

Medical Privacy in Hawaii

HIPAA WEST

June 20-22, 2001

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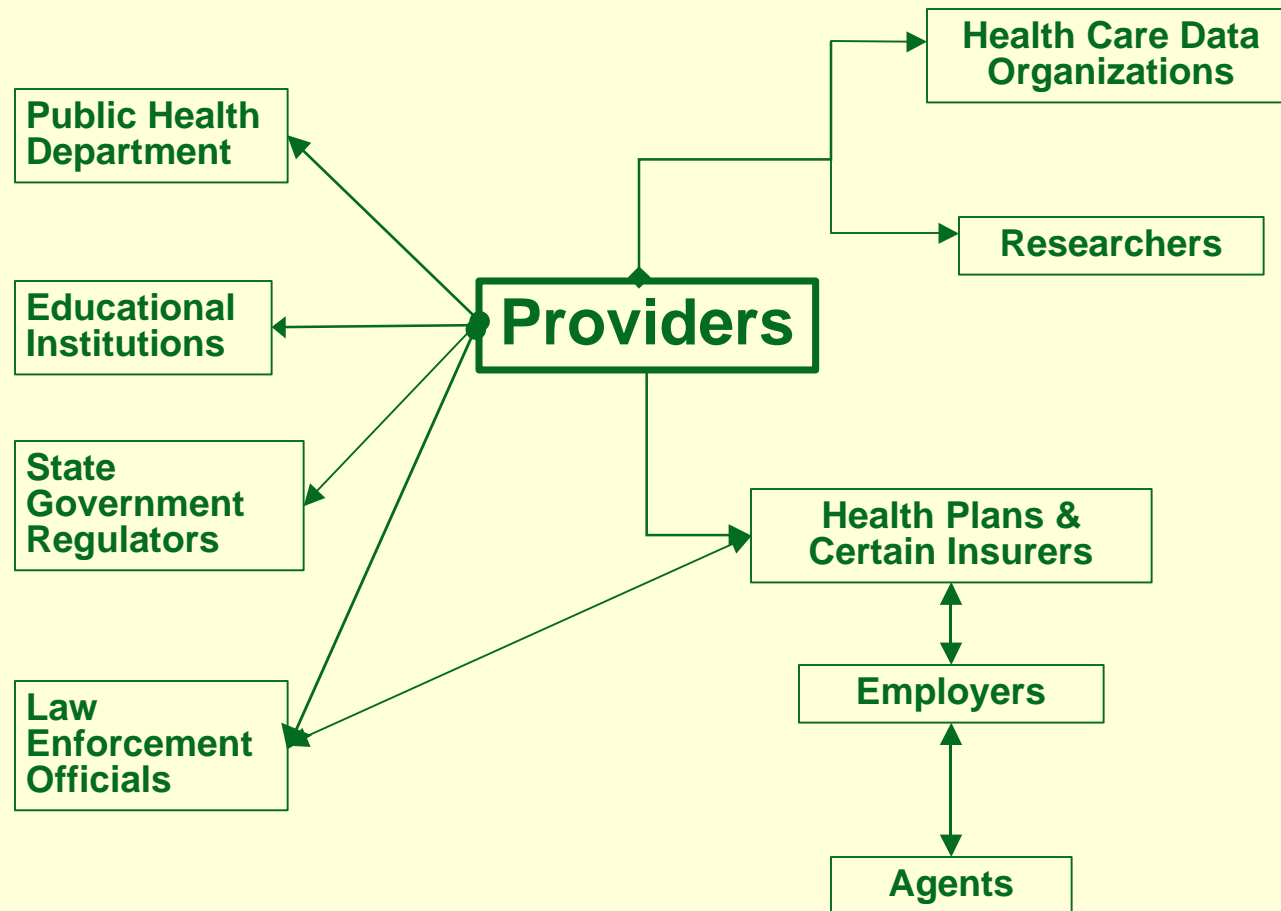
Office of Information Practices

