

Don't Get Lost in the HIPAA Triangle: Employee Health, Claims Data, and Clinical Data

February 5, 2014

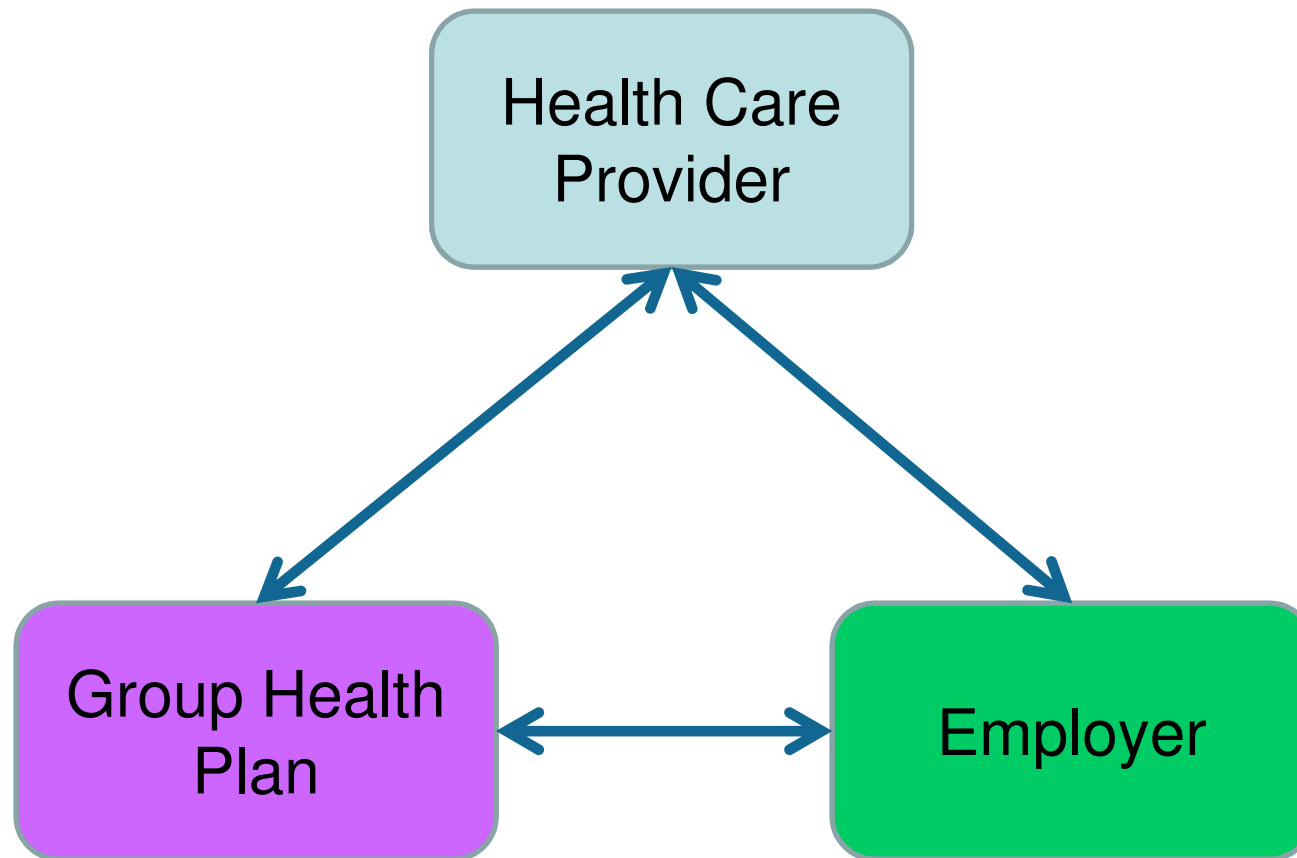
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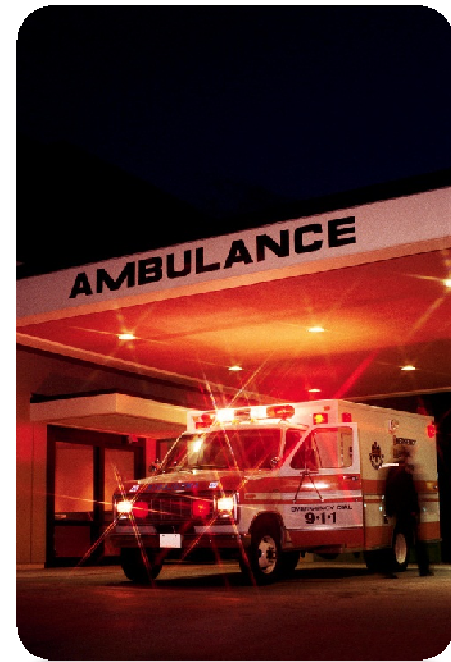
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The HIPAA Triangle



