

Privacy in Hawaii

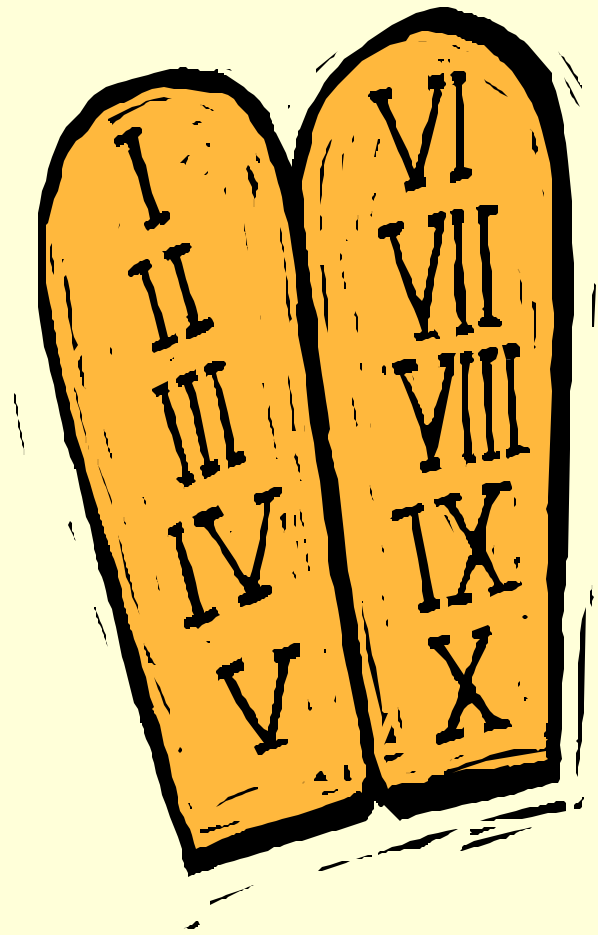
A Ripple Effect



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Hawaii's Medical Privacy Law

