

# HIPAA Implementation Strategies for Long-Term Care Facilities:

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## A 10-Point Plan

by

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# Overview

- **Calendar the compliance deadline dates**
  - EDI – 10/16/02 (10/16/03 for those facilities that filed a compliance plan by 10/15/02)
  - Privacy – 04/14/03
  - Security – possibly 12/2004
- **Monitor and comply with changes to state law**
- **Be aware of penalties for noncompliance**
  - \$100 / incident - up to \$25,000/person/year/standard
  - Criminal penalties - \$50,000 - \$250,000 & 1 – 10 years of imprisonment

# Task #1 – EDI Compliance

- Comply with the data transactions & code sets regulation by 10/16/02 or file for the one year extension by 10/15/02 and have an additional year in which to comply
  - File electronically for the extension by accessing the following website –

[www.cms.gov/hipaa/hipaa2/ascaform.asp](http://www.cms.gov/hipaa/hipaa2/ascaform.asp)





## Task #1 (cont'd)

- LTC providers are “covered entities” under HIPAA if they transmit health information in connection with just one of the standard data transactions
- If you are a Medicare-certified facility and employ 25 or more FTEs, you must be capable of submitting claims electronically to Medicare by October 16, 2003

# Task #1 (cont'd)



- Transaction Standards
  - 270/271 – Eligibility
  - 837 – Claim / Encounter Info.
  - 837 – COB
  - 278 – Referral Authorization
  - 276/277 – Claim Status
  - 835 – Remittance Advice
  - 834 – Plan Enrollment
  - 820 – Premium Payment
  - 148 – 1<sup>st</sup> Report of Injury
  - 275 – Claims Attachment

# Task #1 (cont'd)

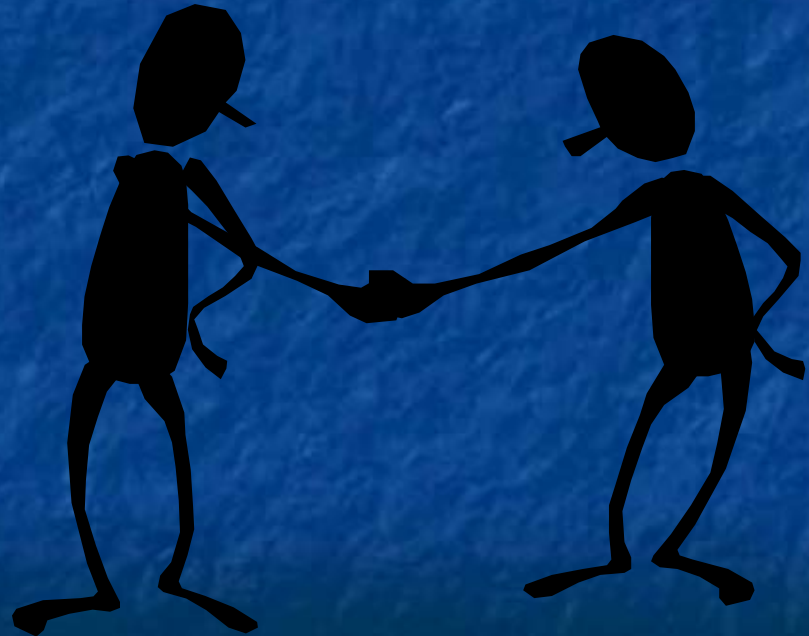
## ■ Provider Options:

- **Continue to submit paper claims** (available only to those facilities with less than 25 FTEs)
- **Submit paper claims to clearinghouse for translation to standard electronic transaction**
- **Submit non-standard electronic transaction to clearinghouse for translation to standard electronic transaction**
- **Direct data entry**
- **Standard electronic transaction**



# Task #2 – Key Personnel

- Identify key personnel and document them
  - Privacy officer
  - Contact person
  - Security officer



## Task #2 (cont'd)

- Establish HIPAA task force
- Develop HIPAA work plan
  - Identify project tasks & timeline
- Prepare budget
- Identify need for outside assistance
  - Information technology vendor
  - Attorney to review agreements



## Task #3 – Internal Uses

- Evaluate internal uses and disclosures of PHI within your organization and document your findings and analysis

<b>Position Title</b>	<b>PHI Currently Accessed</b>	<b>PHI Needed to be Accessed</b>
Eg/ Medication Aide		

## Task #3 (cont'd)

- Evaluation of internal uses and disclosures will assist in determining minimum necessary uses
  - Minimum necessary requirement allows facilities to use, disclose, or request only that amount of PHI which is necessary to accomplish the purpose of the use, disclose or request
  - Covered entities must make "*reasonable efforts*" and rely upon professional judgment in determining what constitutes a "minimum necessary" use or disclosure.

