

HIPAA

The Health Insurance Portability and Accountability Act of 1996

Children's Hospital In-House HIPAA Training



HIPAA Background

History

- Clinton Proposal
 - Uninsured
 - Cost
 - Middle class concerns
- Incremental reform
 - Kennedy-Kassebaum Health Care Reform Bill



HIPAA Background

PUBLIC LAW 104-191

AUG. 21, 1996

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

An Act

To amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.



HIPAA Background

HIPAA included:

- **Administrative Simplification**
 - intended to reduce cost
- **Privacy regulation**
 - intended to protect rights



HIPAA Background

Subtitle F--Administrative Simplification

SEC. 261. PURPOSE.

It is the purpose of this subtitle to improve the Medicare program under title XVIII of the Social Security Act, the medicaid program under title XIX of such Act, and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health information.



HIPAA Background

General Requirements

- Applicability
 - “Covered Entities”
 - health plans
 - health care clearing houses
 - healthcare providers who transmit electronically
- Reduction in cost



HIPAA Background

Covered Transactions

- (A) Health claims or equivalent encounter information.
- (B) Health claims attachments.
- (C) Enrollment and disenrollment in a health plan.
- (D) Eligibility for a health plan.

(Continued)



HIPAA Background

Covered Transactions *(continued)*

- (E) Health care payment and remittance advice.
- (F) Health plan premium payments.
- (G) First report of injury.
- (H) Health claim status.
- (I) Referral certification and authorization.



HIPAA Background

Standards To Be Set

- Unique Health Identifiers
- Transaction & Code Sets
 - “... from among the code sets that have been developed by private and public entities”
- Security Standards
- Electronic Signatures
- Transfers ... Among Health Plans



HIPAA Background

Compliance Time Frames

- Transaction & Code Set Rule
 - Final rule published August 17, 2000
 - Extension deadline October 15, 2002
 - Effective date October 16, 2003
- Security and Employer Identifiers
 - Proposed in Summer of 1998
 - Not yet finally published
- Privacy
 - Final Rule published December 28, 2000
 - Effective April 14, 2003



HIPAA Background

Penalties

- “Violations” - \$100 each, up to \$25,000 per year
- “Wrongful” use or disclosure - \$50,000 and/or up to 1 year
- “Under false pretenses” - \$100,000 and/or up to 5 years
- “Commercial” or “malicious” - \$250,000 and/or up to 10 years



HIPAA Security

Overview of Proposed Security Regulations



HIPAA Security

Four Categories of Security Requirements

1. Administrative procedures
2. Physical safeguards
3. Technical protections for data storage
4. Technical protections for access to and transmission of data



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HIPAA Security

1. Administrative procedures

- Assign security responsibility
- Security policy
- Authorization policy
- Personnel clearance policy
- Sanctions policy
- Training program
- Others



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2. Physical safeguards

- Media controls
- Physical access controls
- Workstation controls



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3. Technical protections for data storage

- Authentication controls
- Technical access controls
- Audit controls



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HIPAA Security

4. Technical protections for access to and transmission of data

- Network access controls or encryption
- Integrity controls
- Message authentication



HIPAA Privacy

Overview of Privacy Regulations



HIPAA Privacy

Privacy

SEC. 264. RECOMMENDATIONS WITH RESPECT TO PRIVACY OF CERTAIN HEALTH INFORMATION.

(c) REGULATIONS.—

(1) IN GENERAL.--If legislation governing standards with respect to the privacy of individually identifiable health information transmitted in connection with the transactions described in section 1173(a) of the Social Security Act (as added by section 262) is not enacted by the date that is 36 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations containing such standards not later than the date that is 42 months after the date of the enactment of this Act. Such regulations shall address at least the subjects described in subsection (b).



HIPAA Privacy

Privacy

SEC. 264. RECOMMENDATIONS WITH RESPECT TO PRIVACY OF CERTAIN HEALTH INFORMATION.

(c) REGULATIONS.—

(2) PREEMPTION.--A regulation promulgated under paragraph (1) shall not supercede a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under the regulation.



HIPAA Privacy

Five Basic Features of Privacy Regulations

1. No use or disclosure unless permitted
2. Permitted uses & disclosures
3. Other patient rights
4. Administrative requirements
5. Miscellaneous provisions



HIPAA Privacy

1. No use/disclosure unless permitted

- “A covered entity may not use or disclose an individual’s protected health information, except as otherwise permitted or required by this subpart.”

§ 164.502(a).

- What is “protected health information”?



