

Legal Strategies In HIPAA Compliance

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Who am I?

- LT US Navy JAGC: VietNam
- Goulston & Storrs: 1967
- First computer: Osborne
- Suffolk Univ. Law School
- Past President Health Lwys.
- Moderator: HIT listserv

J A G & M e & H I P A A

Alan S. Goldberg's Privacy Policy

- Nothing I say in this room is private
- Everything you say in this room is public
- You & I have zero privacy in this room: get over it.
- How's that for a simple privacy policy?

Alan S. Goldberg's COPPA Disclaimer

- This presentation is not for children.
- If you are under age 13, please go away.
- I do not serve cookies, Java, or milk.
- How's that for a simple COPPA policy?

Ministry of Spirit of HIPAA

Do we believe in privacy?

YES!

Are we all patients?

YES!

Will we take the HIPAA pledge?

YES!

HALLELULA, PRAISE HIPAA, AMEN!

H I P A A P l e d g e

“I pledge to preserve, protect, and defend the security, privacy & confidentiality of individually identifiable health information, to the best of my ability, and in furtherance of the best interests of more than 281,000,000 patients.”

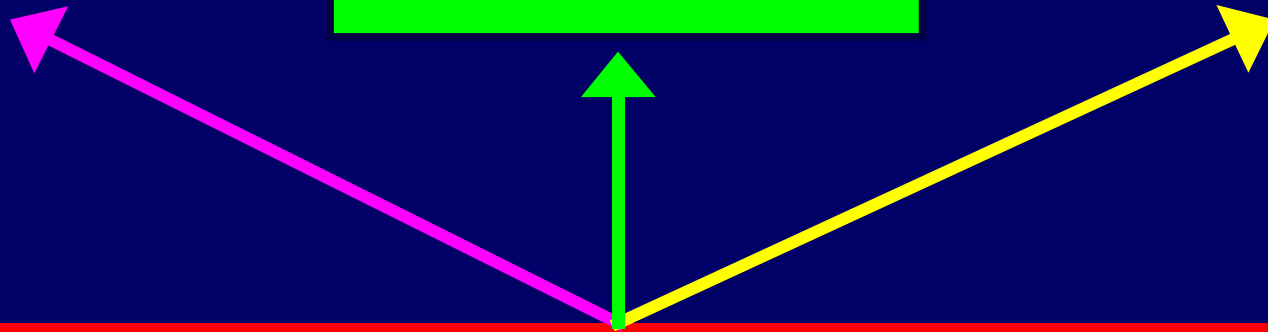
HIPAA Report

HIPAA

**Who
Should
Go?**

**Hip
Hop**

Pres. Clinton & HHS



Send Roger

Pardon Me

**I Never Had Sax With
That Woman - Not Ever**

Florida Offers to Help

Timing Is Everything

You Can Take HIPAA &

% # * & @ # ! ^ @ It!

HIPAA & Fed

H I P A A h o p p i n g

Agency Security

- 5 USC Sec. 552a "(e) Agency Requirements. - Each agency that maintains a system of records shall - (10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained...."

HCFA Internet Security

- 1997 - HCFA to Internet: Drop Dead
- 1998 - Internet Communications Security & Appropriate Use Policy
- An acceptable method of encryption
- Authentication or identification
- Temporary measure in anticipation of HIPAA implementation
- The essence of HIPAA

Bush Discovers Internet

- Bush Administration earmarks \$100 million for Internet to make federal government less bureaucratic

Confidentiality

- Technology vs. DTM (Dead Tree Media)
- Electronic medical records
- Store & forward vs. real time: back-up & purge
- Encryption, decryption & authentication
- Hospital elevators
- Internet

H I P A A Basics

- Health Insurance Portability and Accountability Act of 1996
- “Administrative Simplification”
- Standards for electronic exchange of medical information
- Unique health identifiers for individuals, employers, health plans, & providers

"I am an icon...."

H I P A A S a f e g u a r d s

- **Transmission of health information in electronic form**
- **Ensure integrity & confidentiality of information**
- **Protect against reasonably anticipated threats/hazards to security/integrity**
- **Prevent unauthorized use/disclosure**

H I P A A P r i v a c y

- **Individually identifiable health information transmitted by or maintained in electronic media or in any other form or medium**
- **Health plans, health care clearinghouses, health care providers who electronically transmit, & business associates**

H I P A A P r i v a c y

- **Preemption**
- **Business associates**
- **Lawyer-client privilege**
- **Private right/third party beneficiary**
- **Privacy official**
- **Surveys & sanctions policy**
- **Record keeping**
- **Minimally necessary disclosure**

