

Patient Rights Under HIPAA

Gordon J. Apple, J.D.

Mary D. Brandt, MBA, RHIA, CHE

Program Objectives

- Overview of patient privacy concerns
- Review of patient rights under HIPAA
- Pigs do fly - review implications and challenges for covered entities and business partners in achieving compliance

I. Overview of Patient Data Privacy Concerns - Real or Imagined

Security of Patient Data - Who has the key?



Privacy

- “The right to privacy is an integral part of our humanity; one has a public persona, exposed and active, and a private persona, guarded and preserved. The heart of our liberty is choosing which parts of our lives shall become public and which parts we shall hold close.”
- Minnesota Supreme Court 582 N.W.2d 231, 1998

HIPAA's Goals

- Allow the free flow of health information needed to provide and promote high quality health care
- Assure that individuals' health information is properly protected

Existing Data Protection Requirements

- State law
- Federal law
- JCAHO
- Conditions of Participation
- Professional codes

Covered Entities

- Health plans
- Health care providers who transmit PHI in electronic form in connection with standard transactions
- Health care clearinghouses
- Short list indirectly expanded through business partner requirements

II. Patients Rights Under HIPAA

PHI - What we don't want others to know!

- Sexual history, orientation or practices
- Drug use - either leisure or medicinal for what it tells others about us
- Rock & Roll

HIPAA Data

- Health information
- Individually identifiable health information (IIHI)
- **Protected health information (PHI)**

Protected Health Information

- Individually Identifiable Health Information that is or has been electronically transmitted or electronically maintained by a covered entity and includes such information in any other form (printout of electronic data)

Basic Patient Rights

- Right to notice of information practices
- Right to access to PHI
- Right to an accounting of how their PHI has been disclosed outside normal patient care channels
- Right to request amendment/correction to PHI

Patient Rights - Purpose

“Facilitate individuals understanding of and involvement in the handling of their protected health information.”

Application of Patient Rights Requirements

- Apply to PHI held by health care providers and health plans.
- Do not directly apply to clearinghouses
 - Beware of BP requirements

Uses and Disclosures NOT Requiring Patient Consent

- To carry out treatment, payment or health care operations
- For public health, health oversight, judicial/administrative proceedings, coroners/MEs, law enforcement,

Uses and Disclosures Requiring Patient Consent

- Requests by patient
- Request by CEs re: marketing, fundraising, employers for employment determinations, non-health related divisions of the CE...

Fair Information Practices

- Series of individual rights
- General rule on disclosure
 - “Minimum necessary”

Minimum Necessary

- To meet the purpose of the use or disclosure
- To limit access only to those people who need access to the information to accomplish the use or disclosure.

Minimum Necessary



Notice of Information Practices

- An individual has a right to adequate notice of the policies and procedures of a covered entity that is a health plan or a health care provider with respect to protected health information

Notice Distribution Requirements

- Providers
 - Upon request
- Health Plans
 - by the effective date of the final rule
 - at enrollment
 - within 60 days of a material change to the plan's information practices
 - at least once every three years.

Third Party Beneficiary Lawsuits

- TPB law is state contract law.

Details of Notice

- An otherwise lawful use or disclosure that does not appear in the entity's notice would not be permitted
- The information practices reflected in the most recent notice would apply to all PHI regardless of when the PHI was collected.

Access of Individuals to Protected Health Information

- Right of access includes access to PHI with
 - Health plan
 - Health care provider
 - Business partner if records not a duplicate
- Access as long as records maintained

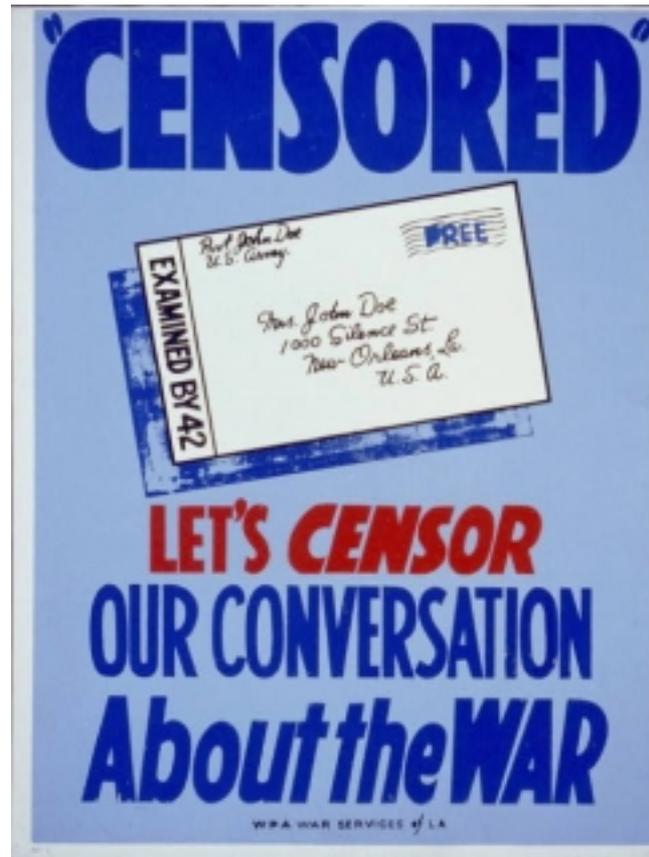
Accounting for Disclosures of Protected Health Information

- Right to full accounting of disclosures from CEs except for treatment, payment and health care operations and for certain disclosures to health oversight or law enforcement agencies.
- Right of accounting also applies to business partners

Right to Request Amendment or Correction

- Requests will have to be either accepted or rejected within 60 days
- Rejections will require an explanation in plain language
- Patients can still file statement of disagreement - for the record

Privacy Education



Too much protection?