Health Care Provider

- Covered entity under HIPAA.
- Deep clinical information, but incomplete picture of patient.
- Increasing participating in efforts such as accountable care organizations.



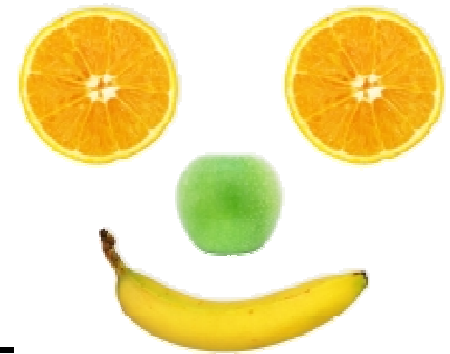
Group Health Plan

- Covered Entity under HIPAA.
- Generally treated as legally separate from employer/plan sponsor under ERISA.
- Comprehensive claims data about enrollees.
- Looking for ways to improve health of population in order to reduce costs.



Employer

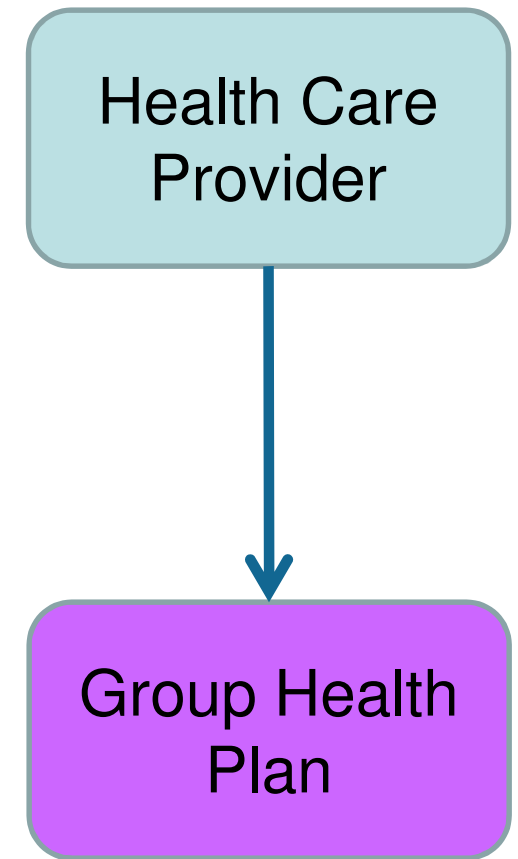
- Not covered by HIPAA.
- Must agree to safeguard group health plan PHI (similar to business associate agreement requirements)
- Healthy employees are productive employees.
- Wellness program may be employer-based or group health plan-based.



Provider and Group Health Plan

Provider may disclose to plan:

