



## Healthcare Providers Should Not Discard HIPAA-Protected Health Information (PHI) in Regulated Medical or Pharmaceutical Waste Containers<sup>1</sup>

### Responsibility to Protect PHI Lies with Healthcare Providers and Other Covered Entities

The Health Insurance Portability and Accountability Act (HIPAA) privacy rule<sup>2</sup> sets national standards to protect individually identifiable health information, or “[protected health information](#)” (PHI). Healthcare providers, including doctors, hospitals, clinics, psychologists, dentists, chiropractors, nursing homes, and pharmacies, are typically “[covered entities](#)” responsible for complying with HIPAA rules. Those rules include management of PHI through disposal.

### Medical Waste Service Providers Are Not Typically HIPAA Business Associates

HIPAA regulations define “[Business Associate](#)” as an entity that performs a function or activity that involves the use or disclosure of PHI on behalf of or in providing services to a covered entity. Covered entities are required to enter into a contract known as a “[Business Associate Agreement](#)” (BAA) with their Business Associates to get satisfactory assurances the Business Associate will safeguard PHI in accordance with HIPAA requirements. Business Associates are directly liable for compliance with certain provisions of HIPAA rules. Regulated waste providers that manage wastes such as regulated medical waste (RMW) and pharmaceutical waste do not use, disclose, or need access to PHI in order to perform their services, and therefore do not generally function as a HIPAA Business Associate for covered entities.

### Medical and Pharmaceutical Waste Programs are Generally Not Designed for Secure PHI Disposal

Medical and pharmaceutical waste management and treatment are designed to protect human health and the environment, including preventing spread of disease and reducing environmental impacts. RMW and/or pharmaceutical waste management services and processes are not uniquely designed for secure PHI disposal due to various circumstances. [Disposal of PHI](#) requires security safeguards to be in place from the point of discarding the PHI at the covered entity’s location until its final disposition where it must be rendered indecipherable and unable to be reconstructed. These safeguards must be aligned with HIPAA’s Privacy and Security Rules to prevent unauthorized disclosure or viewing of PHI.

HWI members may have some safeguards in place, such as anti-scavenging policies and security measures to prevent unauthorized access to waste and may mitigate some risk, but such measures alone do not meet the Privacy Rule requirements specifically designed to protect PHI from unauthorized viewing or access. Covered entities must review their own circumstances to determine what steps are reasonable to safeguard PHI through disposal, and develop and implement policies and procedures to carry out those steps.

### HWI Members May Offer Secure Information Destruction Services Separately from RMW Services

Some HWI members provide HIPAA-compliant shredding or other destruction services separate from a medical and pharmaceutical waste service. Covered entities [must enter into a BAA](#) with a vendor that provides PHI destruction services. If a covered entity uses the same vendor for medical waste and secure information destruction, the covered entity must segregate waste streams correctly and keep PHI out of medical and pharmaceutical waste containers.

If you have any questions, please contact the NWRA Director of Regulatory and Environmental Affairs Sara Bixby, at 202-364-3737 or [sbixby@wasterecycling.org](mailto:sbixby@wasterecycling.org).

<sup>1</sup> The information presented in this document is for informational purposes only and should not be construed as legal advice. It is intended to assist our industry and the entities that regulate our industry. It is subject to change without notice.

<sup>2</sup> 45 CFR [Part 160](#) and [Part 164](#), Subparts A and E.