- In searching for solutions to legitimate privacy concerns, we must take care not to devise solutions that in the name of protecting medical information privacy would impair the integrity or accessibility of medical archives, and thereby blunt medical research that benefits all of us.

DAVID KORN, Senior Vice President, Biomedical and Health Sciences Research

AAMC - Wash. Post Letter to the Editor -

The Dead - Not Grateful

- PHI otherwise protected by HIPAA retain protection for two years after the death of the subject of the information.
- Exception for uses and disclosures for research purposes.
- Right to control PHI of deceased rests with an executor or administrator and on down the line if intestate

Post Mortem Disclosure of PHI

- Danger of the two year release date.
 - Genetic information.. a potential roadmap to the future of the survivors.
 - Hereditary diseases...who has the right to know?

State v. Federal Action

- State laws have been passed specifically addressing privacy of genetic information
 - Massachusetts
- No federal law...yet.

Penalties & Claims

- Civil penalties
- Criminal penalties
- No private cause of action
- Third party beneficiary contract claims

Business Partners?



Business Partners

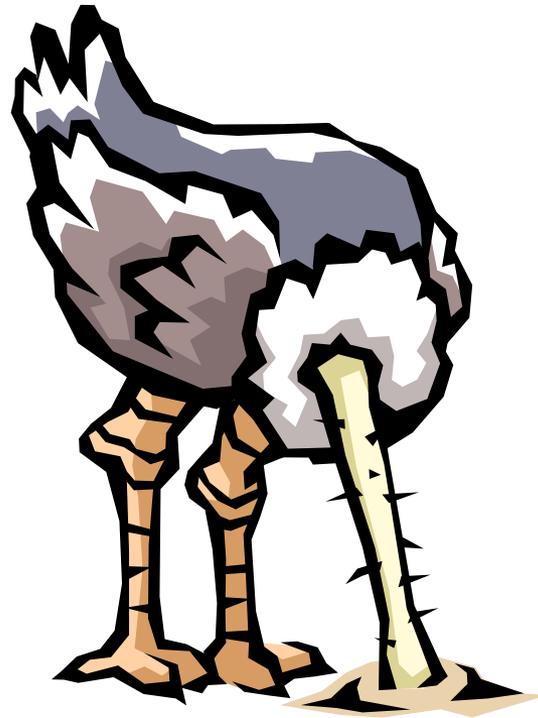
- Insurance companies
- Law firms
- Accountants
- IT contractors
- Compliance consultants
- Insurance brokers

Satisfactory Assurance

BP will....

- Ensure that subcontractors are bound to HIPAA requirements
- Make PHI available upon appropriate request
- Have an open door for DHHS
- Abide by contract termination req's
- Be able to amend/correct PHI upon CE notice