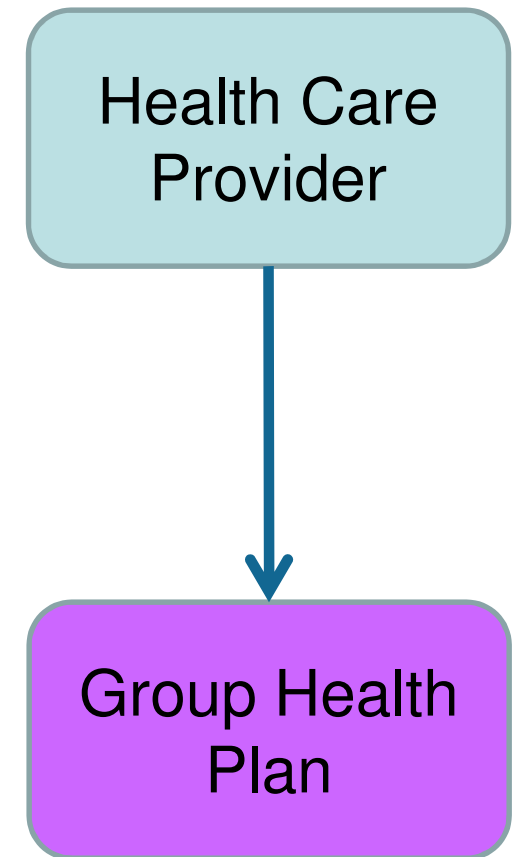
- For its own treatment, payment, health care operations (HCO).
- For plan's payment purposes.
- For plan's HCO if:
 - Paragraphs (1) or (2) of HCO or fraud & abuse detection; and
 - Both have relationship to individual and PHI relates to relationship; or



Provider and Group Health Plan

Provider may disclose to plan (cont'd):

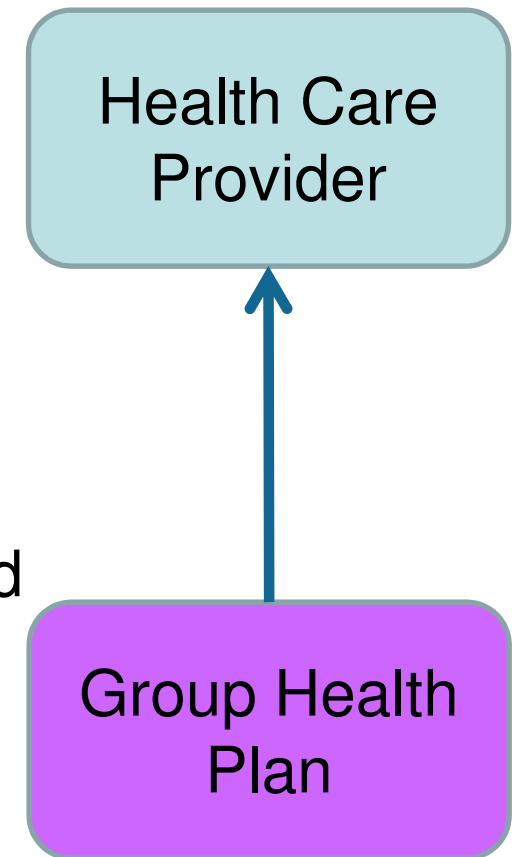
- Limited data set under data use agreement for plan's HCO (or research);
- Pursuant to authorizations; or
- De-identified health information.



Provider and Group Health Plan

Plan may disclose to provider:

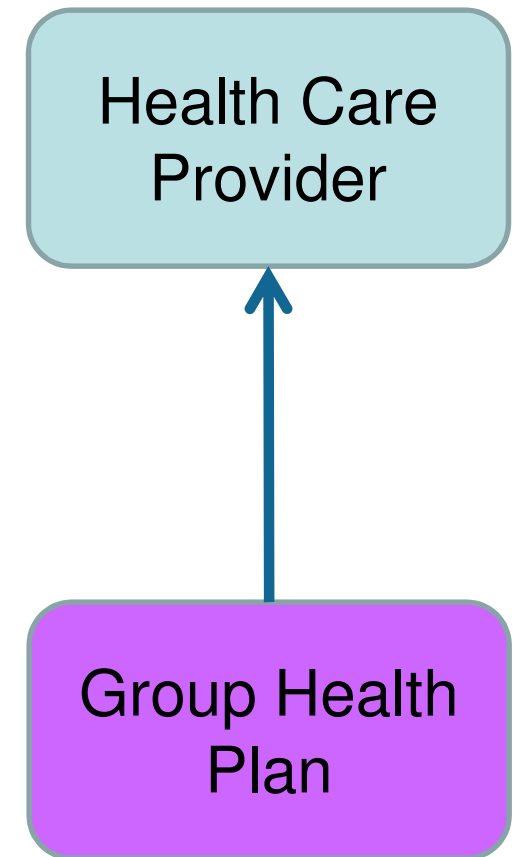
- For its own payment or HCO.
- For provider's treatment or payment purposes.
- For provider's HCO if:
 - Paragraphs (1) or (2) of HCO or fraud & abuse detection; and
 - Both have relationship to individual and PHI relates to relationship;



