HIPAA for Governments & Municipalities

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HIPAA’s Applicability to Government
Administrative Simplification: What Does HIPAA Do?

- Transaction Standards
- Privacy Standards
  - Restrictions on use and disclosure of PHI
  - Individual rights
  - Administrative requirements
- Security Standards
  - Ensure confidentiality, integrity and availability of electronic PHI
  - Protect against reasonably anticipated threats to security or integrity of electronic PHI
  - Protect against reasonably anticipated uses or disclosures of electronic PHI
  - Ensure compliance by workforce
Covered Entities Under HIPAA

- Health care providers engaging in electronic covered transactions
- Health plans
  - Insurers
  - Group health plans (e.g., employee benefit plans)
  - Employee welfare benefit plan established for employees of two or more employers
  - Medicaid
  - Approved state child health plan
- Not a health plan: other government-funded programs
  - Principal purpose is other than providing or paying the cost of health care or
  - Principal activity is direct care or making grants to fund direct care
- Health care clearinghouses
- Sponsors of Medicare prescription drug cards
Others Affected by HIPAA

- Business associates
  - Perform certain functions on behalf of Covered Entity
  - Involves receipt, use, disclosure, creation of PHI
  - Written assurances that meet specific minimum requirements
- Plan sponsor
  - Fiduciary duty to ensure HIPAA compliance of its plan(s)
Hybrids

- Single legal entity
- Covered functions = covered entity
- Business functions include both
  - Covered functions
  - Noncovered functions
- May designate “health care components”
  - Component that would be a covered entity if a separate legal entity
  - Other components may be added
  - Health care components are treated as separate from rest of the legal entity
  - Document designation
Affiliated Covered Entity

- Covered entities under “common ownership” or “common control”
  - Common ownership – ownership or equity interest of 5% or more
  - Common control – entity has the power, directly or indirectly, to significantly influence or direct the actions or policies
- Designation to act as a single covered entity
General HIPAA Considerations
Covered Entity With Multiple Covered Functions

- Single covered entity that engages in
  - Provider
  - Plan
  - Clearinghouse and/or
  - Medicare prescription drug sponsor
- Must comply with each applicable set of requirements
  - Based on each distinct function
General HIPAA Considerations: Preemption

- Is the State law contrary to HIPAA?
  - If not contrary, both requirements apply
  - If contrary
    - HIPAA preempts or supercedes contrary state law
    - UNLESS state law provides
      - Greater privacy protections
      - Greater individual rights
General HIPAA Considerations

- HIPAA may apply to
  - Government agency (or component) itself
  - Covered entities that deal with government agencies

- If agency needs/wants information from covered entities or is a covered entity:
  - Identify applicable permitted and required disclosures
  - Educate on applicable requirements
  - Bring into compliance correspondence, forms, etc.
General HIPAA Considerations

- Minimum necessary
  - Must make reasonable efforts to
    - Limit PHI to the minimum necessary to accomplish the intended purpose
- Applies to uses, disclosures and requests
- Not applicable to
  - Treatment
  - Required by law
  - Authorizations
  - Access to patient
  - Disclosures to HHS

But note: Only to the extent specifically permitted or required
General HIPAA Considerations

- Verification requirements
  - Identity
  - Authority
  - Documentation, statements or representations that otherwise may be necessary

- Notice of privacy practices
  - Bound by notice
General HIPAA Considerations

- Individual Rights
  - Access
  - Amendment
  - Accounting of disclosures
  - Requests for additional privacy protections
Activities Under HIPAA
HIPAA in Inter-Agency/Interdisciplinary Teams

- Governments often use multidisciplinary teams
- Allows combination of expertise and focus
- May include:
  - Covered entities/covered components
  - Non-covered entities
- Can PHI be shared among these teams?
Inter-Agency/Interdisciplinary Teams – HIPAA Permitted Disclosures

- Treatment, payment or health care operations
  - May use or disclose PHI for TPO
  - May disclose PHI for the treatment activities of a provider
  - May disclose PHI for the payment activities of a provider or covered entity
  - May disclose PHI to another covered entity for recipient’s limited health care operation
    - Both have/had a relationship with individual
    - Operations pertain to that relationship
    - Limited operations: QA, credentializing, training and fraud and abuse detection
Inter-Agency/Interdisciplinary Teams – Permitted HIPAA Disclosures

- May disclose when required by law
  - Only to the extent required
  - Note additional requirements
    - Bring disclosure under standards for
      - Abuse/ neglect reporting;
      - Judicial and administrative proceedings, or
      - Law enforcement
- Public health reporting
- Health care oversight
Inter-Agency/Interdisciplinary Teams – Permitted HIPAA Disclosures

- Special rules for covered government programs providing public benefits
  - Government program health plan may disclose certain eligibility and enrollment information to another agency administering/providing public benefits if required or authorized
  - Covered government agency administering a public benefits program may disclose PHI to another like agency if
    - The programs serve similar populations
    - Necessary to coordinate covered function or to improve administration/management
Inter-Agency/Interdisciplinary Teams – Permitted HIPAA Disclosures