HIPAA Privacy

1. No use/disclosure unless permitted

– Specific Disclosure Issues

a. Organizational Issues (§504)

- Hybrids and healthcare components
- Affiliates
- Business associate contracts

b. Disclosure Issues

- De-identification (§514)
- Minimum necessary (§514)
- Personal representative (§502)



HIPAA Privacy

1. No use/disclosure unless permitted

– Types of Business Associate:

- Level 1 - Occasional PHI contact
- Level 2 - Regular PHI contact
- Level 3 - Possession of PHI
- Level 4 - Out-source covered entity's compliance activities

– Strategy:

Start with highest level (most critical) and work down the list



HIPAA Privacy

1. No use/disclosure unless permitted

- “Minimum Necessary” (§514)
 - a. Exceptions
 - treatment, patient requests and “required by law”
 - New exception – “Incidental Disclosures”
 - b. Routine uses
 - Identify people who need access to PHI
 - Identify what PHI they need access to
 - Limit their access to the needed PHI
 - c. Routine disclosures and requests
 - d. Non-routine uses, disclosures and requests
 - e. “Entire record requests”



HIPAA Privacy

2. Permitted Uses/Disclosures

- A. For treatment, payment and healthcare operations (formerly “consent”) (§506)
- B. With authorization (§508)
- C. “Opt-opt” situations (§510)
- D. Exceptions (§512)
- E. Patient (§524)



HIPAA Privacy

2. Permitted Uses/Disclosures

A. For treatment, payment & health care operations (§506)

- Formerly “consent”
- Now tied to Notice of Privacy Practices
- Still need form under Louisiana law



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2. Permitted Uses/Disclosures

B. With authorizations (§508)

- Specific form
- No longer additional requirements



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2. Permitted Uses/Disclosures

C. “Opt-outs” (§510)

- Directory information
 - Including pastoral care
- Involvement in care and notification
 - When the patient is present
 - In the patient’s absence



HIPAA Privacy

2. Permitted Uses/Disclosures

D. Exceptions (§512)

- a) required by law
- b) public health activities
- c) victims of abuse, neglect or domestic violence
- d) health oversight activities
- e) judicial and administrative proceedings
- f) law enforcement purposes

(Continued)



HIPAA Privacy

2. Permitted Uses/Disclosures

D. Exceptions (§512) *(continued)*

- g) decedents
- h) organ, eye, tissue donation
- i) research purposes
- j) to avert serious threat to health or safety
- k) specialized government functions
- l) worker's compensation

(Continued)



HIPAA Privacy

2. Permitted Uses/Disclosures

D. Exceptions (§514) *(continued)*

- m) marketing
- n) fundraising
- o) underwriting



HIPAA Privacy

2. Permitted Uses/Disclosures

E. Patient (§524)

See next section



HIPAA Privacy

3. Other Patient Rights

A. Notice of privacy protections (§520)

B. Requests for additional protections (§522)

C. Access (inspection and copying) (§524)

D. Amendment (§526)

E. Accounting for disclosures (§528)



HIPAA Privacy

3. Other Patient Rights

A. Notice of privacy protections (§520)

- Right to notice
- Content
- Providing notice
- Joint notice



HIPAA Privacy

3. Other Patient Rights

B. Requests for additional protections (§522)

- Right to request additional restrictions
 - No obligation to comply
- Right to request alternative communication
 - Must accommodate if reasonable



HIPAA Privacy

3. Other Patient Rights

C. Access (§524)

- Right to inspect and copy
- Unreviewable grounds for denial
- Reviewable grounds for denial
 - Review process
- Copy charges and timeliness



HIPAA Privacy

3. Other Patient Rights

D. Amendment (§526)

- Right to offer
- Acceptance
 - Transmittal
- Denial
 - Grounds (accurate & complete, not your record, etc.)
 - Right to submit statement
 - Rebuttal



HIPAA Privacy

3. Other Patient Rights

E. Accounting for disclosures (§528)

- Right to accounting
- Excluded disclosures
- Content of accounting



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4. Administrative Requirements (§530)

- privacy officer
- training
- safeguards & security
- complaints to the covered entity
- policies and procedures
- documentation
- sanctions
- verification



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5. Miscellaneous Provisions

- Preemption of State Law (160 CFR 201 et seq.)
- Compliance and Enforcement (160 CFR 300 et seq.)
- Transition provisions (§532)



HIPAA Privacy

Proposed Changes

- Published March 27, 2002
- Effective August 14, 2003
- Major provisions
 - Elimination of consent
 - Marketing re-write
 - Changes to notice, accounting and authorizations
 - Extend business associate contracting deadline
 - Many more



HIPAA Overview

HIPAA Privacy WorkGroups

www.HIPAAPrivacyWorkGroups.com
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HIPAA

The Health Insurance Portability and Accountability Act of 1996

HSLI In-House HIPAA Training