# Task #4 – External Disclosures

- Evaluate external disclosures of PHI which are made to persons or entities outside of your facility and document your findings & analysis

Outside Entity	PHI Currently Disclosed	PHI Needed to be Disclosed
<u>Eg/</u> Barb's Billing Service		



## Task #4 (cont'd)

- Again, evaluation of external disclosures will assist in meeting the minimum necessary requirement
- In addition, identification of outside persons or entities to who disclosures are made will assist in determining which of these are business associates

## Task #4 (cont'd)

### Remember:

Both the entity making the request and the entity receiving a request to use or disclose an individual's PHI have affirmative obligations to request and disclose only the minimum amount of PHI necessary to accomplish the purpose of the disclosure.

## Task #4 (cont'd)

According to the Office of Civil Rights, a covered entity may rely upon the professional judgment of a requesting entity as to what amount of information constitutes a minimally necessary disclosure when the request is made by:

- a public official or agency for a permitted disclosure
- another covered entity
- a professional who is a member of the facility's work force or a business associate of the covered entity holding the information
- a researcher with appropriate documentation for an IRB or Privacy Board



# Task #4 (cont'd)

- Six exceptions to the minimum necessary requirement:
  - Disclosures to or requests by a health care provider for treatment purposes
  - Disclosures to the individual who is the subject of the information
  - Uses or disclosures made pursuant to an authorization requested by the individual who is the subject of the information
  - Uses or disclosures required for compliance with HIPAA data transactions regulations
  - Disclosures to DHHS made for the purpose of HIPAA enforcement
  - Uses or disclosures required by law

# Tasks #3 & 4 (cont'd)

## Implementation Specifications

- “Standard of reasonableness”; strategies can be scalable, depending upon size & complexity of operations
- Develop & implement policies & procedures that address three (3) areas:
  - Internal uses of PHI
  - Routine disclosures
  - Non-routine disclosures

# Task #5 – Business Associates

- Using the information gathered in Task #4, identify your business associates.





## Task #5 (cont'd)

Business associates are individuals and/or entities that --

- (1) receive, create or maintain PHI
- (2) to perform a function or activity on behalf of the facility

Eg/ lawyers, auditors, consultants, TPAs, billing agents, transcriptionists, private accreditation organizations

## Task #5 (cont'd)

A business associate does not include a member of the covered entity's workforce. However, one covered entity can be the business associate of another covered entity, depending upon the function or activity being performed.

Eg/ a physician who serves as the medical director of a nursing facility is a business associate of the facility

## Task #5 (cont'd)

General rule: A business associate may not use or further disclose PHI in any method or manner that is not permitted to the covered entity, except

- for proper management and administration of the business associate, including carrying out its legal responsibilities, subject to assurances of confidentiality and use consistent with law



## Task #5 (cont'd)

### Exceptions to the Business Associate Rule:

- Treatment
- Financial transactions (if financial institution only processes consumer-related financial transactions)
- Disclosures between a group health plan & plan sponsor
- Organized health care arrangements
- Entities acting as mere conduits

# Task #5 (cont'd)

## Contract requirements -

- *Permitted uses & disclosures*
- *Assurances:*
  - Use or disclose PHI only as permitted by agreement or by law
  - Use appropriate safeguards to protect confidentiality of PHI
  - Report to covered entity any use or disclosure not permitted by agreement or by law
  - Ensure agents or subcontractors agree to same restrictions & conditions
  - Make PHI available to covered entity as necessary for covered entity to comply with individual's rights to access, amendment & accounting
  - Make internal practices, books & records available to DHHS relating to use & disclosure of PHI
  - Return or destroy PHI once agreement is terminated