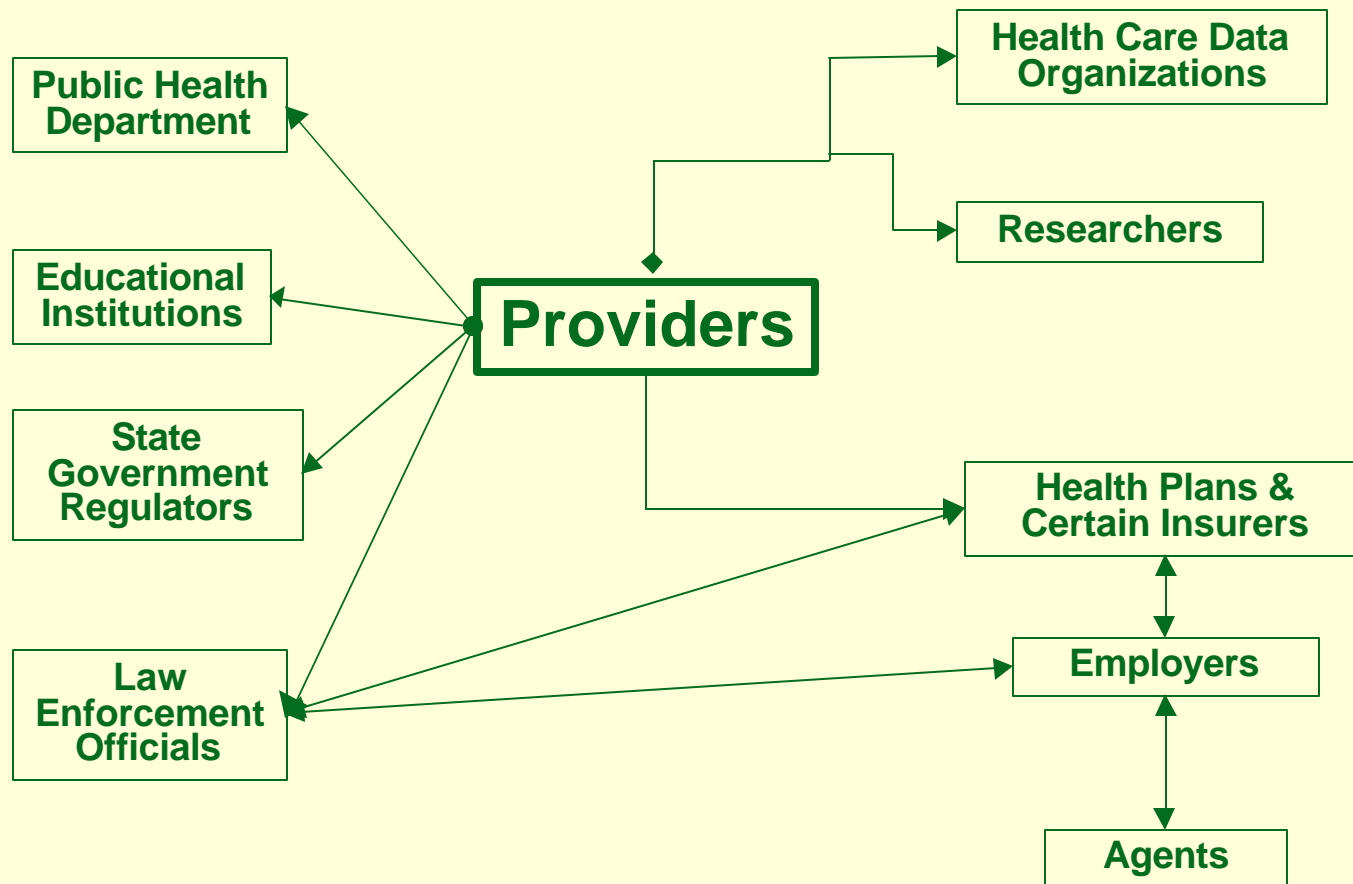
- Proposed in 1995, 1996, 1997 and 1998
- Adopted in 1999
- Repealed in 2001



Four Basic Principles

- Tell patients how information is used
- Allow disclosure without authorization for limited health care purposes (free flow zone)
- Require authorizations for all other uses & disclosures
- Strong consequences for violations