- Authorization
- Must comply with all applicable laws
  - HIPAA
  - State law
- Heighten confidentiality requirements
  - Protected classes of information
  - Substance abuse regulations
  - Privacy Act
- Draft to include all relevant team players
HIPAA in Public Health

- Tension between
  - Benefits of total access to all health information
  - Public concern over confidentiality
- Permissible disclosures without patient authorization
  - Required by law (e.g., mandatory reporting, gunshot wounds, certain communicable diseases), births and deaths, birth defects
  - For public health activities (intended to cover the spectrum of public health activities)
    - Prevention and control of disease, injury
    - Communicable disease notification
    - Child abuse or neglect reporting
    - FDA-regulated product or activity
    - Work-related injury or illness
  - Necessary to avert a serious threat to health or safety
  - Other abuse, neglect or domestic violence
  - TPO
  - De-identified information and limited data set
HIPAA in Public Health: De-Identification

- Information is presumed de-identified if—
  - Qualified person determines that risk of re-identification is “very small” or
  - The following identifiers are removed:
    - Name
    - Address
    - Relatives
    - Employer
    - Dates
    - Telephone
    - Fax
    - e-mail
    - SSN
    - MR#
    - Plan ID
    - Account #
    - License #
    - Vehicle ID
    - URL
    - IP Address
    - Fingerprints
    - Photographs
    - Other unique identifier

- And the CE does not have actual knowledge that the recipient is able to identify the individual
HIPAA in Public Health: 
Limited Data Set

- Limited Data Set = PHI that excludes direct identifiers except:
  - Full dates
  - Geographic detail of city, state and 5-digit zip code
- Not completely de-identified
- Special rules apply
HIPAA in Public Health: Data Use Agreements

- Limited Purposes:
  - Research,
  - Public health
  - Health care operations

- Recipient must enter into a Data Use Agreement:
  - Permitted uses and disclosures by recipient
  - Who may use or receive limited data set
  - Recipient must:
    - Not further use or disclose information
    - Use appropriate safeguards
    - Report impermissible use or disclosure
    - Ensure agents comply
    - Not identify the information or contact the individuals
HIPAA in Public Health
HIPAA in Disaster Situations

- Facility Directory – covered entities may disclose PHI if patient is asked for by name:
  - Name
  - Condition (e.g., undetermined, good, fair, serious, critical)
  - Location within facility
  - Religion (release to clergy only)

- Notification in Disaster Relief Efforts
  - Disclosures to public or private entity authorized to assist in disaster relief efforts
  - Disclosures for notification of individual’s location or general condition to family member, personal representative or another responsible for care

- Subject to opportunity to agree or object
- Recognize professional judgment
HIPAA in EMS

- EMS generally is covered entity or covered health care component and must comply with HIPAA
- Beware of HIPAA overkill: Balance between patient care and minimum necessary
  - If name and description of condition is needed, it should be given
  - If directions are needed, get them
- Police often want information from EMS
  - Reporting crime in emergencies (not at a health care facility) to report
    - Commission and nature of a crime
    - Identity, description and location of perpetrator
    - Location of a crime or victim
- Some disclosures require representations on part of law enforcement that may be able to be given in advance (e.g., formal annual request and representation letter)
HIPAA in Schools

- Schools have long protected confidentiality, e.g., Family Education Rights and Privacy Act
- Two-prong analysis
  - Is school – or person/entity providing services to the school – covered entity?
    - Examples – school nurse, speech therapist, psychologist, school-based clinics
    - Engage in health care provider activities
    - Engage in electronic HIPAA transaction
  - Is PHI involved?
    - Exception for FERPA – covered records (beware FERPA exceptions, such as for oral communication and sole possession)
    - Treatment records of older students exception
HIPAA in Prisons

- A covered entity may disclose PHI to a correctional institution (or law enforcement official) having lawful custody of an inmate
  - Upon institution’s representation that the PHI is necessary for:
    - The provision of health care to the inmate
    - The health and safety of the inmate – or others at the correctional institution
    - The health and safety of inmates, officers or other persons responsible for transporting/transferring inmates
    - Law enforcement on correctional institution’s premises
    - Administration and maintenance of the safety, security and good order of the correctional institution
HIPAA in Prisons

- Limited rights of prisoners
- Notice of Privacy Practices
  - Not applicable to inmates or correctional institutions
- Access
  - Covered correctional institution – or provider under such institution’s direction – may deny inmate’s request for access if it would jeopardize
    - The health, safety, security, custody or rehabilitation of the individual or other inmates
    - Safety of any officer, employee or others
    - Unreviewable grounds for denial
- Amendment
  - May be denied if the record is not subject to access
- Accounting of Disclosure
  - Suspend right to an accounting if law enforcement
    - Represents that it may reasonably impede the agencies’ activities
    - Specify a time period for the suspension
Questions