



5.05 Medical Banking Policy:

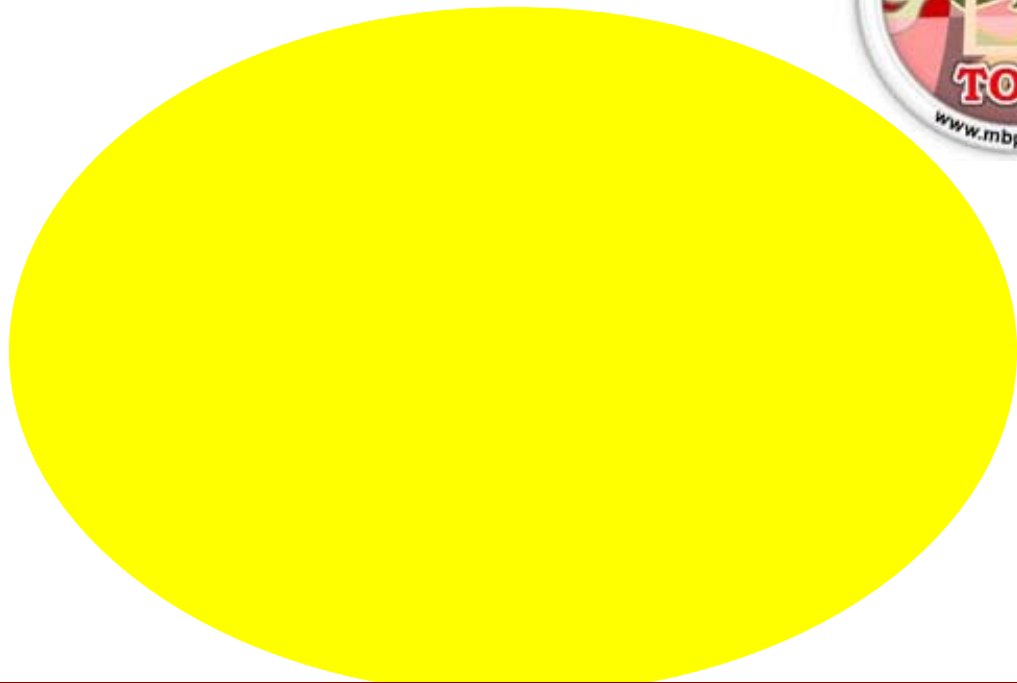
The Impact of HIPAA, the FACT Act and the Fair Credit Reporting Medical Information Regulations NPRM on Healthcare Credit Practices



Stop 6 | BANKS



Stop	Stakeholder	When	Event
1	Policymakers	11/19/03	Medical Banking Open Policy Forum, Wash. DC
2	Clearinghouses	11/21/03	WEDi / Association for Electronic Healthcare Transactions, Wash. DC
3	Providers	02/04	American Association of Healthcare Administrative Management - TN Chapter, Nashville, TN
4	Academia	03/04	The 8 th National HIPAA Summit, Baltimore, MD
5	Technology Community	06/04	OASIS International Symposium, New Orleans, LA
6	Banks	09/04	The 9 th HIPAA Summit, Baltimore, MD AFS Annual User Group Meeting, Oklahoma City, OK Faces of a Healthy Future Conference, Winston, NC
7	Employers	10/04	Interview: MyHealthGuide & Wells Fargo, Franklin, TN Self Insurance Institute of America, Miami, FL
8	Legal Community	11/04	Re-Broadcast: 7 th HIPAA Policy Roundtable at LEGALTECH New York
9	Consumers	12/04	TBD
10	Charities	02/05	3 rd National Medical Banking Institute, Nashville, TN



I. HIPAA's Impact on Healthcare Credit Practices

- Privacy Rule prohibits the sale or transfer of PHI external to patient authorization

“...if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm...”

- Fine: Not more than \$250,000 and imprisoned not more than 10 years (45 C.F.R. Section 1177).

The Problem:

- Lending contract may use A/R as collateral
- If contract is violated, collateral automatically transferred
- Medical A/R is comprised of PHI
- External to a B.A. contract and/or absent the patient's authorization, transfer appears illegal
- Lending structures affected:
 - ✓ Routine Commercial Lending
 - ✓ A/R Financing
 - ✓ Securitization
 - ✓ Factoring

Business Associate Contract Issues...

- A B.A. relationship includes persons who provide financial services to or for a covered entity, if the service provided includes the use or disclosure of PHI (65 Fed. Reg. 82,475)
 - ✓ Does routine lending qualify?
 - ✓ Even if it did, would banks want to agree to the terms of a B.A. if they had inadvertent access to PHI
 - ✓ What are the options?

Business Associate Contract Issues...

- Section 1179 exempts from the B.A. requirement, financial institutions that process “consumer-initiated financial transactions”
 - Note: NCVHS seeks clarification as to whether Section 1179 includes consumer and corporate payments, or just consumer payments only
 - MBProject recommends including corporate payments, not remittances
- Section 1179 does not exempt banks that gain PHI from their lending activities
 - Exempts certain payment activities and functions, not activities or functions that are involved in routine lending
 - Legal “catch 22”

Risk Mitigation...

- Determine extent of problem across healthcare credit portfolio
 - ✓ Pertains to A/R-collateralized credit
- Revise loan documentation to include B.A.
- Use an intermediary to process healthcare credits
 - ✓ Drives up transaction costs but could result in new business opportunities
- For other types of A/R financing, the issue remains at large:
 - ✓ Factoring (outright purchasing of debt)
 - ✓ Securitization (S.P.V.)

Global Issue...

- Determine extent of new privacy interest in financial assets
 - ✓ How is this interest enforced when assets are transferred
 - ✓ What body of law can be used to help to establish divisible interests in the same asset?
 - ✓ Someone has got to say it, so we will: “individual authorization may not be an answer because access to credit may trump privacy rights”
- Review impact with bankruptcy laws and international regulations (i.e. UNICITRAL)

II. FACTA's Impact on Healthcare Credit Practices

- Signed into law by President Bush on 12/4/2003, FACTA amends Fair Credit Reporting Act
 - ✓ 9.9 million cases of identity theft were reported from 4/2002 – 4/2003 with \$5 billion in losses (FTC)
- Simplifies growing patchwork of state laws re: how consumers report theft and how banks respond
 - ✓ Attempts to ensure that credit information is accurate
 - ✓ Grants consumers free access to their credit report
 - ✓ Creates national system for fraud detection

Problems:

- Some banking groups argued that the term “identity theft” was too broad
 - ✓ Could include common fraud crimes for which the body of law is already developed, causing confusion
 - ✓ Possible to file a fraudulent identity-theft report and reduce accuracy of credit report
 - ✓ June 15, 2004: last date for filing comments

Medical records privacy issues...

- Scope: pertains to PHI acquired in consumer transactions
 - ✓ Creates standards for use of PHI derived from credit transactions
 - ✓ PHI specifically eliminated from exclusions permissible for other purposes, (i.e., payment history between a company and an individual)
- Could adversely impact liquidity for providers
 - ✓ A/R financing arrangement where scoring is required
 - ✓ Forward flow financing arrangements that can be improved with better information
 - ✓ Greater liquidity is essential but requires better information

Medical records privacy issues...

- **NPRM:** Fair Credit Reporting Medical Information Regulations
 - ✓ Specifically flags using customized credit scores (i.e., history for payment of medical bills) as potentially inappropriate
 - ✓ Must be very careful in an environment where liquidity is already difficult (i.e., hospitals, nursing homes, etc.
 - ✓ See MBProject comments to OCC, Docket Number 04-09

Questions & Answers