage and disposal company. FileFax's clients included healthcare providers, such as CCDH. FileFax's services to those providers included the storage and disposal of medical records. A whistleblower led to a 2015 investigation of FileFax by the Illinois Attorney General. HHS then discovered that FileFax was discarding medical records in an unlocked dumpster adjacent to its building and had also shipped a large volume of other medical records to a third party for recycling. It is unclear if HHS investigated all healthcare providers doing business with FileFax, but HHS began a HIPAA compliance review of CCDH in late 2015 as a result of the FileFax investigation. During the CCDH investigation, HHS determined that FileFax was a business associate of CCDH and that CCDH had sent the medical records of more than 10,000 individuals containing protected health information for storage and disposal to FileFax over a 12-year period without entering into a business associate agreement or otherwise obtaining satisfactory assurances that FileFax was HIPAA compliant. View the [Resolution Agreement](#).