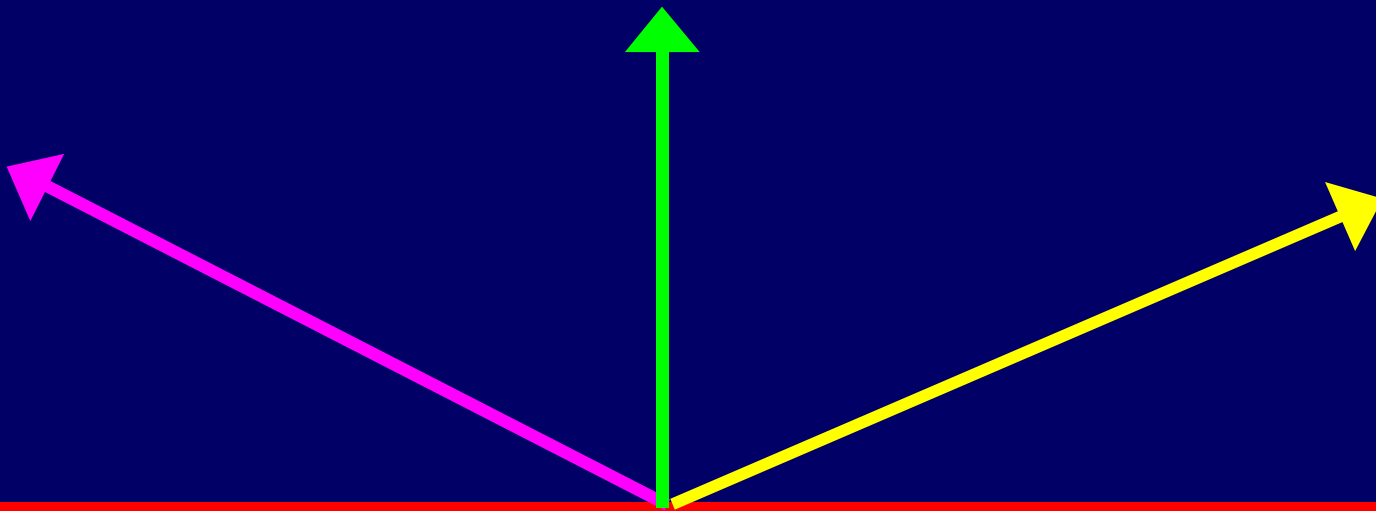
Funeral Directors

Get Ready

Workforce

Consultants

Patients



Covered Entities

Critical Inside

Notice

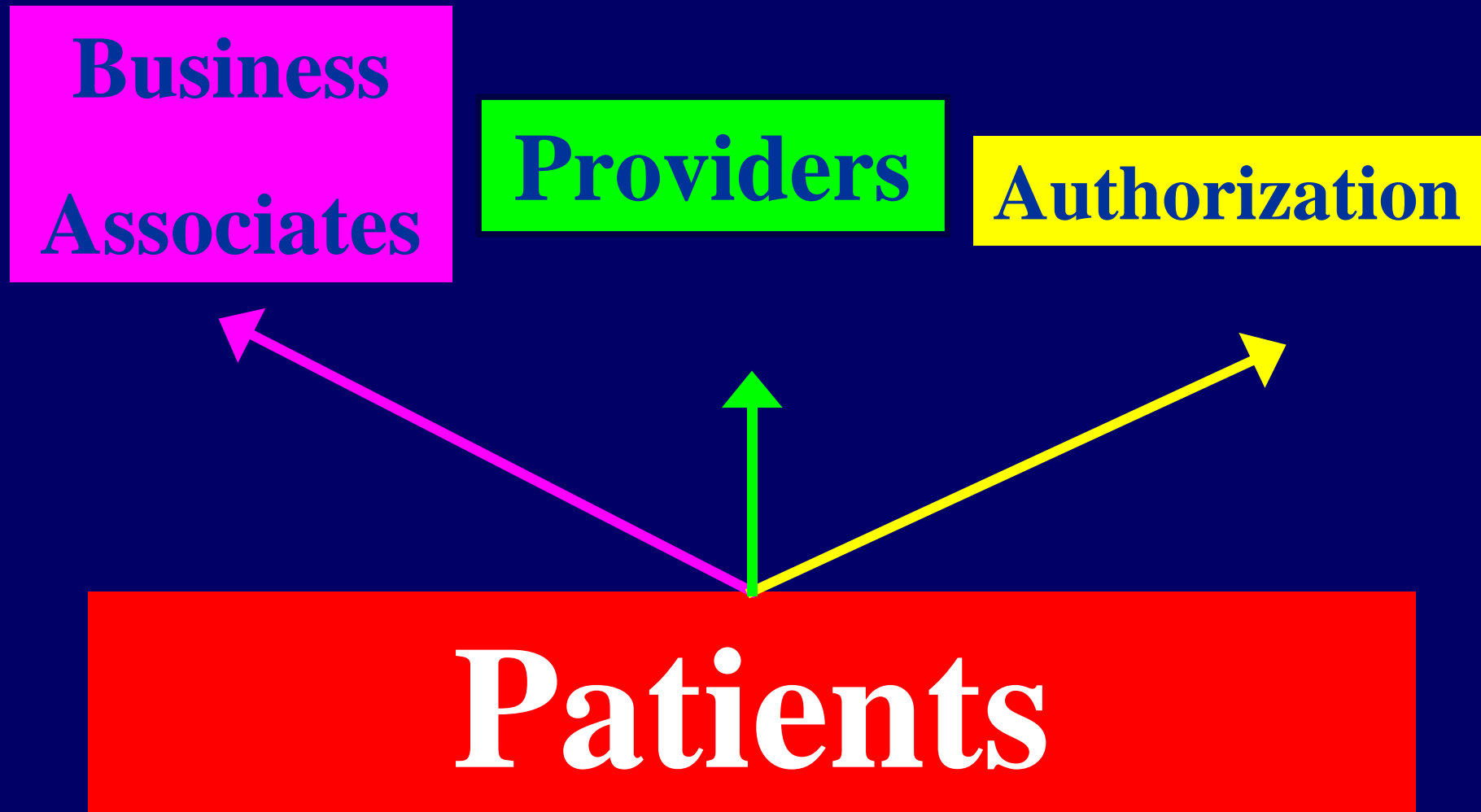
Consent

Records

Patients

The diagram illustrates the relationship between Patients and the Critical Inside components. A red box at the bottom contains the word 'Patients'. Three arrows originate from the top of this box: a magenta arrow pointing to the 'Notice' box, a green arrow pointing to the 'Consent' box, and a yellow arrow pointing to the 'Records' box. This visualizes the flow of information from patients to the core components of the Critical Inside system.

Critical Outside



FBI Likes HIPAA

Your Compliance Team: Where
Everyone Knows Your Name

🍷 Cheers!

H I P A A C o r p o r a t e C o m p l i a n c e P r o g r a m

- **DOJ Sentencing Guidelines**
- **Reduces costs & penalties**
- **Reduces likely enforcement**
- **Government strongly urges**

False Claims Act

“Whoever...knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program....”

Max. Penalty: \$25,000

5 years in jail

False Claims Act

- Qui Tam

- “honest mistakes” & “mere negligence”

- quality of care cases

- violation of HIPAA rules

- Poor HIPAA = poor care?

Office for Civil Rights

- HHS delegates – with authority to redelegate – authority under HIPAA to administer regulations & to make decisions regarding interpretation, implementation & enforcement of Standards & General Administrative Requirements

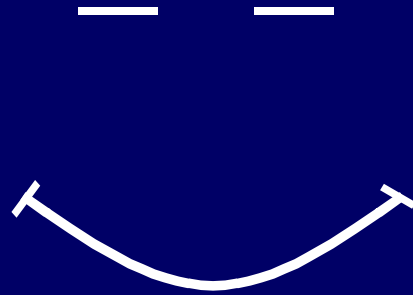
**We Need A Clear Sense
of Direction**

Nice HIPAA

H I P A A F o r D u m m i e s

- \$100 for each violation, total during year \$25,000