Provider and Group Health Plan

Plan may disclose to provider:

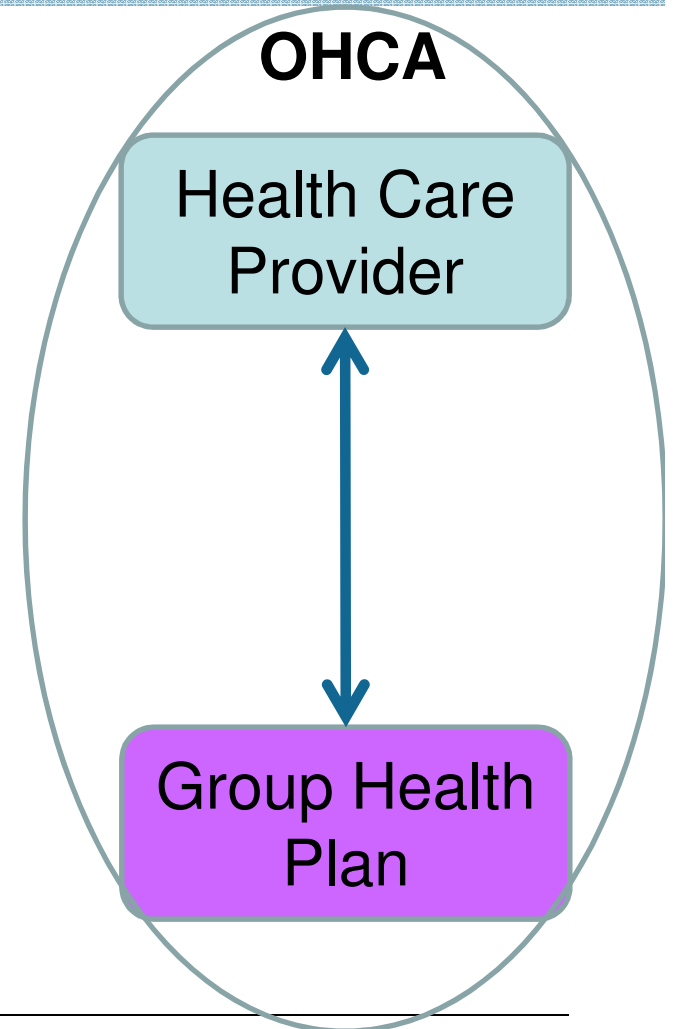
- Limited data set under data use agreement for provider's research or HCO;
- Pursuant to authorizations; or
- De-identified health information.



Provider and Group Health Plan

Provider and plan can form an organized health care arrangement

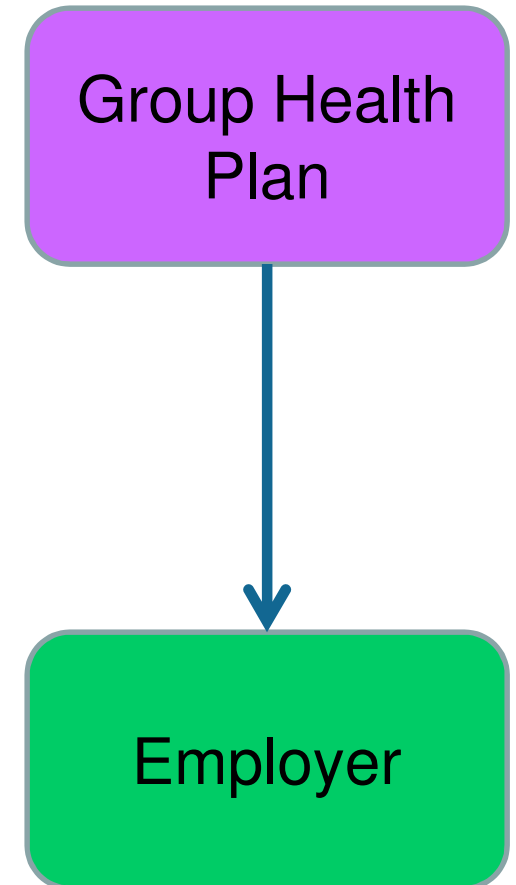
- Participate in joint quality improvement, utilization review, or financial risk sharing
- Hold themselves out to the public as in joint arrangement
- Disclosures must be for the OHCA (not for exclusively one participant's benefit)
- Some risk, as outside HHS examples of OHCA's in guidance