More Covered Entities Than HIPAA

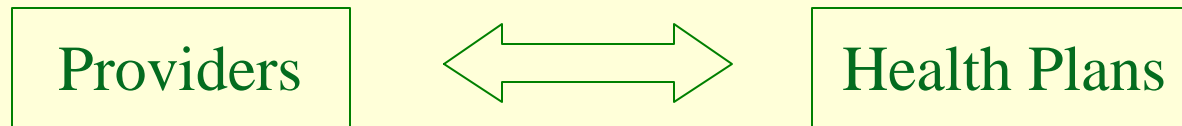


Components of the Law

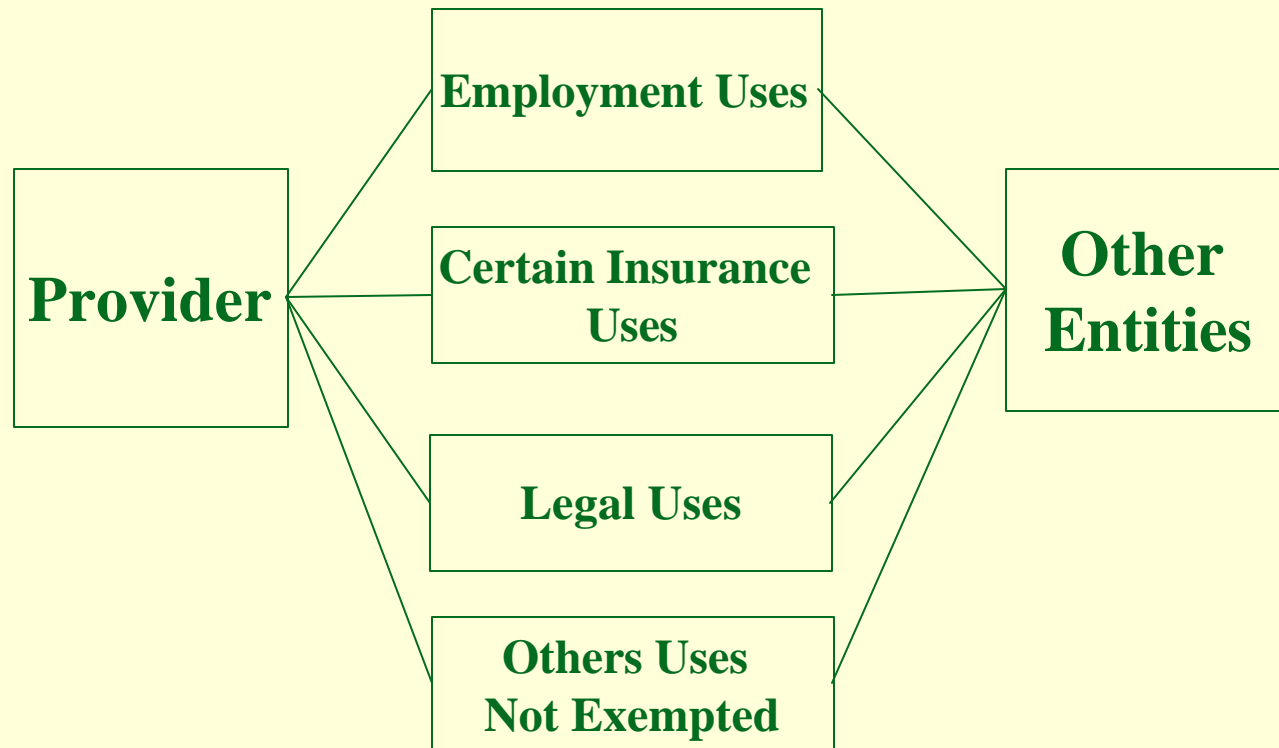
- Individual Rights
- Notice
- Free Flow Zone - Provider & Health Plan
- Authorization, Subpoena or Court Order
- Excepted Public Policy Uses & Disclosures
- Sanctions

Free Flow Zone

No Authorization for Disclosures
for Treatment, Payment &
Qualified Health Care Operations



All Other Uses - Authorization, Subpoena, Court Order



Authorizations

- In writing with
 - Name of patient
 - Names of persons disclosing & receiving
 - Signature of patient & date
 - Purposes of disclosure
 - Notice of revocation
 - Date authorization ends

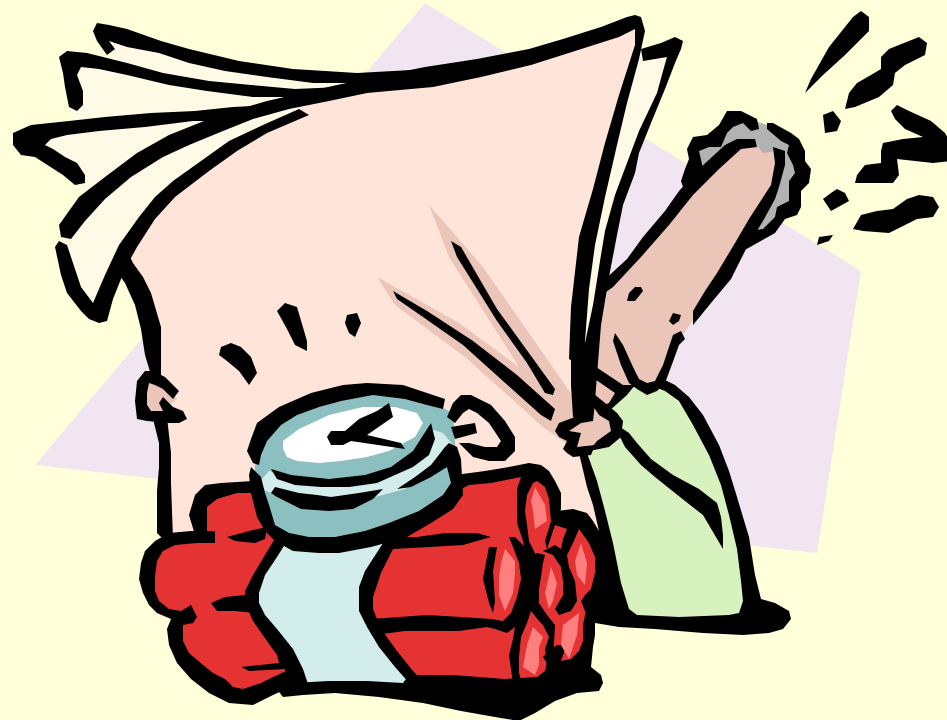
Certain Public Health & Safety Uses Excepted

