

magicVORTEX File Transfer Service
Conformance Statement regarding the
American Recovery and Reinvestment Act of 2009 - Title XIII (Health
Information Technology for Economic and Clinical Health Act)
a.k.a “HITECH Act”
Version 1 – July 1, 2009

Usage Guidelines

Three usage guidelines are required for compliance to the HIPAA Electronic Transaction Standards and the HITECH Act Privacy Provisions (Subtitle D).

1. When the magicVORTEX application (as opposed to the website) is used to send files, the program must remain in Secure Mode (the default mode after installation). To ensure that the magicVORTEX application is operating in Secure Mode, look to the bottom of the console window. A small, blue lock icon appears when set to Secure Mode. To change the current operating mode, select "Settings" from the menu.
2. The intended recipient must be a registered user of magicVORTEX. Any recipient can sign up for a free account for the purposes of receiving files. The introductory free trial covers sending for only 30 days, but the ability to receive files for free lasts indefinitely. The registered status of a recipient can be confirmed at the magicVORTEX website at:
<http://magicvortex.com/Community.asp>
3. The filenames and descriptions of files sent via magicVORTEX should not contain individually identifiable information. The sender and recipient, exclusively, have access to the filenames and descriptions of transfers through their File History. By employing a labeling system that does not include patient names or names of procedures, no lasting individually identifiable information will be stored on the magicVORTEX servers.

Privacy Protections

When following the guidelines as described above, the magicVORTEX File Transfer Service protects the confidentiality and integrity of any protected health information.

- No access is given for any transmitted information to any party other than the sender and the intended recipient. In the case of legal proceedings, the appropriate courts and/or their officers may gain access where required by law.
- Passwords are always required to authenticate the sender and recipient of a given transmission.
- There is no shared or public repository of data.
- Electronic transmission occurs over public networks only after SSL-based (128-bit) encryption is applied.
- Servers participating in the transmission of data neither retain nor archive any file data following the completion of a file transfer.
- All physical access to servers and communication hardware is restricted and audited.
- A historical log is available for audit purposes that details: sender, recipient, date sent, date received, filename, file size, file date, and description.

Standard Operating Procedures

The policies and procedures that are followed in providing the magicVORTEX File Transfer Service are publicly available at the magicVORTEX website.

Privacy Policy - <http://magicvortex.com/Privacy.asp>

Terms of Use - <http://magicvortex.com/Terms.asp>

Impact of Federal Regulations

Section 1. NO REQUIREMENT FOR A BUSINESS ASSOCIATE CONTRACT

Since the magicVORTEX File Transfer Service does not use or disclose individually identifiable health information and merely acts a conduit between covered entities, magicVORTEX (or its operator, Sage Analytic Technologies, LLC) is not considered a "business associate" as defined by legislation (45 CFR 160.103). Therefore, no business associate contract is required in conjunction with magicVORTEX.

Excerpt from 65 FR 82476:

We do not require a covered entity to enter into a business associate contract with a person or organization that acts merely as a conduit for protected health information (e.g., the US Postal Service, certain private couriers and their electronic equivalents). A conduit transports information but does not access it other than on a random or infrequent basis as may be necessary for the performance of the transportation service, or as required by law. Since no disclosure is intended by the covered entity and the probability of exposure of any particular protected health information to a conduit is very small, we do not consider a conduit to be a business associate of the covered entity.

Regulations that govern which organizations should be treated as a "business associate" have changed with the enactment of the American Recovery and Reinvestment Act of 2009:

SEC. 13408. BUSINESS ASSOCIATE CONTRACTS REQUIRED FOR CERTAIN ENTITIES.

Each organization, with respect to a covered entity, that provides data transmission of protected health information to such entity (or its business associate) and that requires access on a routine basis to such protected health information, such as a Health Information Exchange Organization, Regional Health Information Organization, E-prescribing Gateway, or each vendor that contracts with a covered entity to allow that covered entity to offer a personal health record to patients as part of its electronic health record, is required to enter into a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations and a written contract (or other arrangement) described in section 164.308(b) of such title, with such entity and shall be treated as a business associate of the covered entity for purposes of the provisions of this subtitle and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of the date of enactment of this title.

This change in federal regulations does not alter our interpretation of the role magicVORTEX (and its operator, Sage Analytic Technologies, LLC) plays within the legal context of the healthcare information provider community. magicVORTEX clearly does not require access to protected health information on a routine basis. In fact, the magicVORTEX File Transfer Service has absolutely no access to protected health information following the completed transmission of a file. Furthermore, magicVORTEX does not act as a gateway to electronic health records, but solely as a one-time conduit.