Group Health Plan and Employer

Plan may disclose to employer:

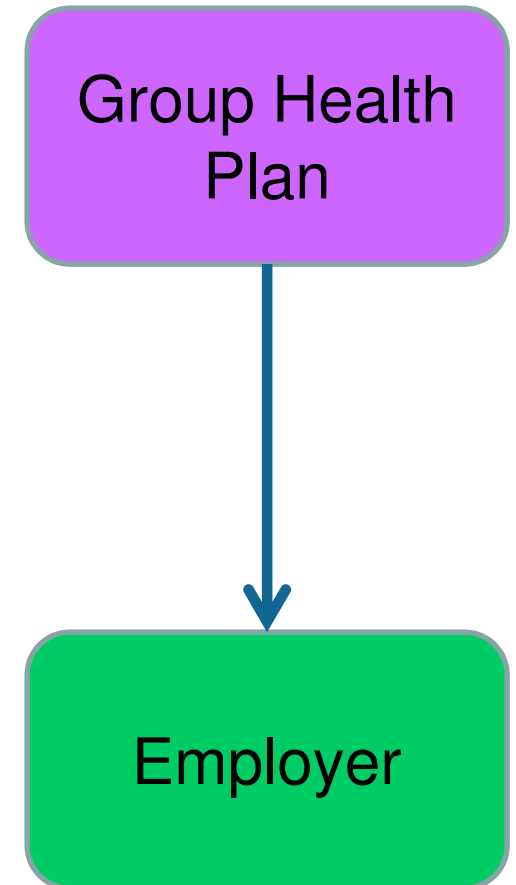
- Summary health information for obtaining bids or adjusting the plan;
- PHI for plan administration pursuant to employer certification;
- Pursuant to authorizations; or
- De-identified health information.



Group Health Plan and Employer

If wellness program wants more PHI, employer can move wellness program to group health plan.

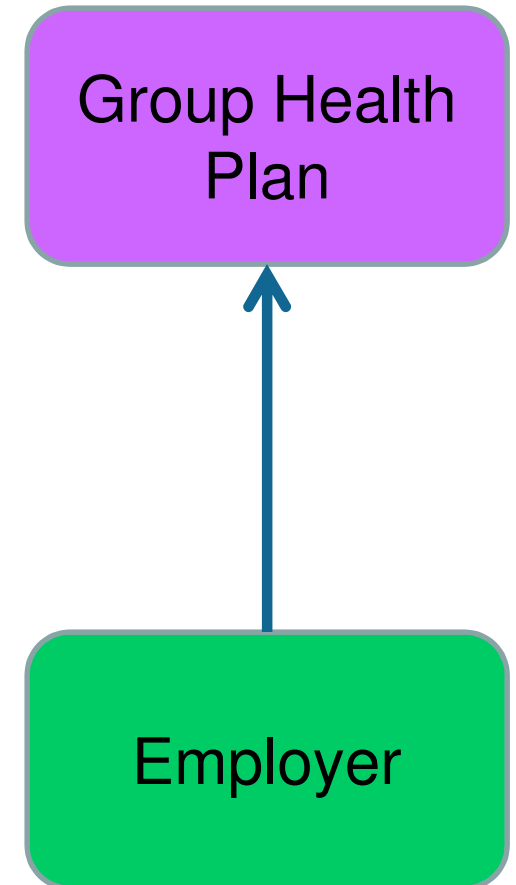
- GHP/wellness program can use PHI for its own health care operations (e.g., to improve employee health).
- Wellness program becomes subject to HIPAA (regulatory restrictions and potential liability)



Group Health Plan and Employer

No HIPAA limits on employer sharing information with group health plan.