State of Hawaii

Four Principles To Protect Privacy

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

Covered Entities

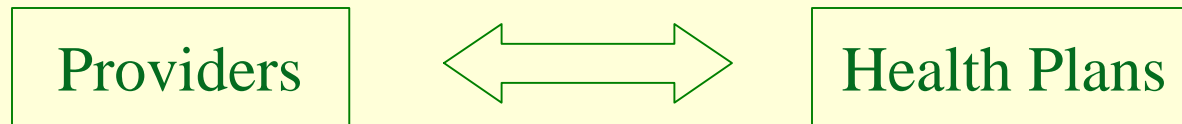


Components of the Law

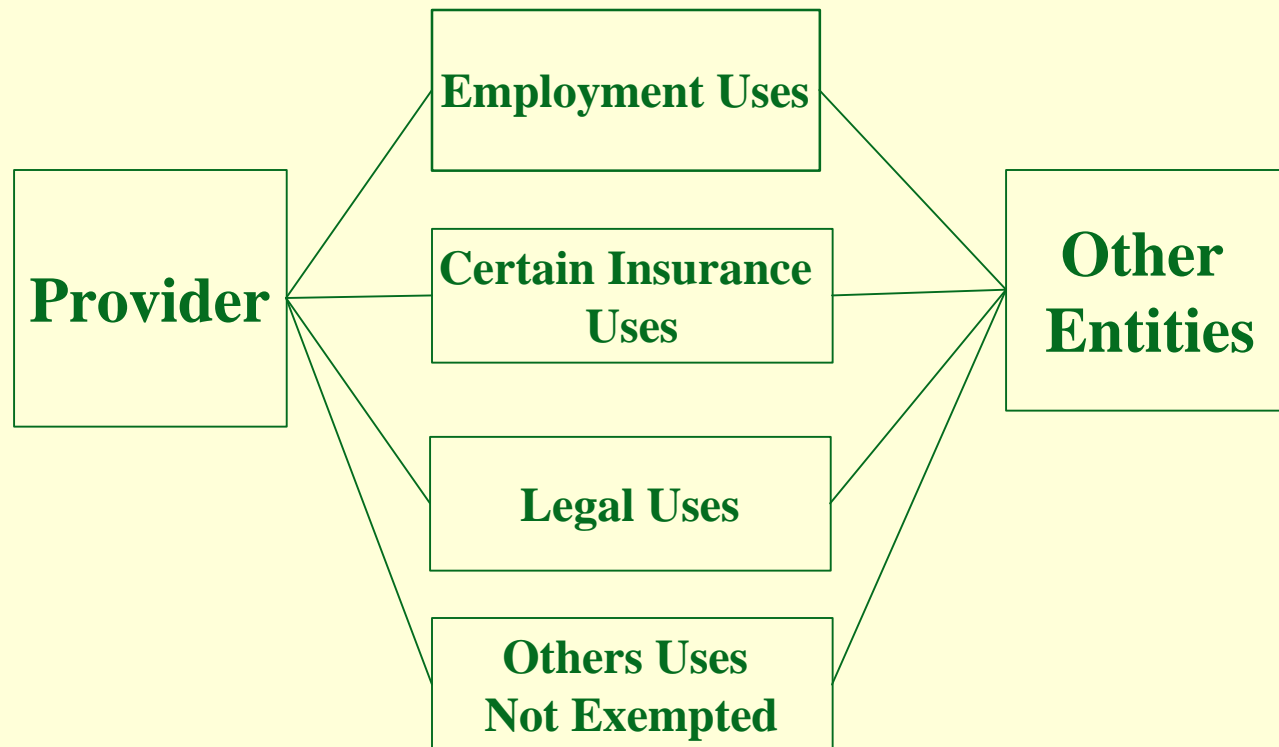
- Individual Rights
- Notice
- Free Flow Zone - Provider & Health Plan
- Authorization, Subpoena or Court Order
- Excepted Public Policy Uses & Disclosures
- Sanctions

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

Certain Public Health & Safety Uses Excepted

- 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

Attempts to Comply

- Insurance companies -
 - costs were up because they carved themselves out of the free flow zone
- Employers
 - realized they were covered and had to obtain authorizations

Attempts to Comply

- Doctors
 - realized that privacy was here and they were subject to criminal penalties
- Lawyers
 - Gave conflicting legal interpretations

Confusion in Application

- Doctors refused to transmit PHI in “free flow zone”
- Employers’ Authorizations and notices
 - overreaching & duplicative
- Hearings in workers compensation regime 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

- Expand free flow zone
- Create regulatory authority
- Reduce costly requirements

Proposed Expanding the Free Flow Zone

- To include
 - Delivery and financing of health care
 - Employment benefits or entitlements
 - Workplace or educational health and safety
 - Collective bargaining

Proposed Reducing Notice Requirements

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

Strong Opposition to Any State Privacy Law

- Drug companies
- Non-health insurance industry
- Employers

Task Force Report

- Forwarded Recommendations to Legislature
- Included strong opposing minority view
 - Opposed to Any State Privacy Law
- Published just as HIPAA privacy regulations 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

- Healthcare is larger than the health care industry
 - Not every one is covered by HIPAA & GLB & expectations will be different
- Language of privacy is new & foreign
 - many lawyers may not understand it

Lessons from Hawaii

- Assess data flows outside of the health care industry
 - look at exchanges of information for employment and payment issues, e.g., union grievance procedures and workers compensation
 - look at redisclosure of information

Lessons from Hawaii

- Anticipate “stoppages” in flow of information
- Create common expectations of information usage with
 - Doctors, Dentists, Pharmacists, Nurses
 - Employers, Unions and Insurers
 - Lawyers, Vendors

Impact of Federal Privacy Laws

- Constitutional torts remain
 - HIPAA may have set the standard for other industries
- Impact of GLB is uncertain