- Except if did not know, and a person exercising reasonable diligence would not have known, of violation
- Waive penalty if failure due to reasonable cause & not willful neglect
- 30 days & further extension
- Technical advice
- Office for Civil Rights vs. OIG

HIPAA LOVES YOU



B a d H I P A A

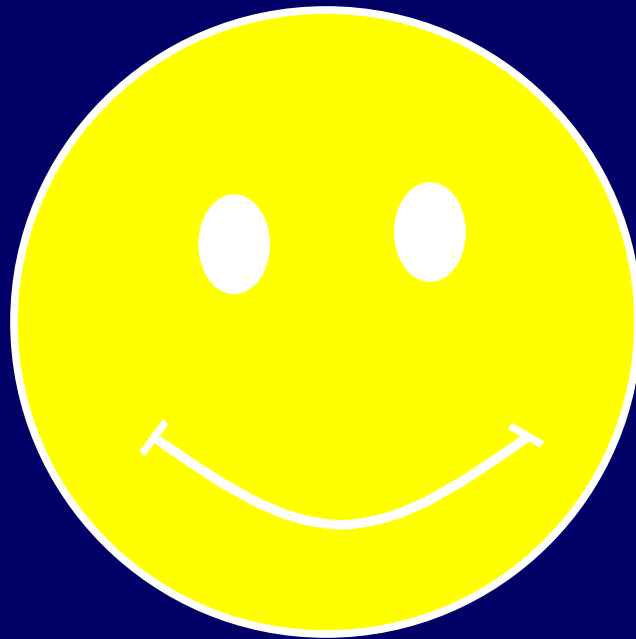
B a d H I P A A

H I P A A F o r C r o o k s

- \$50,000 & a year in jail
- If under false pretenses
- \$100,000 & 5 years in jail
- If with intent to sell, transfer or use health information for commercial advantage, personal gain, or malicious harm
- \$250,000 & 10 years in jail

**Don't Get Behind a
HIPAA**

BE A HIPAA
HERO (sm)



Alan S. Goldberg's

Year 3000 Readiness Disclosure

- **To the best of my knowledge, this presentation will not cause the interruption or cessation of, or other negative impact on, business or other operations, attributable directly or indirectly to the processing (including but not limited to calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 22nd centuries, and during the calendar year 1998 and thereafter (including but not limited to the calendar years 1999-3000), and leap year calculations, or give rise to the inability of one or more computer software or hardware programs, machines or devices accurately to receive, store, process or transmit data on account of calendar information applicable to such programs, machines or devices, including without limitation calendar information relating to dates from and after February 28, 2001.**

Practice Safe Computing

● Why is this man smiling?



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