- Other laws may apply.

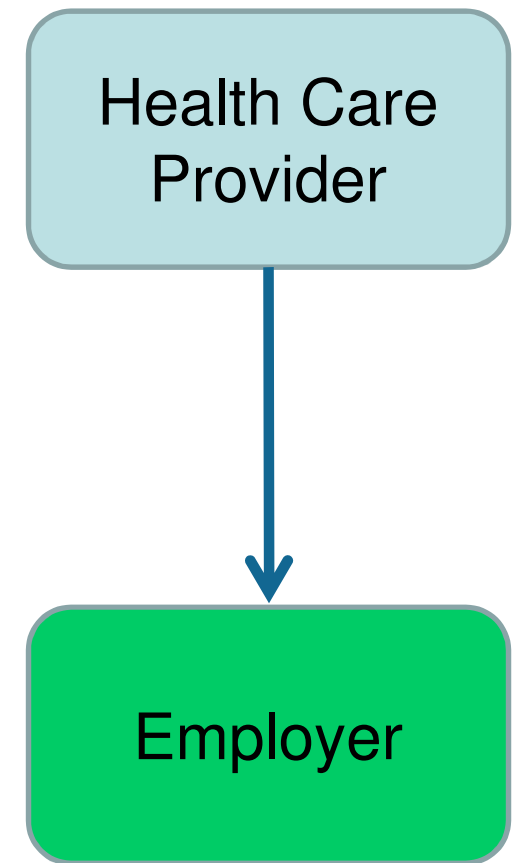


Provider and Employer

Provider may disclose to employer (e.g., employer-based wellness program):

- For its own treatment, payment, health care operations (HCO);
- Pursuant to authorizations; or
- De-identified health information.

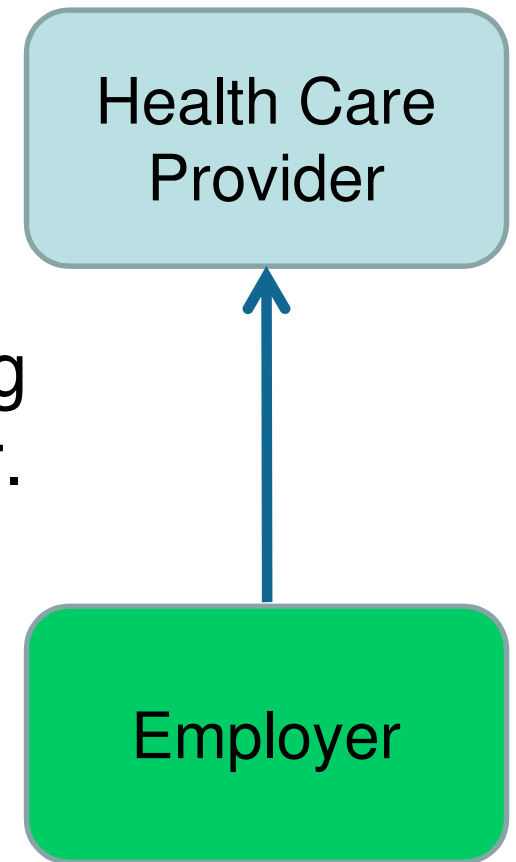
(If wellness program part of group health plan, then more ways for provider to disclose information)



Provider and Employer

No HIPAA limits on employer sharing information with health care provider.

- Other laws may apply.



Conclusions

- Workforce has to understand distinctions between health care provider, health plan, and employer.
 - Some employees wear multiple hats and must avoid inappropriate uses.
- There are a number of ways to share information between roles, but HIPAA-required steps must be taken.

Questions

