

AI Scribes & HIPAA: What Providers Need to Know

Laws on Protected Health Information, Recording & Consent

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1 Where AI and HIPAA Meet

AI scribes capture the patient-provider conversation and turn it into documentation. The very fact that they handle sensitive patient information means they fall directly under HIPAA requirements.

Whenever an AI scribe records or processes a conversation, the audio and transcript are considered Protected Health Information (PHI). That makes the tool subject to the same HIPAA Privacy and Security Rules that apply to your EHR or billing system.

Simple Rule of Thumb

If your scribe touches patient conversations → it's PHI → HIPAA applies.

What is PHI?

PHI is any information about a person's health or healthcare that can be used to identify them. This includes information about their past, present, or future health, healthcare services, and payment for healthcare.

2 **Covering Your Compliance Bases**

Think of HIPAA compliance with AI scribes as a checklist. If you address these areas, you'll reduce your risk and strengthen patient trust.

Step 1: Sign a Business Associate Agreement (BAA)

Your AI scribe vendor is a Business Associate under HIPAA. Never use them without a signed BAA. The agreement should spell out:

- what the vendor can and cannot do with PHI,
- how and when they will notify you about a breach, and
- what happens to PHI if you stop using the service.

👉 **When you sign up for Skriber, you agree to our Terms of Service and BAA through the check box at signup. You can review the BAA in Section A of our Platform Terms of Use at <https://skriber.com/platform-terms-of-use/>**

Step 2: Safeguard the Data

Your vendor should demonstrate strong security practices that meet HIPAA's Security Rule requirements. At a minimum, confirm they provide:

- Encryption of PHI in transit and at rest,
- Access controls to limit who can see patient information, and
- Audit trails so access and changes can be tracked.

👉 Details on Skriber's security practices can be found in our Trust & Compliance Center at <https://trust.skriber.com>

Step 3: Limit Retention

PHI should never be stored indefinitely. Define policies with your vendor that cover:

- how long recordings or transcripts are stored,
- who is authorized to access them, and
- how and when data is securely deleted.

👉 Skriber provides transparency into our data retention and deletion policies in our Trust & Compliance Center at <https://trust.skriber.com>

3 Recording Conversations: Federal & State Laws

HIPAA sets the ground rules for protecting patient information, but it does not prohibit recording itself. What HIPAA requires is that any recording containing Protected Health Information (PHI) is handled securely — with proper processes, encryption, and safeguards in place.

Whether or not you can record in the first place is determined by federal and state recording laws, not HIPAA. These laws are separate, vary by state, and are updated over time. For that reason, we are not listing state-by-state requirements here — but you can easily look up the current recording law for your state before implementing an AI scribe.

Federal Law Considerations

At the federal level, the Wiretap Act (part of the Electronic Communications Privacy Act) generally makes it illegal to record a conversation unless at least one party consents. This is sometimes called the "one-party consent" standard. Some states follow this federal rule, while others go further.

State Recording Laws

Each state sets its own consent requirements for recording conversations:

One-Party vs. All-Party Consent States

- **One-party consent states:** Only one person in the conversation (often the provider) must agree to the recording. Examples: Utah, Texas, Florida.
- **All-party consent states:** Every participant must consent to the recording. Examples: California, Illinois,

Massachusetts.

Why This Matters for Providers

If you record without following your state's consent law, you could face civil or even criminal penalties. Even in one-party states, best practice is to tell the patient explicitly that the visit is being recorded and document their agreement.

4 Best Practices for Using AI Scribes Legally & Ethically

Follow these four essential practices to ensure legal and ethical use of AI scribes in your practice.

1. Have a BAA in Place

Never use a scribe vendor without a signed Business Associate Agreement. This legal document is required by HIPAA and protects both you and your patients.

👉 With Skriber, you agree to our BAA and Terms of Use at signup, and you can review them anytime at skriber.com/platform-terms-of-use

2. Confirm Security Practices

Make sure your vendor uses strong encryption and has clear compliance processes. Ask about their security certifications and audit procedures.

👉 Skriber publishes ours at trust.skriber.com

3. Know Recording Laws and Get Consent

Federal law requires at least one party to know a recording is happening, but some states require everyone's consent.

Best Practice Everywhere

Always tell the patient and document their consent.

This protects you legally and builds patient trust.

4. Review Before Finalizing

AI-generated notes are drafts. The provider must review and approve them before they become part of the medical record. This ensures accuracy and maintains clinical oversight.

5 Sample Consent Scripts / Patient Disclosure Language

Sample Consent Scripts

Here are several ways to ask for patient consent. Choose the approach that feels most natural for your practice:

Option 1: *"I usually record our conversation to make sure my notes are accurate and you get the best care. Do you mind if I record today?"*

Option 2: *"To give you my full attention, I like to record our visit so I don't miss anything in your notes. Is it okay if I do that today?"*

Option 3: *"I use a recording of our conversation to keep your notes complete and accurate. It's only for your chart. Is that alright with you?"*

Option 4: *"To make sure I don't miss anything important, I usually record our visits and use it just for your notes. Would that be okay?"*

Option 5: *"I record our chat so your notes are accurate and I can focus on you. Is that okay with you?"*

6 Resources & Citations

Regulatory References

- **HIPAA Privacy Rule:** 45 CFR Part 160 and Subparts A and E of Part 164
- **HIPAA Security Rule:** 45 CFR Part 160 and Subparts A and C of Part 164
- **State Recording Laws:** Consult your state's specific wiretapping and eavesdropping statutes

Published Guides and Resources

"HIPAA Compliance Risks with AI Scribes in Health Care."
Foley & Lardner LLP. The National Law Review

"Using AI Scribes and Legal Compliance: What Providers Need to Know." DMCLaw LLC. DMC Law, LLC

"AI Medical Scribe Security: Complete HIPAA Compliance Guide." ScribeHealth

"Healthcare AI Compliance: Recording and Consent Requirements." Health Leaders Media

"State-by-State Recording Consent Laws." MICA Insurance

Additional Resources

- **HHS Office for Civil Rights:** [HIPAA Guidance and Resources](#)
- **American Medical Association:** [AI in Healthcare Guidelines](#)
- **Healthcare Information and Management Systems Society (HIMSS):** [Digital Health Resources](#)

Disclaimer

This guide provides general information about HIPAA compliance and AI scribes. It is not intended as legal advice. Healthcare providers should consult with qualified legal counsel to ensure compliance with all applicable laws and regulations in their specific jurisdiction.

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