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CARSA

Spring Legislative Conference

Sheraton Baton Rouge
Convention Center Hotel

March 26, 2002
1:00 – 2:00 p.m.

HIPPA Status Update

Gregory D. Frost

**Roedel Parsons Koch Frost
Balhoff & McCollister**
Baton Rouge, Louisiana

Speaker

Gregory D. Frost

Roedel Parsons Koch Frost Balhoff & McCollister

Gregory D. Frost is a partner in the law firm of Roedel, Parsons, Koch, Frost, Balhoff & McCollister. His practice concentrates in healthcare law and governmental relations, including the representation of physicians, not-for-profit, for-profit and governmental hospitals, other types of healthcare providers, and health care trade associations. His legal practice includes licensure and other regulatory matters, Medicare, Medicaid and workers' compensation reimbursement issues, defense of civil and criminal fraud prosecutions, transactional matters and litigation involving healthcare providers. His governmental relations practice involves assisting clients in the development and implementation of complete legislative and regulatory strategies.

Prior to joining his firm, Mr. Frost was Vice President of Legal & Governmental Affairs with the Louisiana Hospital Association for more than eight years. He has lectured at Louisiana State University, Tulane University, the University of Louisiana at Lafayette, has served on the adjunct faculty of the College of St. Francis, and regularly speaks before trade and professional organizations and legal audiences. In addition to numerous articles on health law issues, he is the editor of *Louisiana Medical Records Law* which is currently in use as a textbook at two Louisiana colleges. He has also edited *Managed Care, Collections and Related Issues*, and the *Workers' Comp Medicals Handbooks* (five volumes). Mr. Frost is a member of the American Health Lawyers Association, the Association of Louisiana Lobbyists, the Louisiana State and Baton Rouge Bar Associations. He is also a founding member and three-term director of the Louisiana Society of Hospital Attorneys. He received his J.D. degree from LSU in 1981.

Related Links

Louisiana HIPAA WorkGroups – www.HIPAAPrivacyWorkGroups.com

Business Associate Resources – www.HIPAABusinessAssociate.com (February 1, 2002)

Louisiana HIPAA Conference – www.LAHIPAAConference.com

HIPAA Status Update

**For the Community and Residential
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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.



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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.



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HIPAA Background

General Requirements

– Applicability

- “Covered Entities”

- health plans

- health care clearing houses

- healthcare providers who transmit electronically

– Reduction in cost



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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



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HIPAA Background

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).



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HIPAA Background

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.



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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
- Amendment proposed March 27, 2002 ***
- Effective April 14, 2003



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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



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HIPAA Security

Overview of Proposed Security Regulations



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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

HIPAA Security

1. Administrative procedures

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

HIPAA Security

2. Physical safeguards

- **Media controls**
- **Physical access controls**
- **Workstation controls**

HIPAA Security

3. Technical protections for data storage

- Authentication controls
- Technical access controls
- Audit controls

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



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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

- Hybrids and healthcare components**
- Affiliates**
- Business associate contracts *****

b. Disclosure Issues

- De-identification**
- Minimum necessary *****
- Personal representative *****

HIPAA Privacy

1. No use/disclosure unless permitted

– “Minimum Necessary”

a. Exceptions

- treatment, patient requests and “required by law”

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”



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HIPAA Privacy

2. Permitted Uses/Disclosures

- A. With consent *****
- B. With authorization *****
- C. “Opt-opt” situations**
- D. Exceptions**
- E. Patient**

HIPAA Privacy

2. Permitted Uses/Disclosures

A. With consent ***

- For treatment, payment & health care operations
- When and how obtained
- Defective consents

HIPAA Privacy

2. Permitted Uses/Disclosures

B. With authorizations ***

- **Specific form**
- **Additional requirements**

HIPAA Privacy

2. Permitted Uses/Disclosures

C. “Opt-outs”

- Directory information
- Involvement in care and notification

HIPAA Privacy

2. Permitted Uses/Disclosures

D. Exceptions

- 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)



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2. Permitted Uses/Disclosures

D. Exceptions *(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 *(continued)*

m) marketing ***

n) fundraising

o) underwriting

HIPAA Privacy

2. Permitted Uses/Disclosures

E. Patient

See next section

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3. Other Patient Rights

- Access (inspection and copying)**
- Notice of privacy protections *****
- Requests for additional protections**
- Amendment**
- Accounting for disclosures**

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4. Administrative Requirements

- 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

– Compliance and Enforcement

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HIPAA Overview

HIPAA Privacy WorkGroups

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Major Revisions to HIPAA Privacy Rules

An In-Depth **Teleconference** on the Latest Changes

Registration

Please use multiple forms for multiple registrations.

Name _____
Business _____
Address _____
City _____ State _____ Zip _____
Telephone _____ Fax _____
Email address _____

Send This Form

Return to: HPM, P.O. Box 66776, Baton Rouge, Louisiana 70896-6776
Or register by phone or fax: 1-800-841-8240
Or via the internet: www.HIPAAPrivacyWorkGroups.com

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An innovative approach to self-implementation

On March 27, 2002, the Department of Health and Human Services will publish the long-awaited proposal for amendments to the privacy rules. These surprisingly broad and controversial revisions will greatly effect compliance efforts of all health care providers.

What changes were made? Some of the most important changes include:

- ◆ deleting the requirement for consent
- ◆ making notice requirements more stringent
- ◆ requiring authorizations for marketing
- ◆ expanding parental rights
- ◆ providing a model business associate agreement
- ◆ and much more

Will the changes effect your HIPAA Privacy efforts?

Yes! These proposals offer real opportunities for simplifying implementation in some areas, but they add additional requirements in others.

What will this teleconference cover? This one-hour session (produced twice for easier scheduling) will review and analyze all of these important changes and discuss strategies for incorporating them into compliance efforts. Registrants will receive an index to the proposal, a summary of its contents, links to conveniently formatted versions, and more.

Select Session

<input type="checkbox"/>	April 3, 2002	Teleconference 10:00 a.m. – 11:00 a.m.	WorkGroups Member Fee \$75.00	Non-WorkGroups Member Fee \$95.00
<input type="checkbox"/>	April 10, 2002	Repeat Teleconference 2:00 p.m. – 3:00 p.m.	WorkGroups Member Fee \$75.00	Non-WorkGroups Member Fee \$95.00

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