

# ***Key Issues For Your Remaining HIPAA Compliance Time – The Health Plan Perspective***

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**The Fifth National HIPAA Summit**  
**(November 1, 2002)**

# **Approach**

- Key remaining challenges
- Issues beyond compliance
- Balance of legal, risk management and business
- Provider contracting
- Employer issues
- Marketing
- Research

# **Contracting Strategy**

- Dealing with the different audiences
- Dealing with the different contracts
- Integrating business concerns
- Management strategy
- What is your process?
  - Not too generic, not too individualized

# **Contract Categories - Audiences**

- Employers
- Vendors
- Providers
- Others?

# **Contract Types**

- Business associate (privacy)
- Chain of trust (security)
- Trading partner (standard transactions)

Focus on understanding/analyzing overlaps

# **Relations with Employers**

- Most difficult
- Very complicated
- At least confusing/perhaps inconsistent
- Major client relations issues
- Opportunities? Challenges?
  - Shift to fully insured?
  - Privacy services to clients?
  - Will customers abandon group health care?

# **What is the Problem?**

Avoid having PHI used by employers for employment-related purposes

- HHS' fix:
  - HHS does not directly regulate employers or other plan sponsors
  - Instead, HHS places restrictions on the flow of information from covered entities to non-covered entities, including plan sponsors
- HHS guidance has been limited and not helpful

# ***The Role of the Employer***

## Plan Sponsor (Employer and Customers)

- Rule restricts flow of PHI between GHP and plan sponsor
- Minimal impact of rule on plan sponsor that receives summary health information for premium bid purposes
- Substantial impact of rule on plan sponsor that receives PHI



# ***Compliance Obligations For Health Plans***

- If fully insured and receive only SHI, very limited effects
- If (1) self-insured or (2) fully insured and get PHI, substantial obligations

# **Business Opportunities**

- How will you educate your customers?
- What do you want the answers to be?
- Understanding the “touch points” with customers (brokers, consultants, reinsurers, HR, customer service, politicians)
- Implementing appropriate procedures
- Revising contracts (BA and employer)

# **Provider Contracting**

- Most ignored
- What is required?
- What do you want to do anyway?
- What are the problems you want to anticipate?
- Cooperation/education efforts
- Need to be proactive and creative
- Under the radar today

# **Potential Problems**

- Overall disincentive to share
- General nervousness
- No requirement of disclosure
- Patients can withdraw consent
- Are the right people involved?
- One-pagers
- Contract revisions

# **Marketing**

- Most changes
- A “hot spot” under the Rule
- Not as bad as we thought under the Final Rule

Basic definition:

A communication about a product or service that encourages recipients of the communication to purchase or use the product or service

Business needs vs. risk management

# **The Final Rule**

- Health-related products and services
- In a plan of benefits
- Replacement or enhancement
- Value added services
- Plan members only
- Adds value
- No sale of customer lists

# **Marketing Challenges**

- How many of your current practices are at risk?
- Use of PHI
- Mass circulation
- Is there anything you can do?
- How big a problem is this?
- Will this affect your philosophy?

# **Research**

- The changing rule
- A sleeper issue
- Implications for health plans



# ***Lessons Learned From The Inside***

- The biggest challenges – operationally
- The biggest challenges – resources
- The biggest challenges – going forward

# **Conclusions**

- Still lots to do
- Enough progress on compliance to consider business implications
- Resources
- Keep an eye on the lawsuits
- Very difficult balancing act
- Challenges of a moving target