# Task #5 (cont'd)

## Contract Requirements (cont'd) -

- *Breach and termination*
- *Optional provisions*
  - Covered entity's access to business associate's facility for purposes of audit
  - Use of PHI for business associate's management and administration
  - Use of PHI to perform data aggregation services for covered entity
  - No third party beneficiary
  - Indemnification
  - Insurance



## Task #5 (cont'd)

- Implementation strategies:
  - Prepare list of business associates
  - Amend existing agreements to include required business associate provisions
  - Contracts which come up for renewal prior to April 14, 2003, and any new contracts, must include the required business associate language by the compliance deadline date
  - For contracts which come up for renewal after April 14, 2003, you have one (1) additional year in which to enter into a business associate agreement

## Task #6 – Notice of Privacy Practices

- Develop your Notice of Privacy Practices & written acknowledgement of receipt
- Ensure that the content of your Notice satisfies HIPAA requirements
- Prepare policy / procedure regarding Notice of Privacy Practices

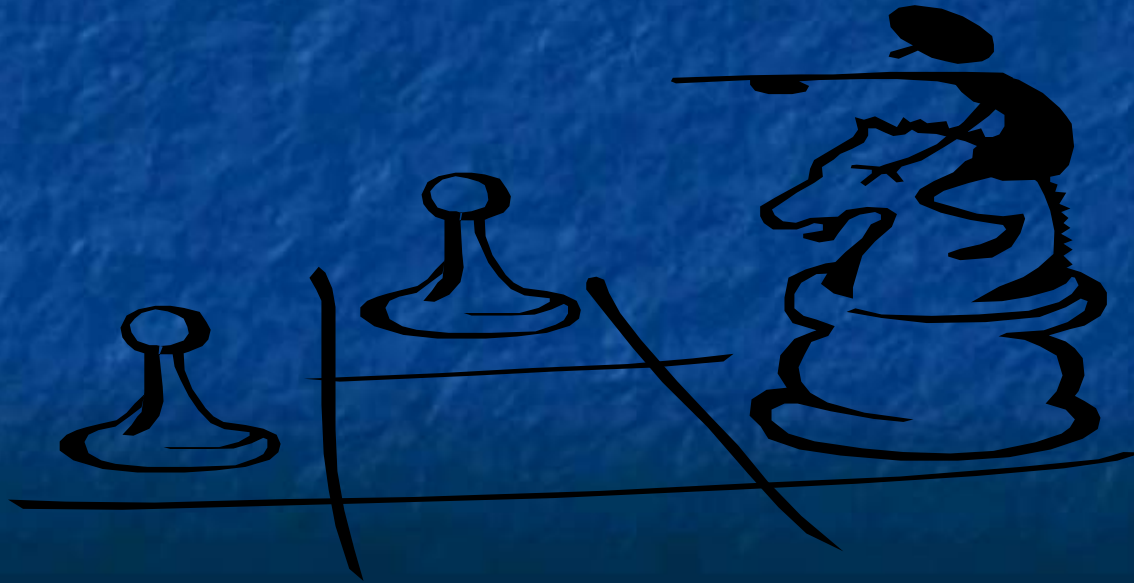
# Task #7 – Resident Rights

- Develop forms and policies & procedures regarding a resident's right to—
  - Access PHI
  - Amend PHI
  - Restrict uses & disclosures
  - Receive confidential communications via alternative means and/or method
  - Receive an accounting of disclosures



# Task #8 - Safeguards

- Evaluate physical, technical & administrative safeguards and document findings and analysis



# Task #9 – Develop Remaining Forms, Policies & Procedures

- Minimum Necessary
- Business Associates
- Verbal Agreement
- Marketing / Fundraising
- Uses / Disclosures Requiring an Authorization
- De-identification
- Verification
- Patient rights (access, amendment, restriction of use/disclosure, confidential communications, accounting, privacy notice)
- Technical, physical & administrative safeguards
- Training
- Complaint process
- Sanctions for employee violation

## Task #10 – Train Workforce

- Train current workforce members on or before April 14, 2003
- Train new workforce members who join after April 14, 2003, as soon as “reasonably practicable”
- Train affected workforce members each time privacy practices are changed
- Periodic retraining





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