- Emergencies, Coroner, medical examiner
- Health oversight & Public health
- Health research
- Civil, judicial administrative procedures
- Law enforcement
- Designated representatives
- Minors & parents

Compliance & Sanctions

- 1 Year to Comply
- Criminal prosecution - Class C & B felonies
- Civil actions
 - Damages, attorneys fees
 - Fines - up to \$100,000

Experience with Compliance



Attempts to Comply

- **Doctors, Other Providers, Insurance Carriers & Employers**
 - Slow to realize impact of privacy law on business
- **Lawyers**
 - Gave conflicting legal interpretations

Difficulties in Application

- **Doctors**
 - refused to transmit PHI in “free flow zone”
- **Employers**
 - Authorizations and notices were overreaching & duplicative
- **Workers Compensation**
 - Hearings stopped until Insurers could use & disclose information by authorizations

Special Session Called

- Insurance industry & employers led push to kill privacy law
- Legislature delayed law one year
- Medical Privacy Task Force reviewed
 - Employment issues
 - Insurance issues
 - Compliance issues

Specific Problems

- **Intended consequences**
 - Exclusion of insurers
- **Unintended consequences**
 - Cost of authorizations
 - Confusing legal interpretation
 - Community need for government regulation

Major Solutions

- **Reduce costly requirements by**
 - Expanding free flow zone
 - Reduce costly notice requirements
 - Provide for definitive compliance guidance

Cost Reduction

- **Expand the “no-consent” zone to include**
 - Delivery and financing of health care
 - Employment benefits or entitlements
 - Workplace or educational health and safety
 - Collective bargaining

Cost Reduction

- **Notice Requirements**
 - Only providers & employers to provide notice
 - Eliminate signature requirement on notice

Cost Reduction

- **Reduce Compliance Confusion**
 - Provide definitive compliance guidance through regulatory authority

Strong Opposition to Any State Privacy Law

- Drug companies
- Insurance industry
- Employers



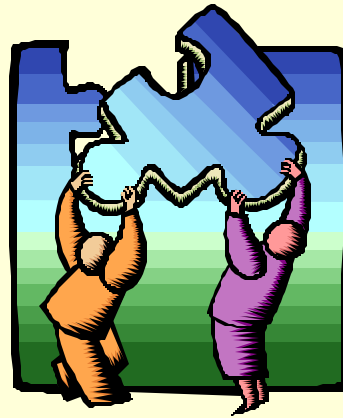
Task Force Report

- Published just as HIPAA privacy regulation was adopted

Legislative Session 2001

- Political opposition to privacy law became support for HIPAA privacy regulations
- Strong move to overturn state privacy law
- State law repealed June 14, 2001