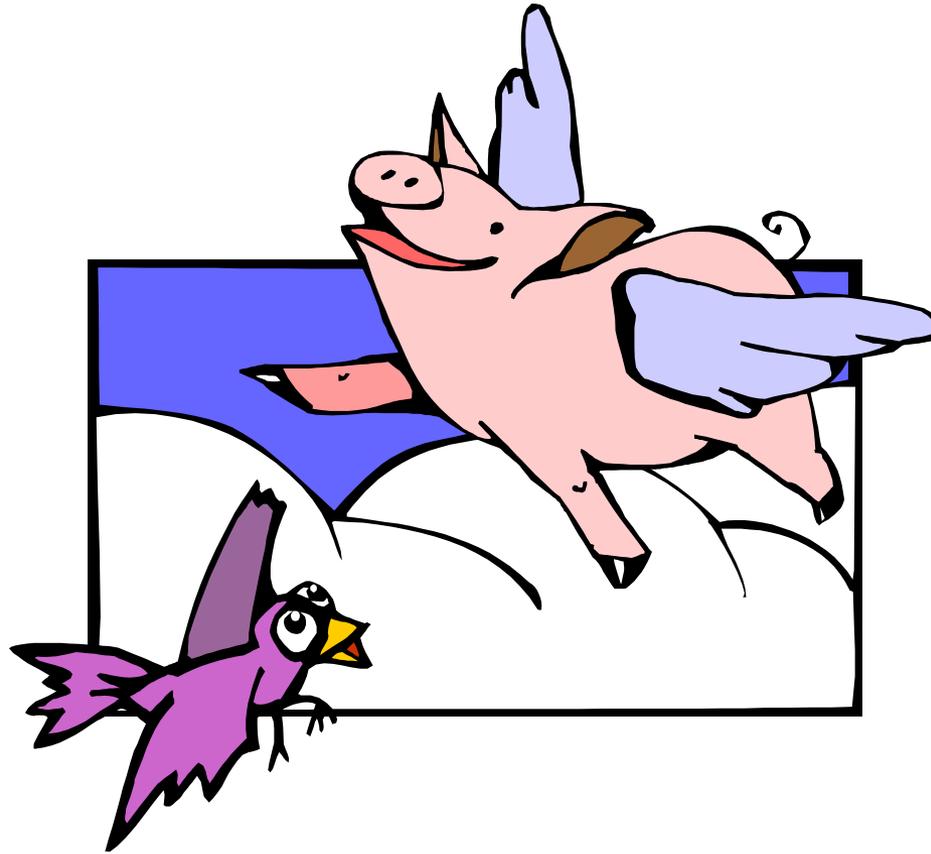
BPs & the Ostrich Syndrome



CE Responsibility for BP Violations

- Reasonable steps to ensure compliance
 - K due diligence
- Tainted by BP breach if CE “knew or should have known” of BP breach and....DID NOTHING...AKA as “Ostrich Syndrome”

III. The Implications and Challenges



Notice of Information Practices



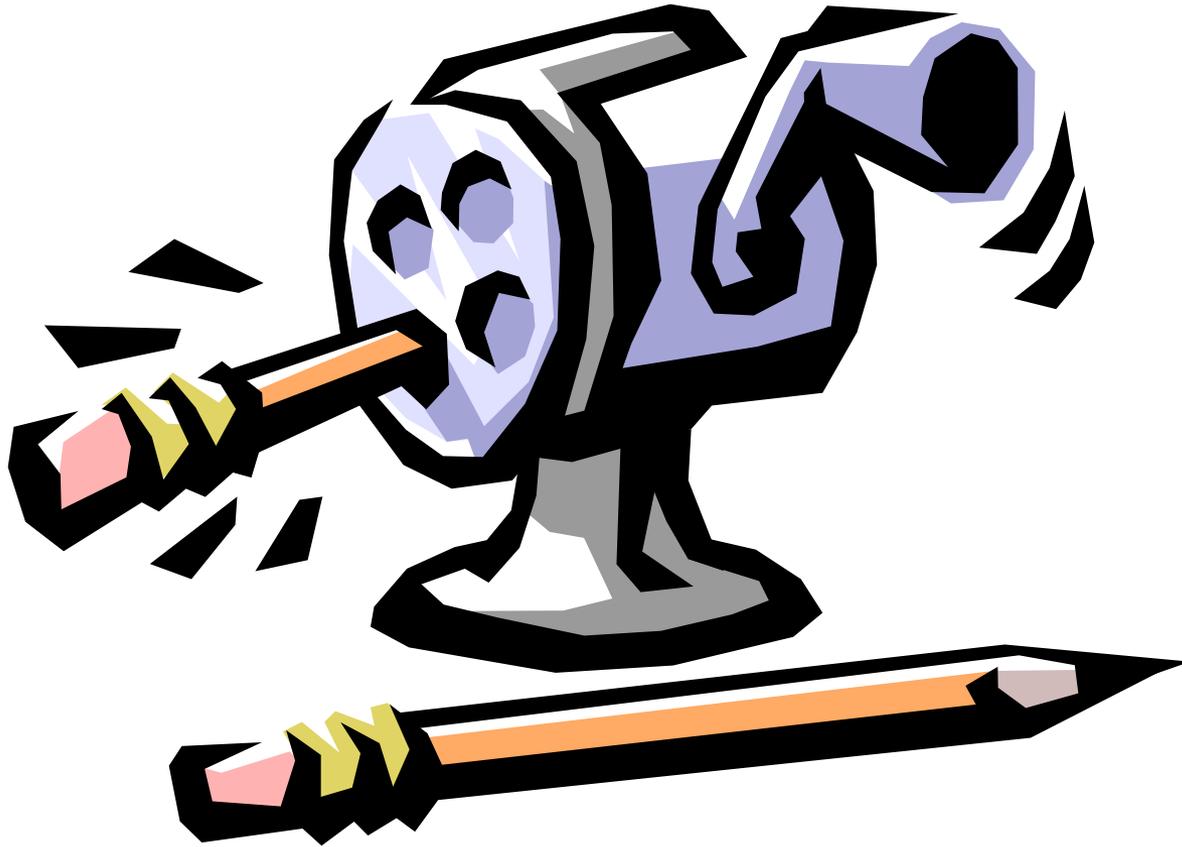
Right to Inspect and Copy



Right to Amend or Correct



Right to an Accounting



Right to Limit Access to PHI



Questions?

- Gordon Apple, JD
Law Offices of Gordon J. Apple, P.C.
St. Paul, MN
Tel: 651-292-1524
E-mail: GordonJApple@Worldnet.Att.Net
- Mary Brandt, MBA, RHIA, CHE
PricewaterhouseCoopers, LLP
Houston, TX
Tel: 713-356-8582
E-mail: mary.d.brandt@us.pwcglobal.com