Lessons from Hawaii

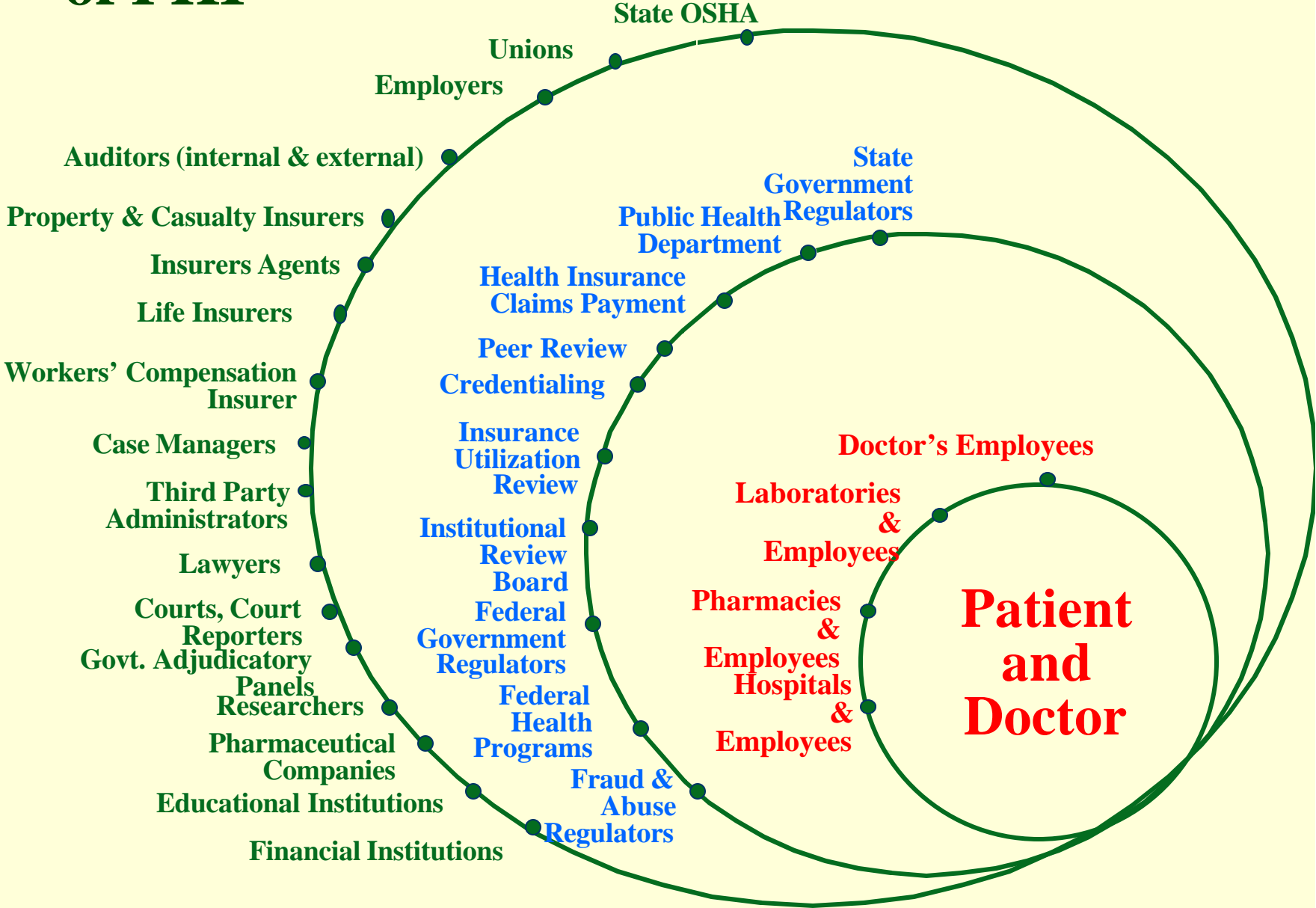


Be sensitive to the different uses of PHI

- **Uses in favor of the Patient**
 - treatment, payment and health care operations
- **Uses in the Public's Interest**
 - fraud and abuse regulation
- **Uses against the Patient's Interest**
 - to reduce liability



Collection & Use of PHI





Privacy - A Foreign Language

A Tower of Babel

- Anticipate confusion from everyone
 - your lawyers
 - internal and external
- Anticipate the flow of information to stop

Solutions

- Create common expectations by
 - inter-institutional collaboration
 - regional collaboration

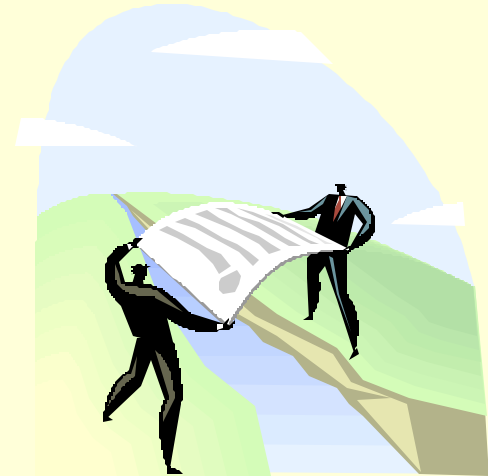


HIPAA will have a Ripple Effect



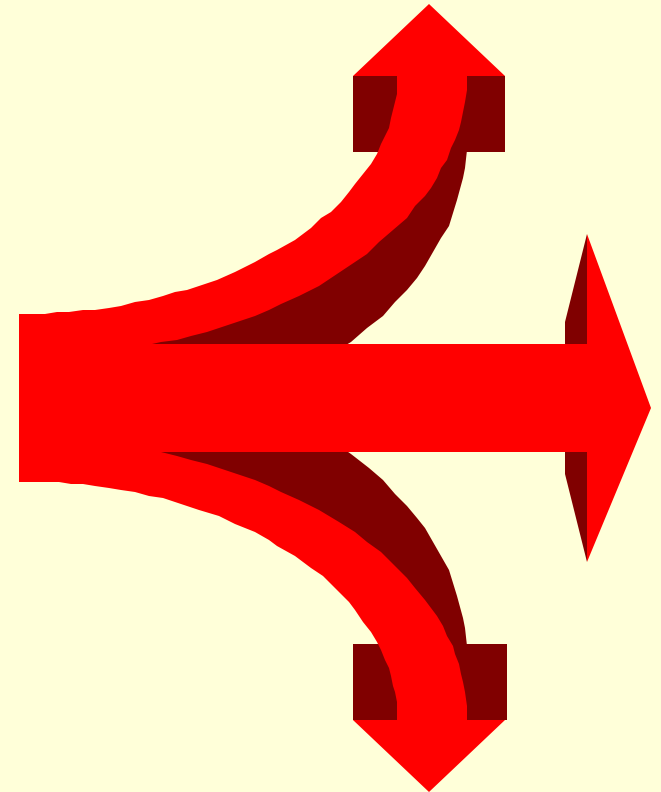
HIPAA will impact other industries

- Insurance Defense & Tort liability
- Workers' Compensation
- Employers, Unions & Collective Bargaining
- Educational Institutions & Student Health Records



Solutions

- Assess data flows outside of the health care industry
 - Look for exchanges of PHI in
 - employment and payment issues,
 - union grievance procedures and
 - workers compensation



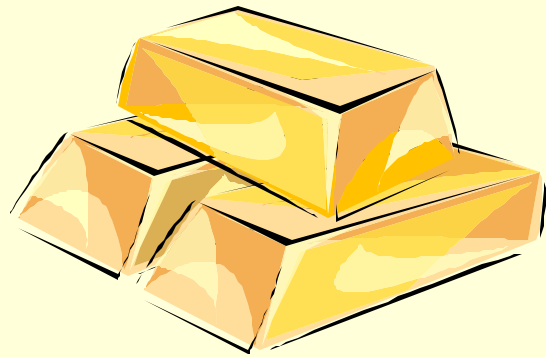
Solutions

- Establish clear operational procedures with Non-HIPAA Entities



HIPAA--

the gold standard for privacy?



Solutions

- Assess your liability
 - under State Laws
 - under Constitutional Right to Privacy



Solutions

- Develop Enterprise-Wide Privacy Standards
 - Go beyond HIPAA



