

HIPAA SUMMIT WEST
PERMITTED DISCLOSURES
UNDER GLB & HIPAA
June 21, 2001

A Privacy Compliance Assessment
Case Study

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PROJECT OVERVIEW

- Client: Large Health Plan
 - Health insurer, Disease management, HMO, Home health
- Privacy Compliance Assessment
 - GLB Primary Focus
 - HIPAA (where overlaps exist)
- Timeline: 8 weeks

PROJECT OVERVIEW

- Objectives
 - Uses & Disclosures Inventory
 - Determine which disclosures are permitted under GLB & HIPAA, Identify gaps
 - Develop baseline HIPAA gap analysis
- #1 Priority
 - Identify changes in disclosure practices needed before July 1, 2001

THE PROJECT TEAM

- Paramore Consulting, Inc. (PCI)
 - Business & technical consulting
 - Data gathering, Disclosure analysis, Document cataloging, Information Inventory
 - Facilitated sessions
- Gardner, Carton & Douglas (GCD)
 - Document review, Privilege
 - Legal interpretation & analysis

PROJECT TEAM

- The Client
 - Dedicated team of internal staff
 - Coordinated by Corporate Compliance Manager
 - Representatives from all affected business units & departments
 - Educated on the relevant laws
 - Motivated

THE LAWS

- HIPAA

- Health plans, Clearinghouses, Providers that transmit electronically
- Use and disclosure of protected health information

- GLB

- Insurance institutions, Agents & Insurance support organizations
- Disclosure of personal information

PERMITTED DISCLOSURE COMPARISON

- HIPAA

- Written Authorization
- Minimum Necessary
- Written Business Associate Agreements

- GLB

- Written Authorization
- Reasonably Necessary
- Written or Oral Agreements With Recipient

PROJECT PROCESS

- Planning
 - Client, PCI, & GCD responsibilities assigned and coordinated
- Attorney-Client Privilege
- Information Capture
- Legal & Risk Analysis
- Reporting

ATTORNEY-CLIENT PRIVILEGE

- Established early
- Underlying information not covered
- Review of all documents prior to distribution to project team
- Legal interpretation to in-house counsel prior to distribution
- Analysis and reporting through GCD

INFORMATION CAPTURE

- Document gathering (547 documents)
- Questionnaires
- Cross-functional facilitated sessions (4 days)
- Detailed interviews with each affected department

DISCLOSURE ANALYSIS

- To, From, What, Purpose, On Who's Behalf
- Recipients
 - Affiliate, nonaffiliate
 - Covered entity, non-covered entity
 - Business associate
- Marketing purpose

DISCLOSURE ANALYSIS

- Permitted
- Permitted but limited to minimum necessary
- Permitted with agreement or written contract
- Permitted with authorization and/or opt out
- Not permitted

DISCLOSURE ANALYSIS EXAMPLE

- Pharmacy benefits program to identify drug abuse
- Disclose to prescribing physicians
 - Name of member
 - Names of all other prescribing physicians
 - Drugs & doses prescribed
 - Dispensing pharmacies

DISCLOSURE ANALYSIS EXAMPLE

- Purpose of disclosure
 - Determine validity of benefit claim
 - Determine medical necessity
 - Alert physicians of abuse problem
 - Establish coordination of care
- Principle compliance issue
 - Minimum necessary under GLB & HIPAA

DISCLOSURE ANALYSIS EXAMPLE

- GLB Standard
 - Determining eligibility for the benefit
 - Detecting or preventing fraud
 - To a medical professional to:
 - Verify coverage
 - Inform individual of medical problem of which he may not be aware
 - Provided only that information is disclosed as is reasonably necessary to accomplish the purpose of the disclosure

DISCLOSURE ANALYSIS EXAMPLE

- HIPAA Standard
 - “Payment” includes medical necessity & appropriateness of care
 - “Health care operations” includes medical review for fraud and abuse detection
 - Reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose

DISCLOSURE ANALYSIS EXAMPLE

- No support for disclosing names of dispensing pharmacies
- Limit disclosure to drug & dosage
- Determine referral relationships
- If referral relationships exist
 - Disclose names of other physicians
- If no relationship
 - Assurance that physician will consult with other physicians

DISCLOSURE ANALYSIS EXAMPLE

- Develop criteria to determine when disclosing names of physicians is needed
- Where criteria not met, analyze facts & circumstances
- Document basis for position that disclosure is the minimum necessary to accomplish intended purpose

REPORTING

- Master Document Catalog
 - Reusable, electronic workbook
- Uses & Disclosures Inventory
 - Reusable, electronic workbook
 - Hyperlinked to MDC
- Disclosure Flow Diagram
- Gap Analysis Report
- Presentation to Senior Staff

FINDINGS

- Written authorizations required if information disclosed by Client to subsidiary is used beyond its work for Client
- Document minimum necessary
- Written business associate agreements
- Revise and issue privacy notices

NEXT STEPS

- Incorporate into compliance plan
- Full HIPAA privacy assessment
 - Policy & procedure development
 - Privacy training
 - Minimum necessary
 - Authorization forms
 - Business associate agreements
- Full HIPAA security assessment

LESSONS LEARNED

- Communication is key
- Combine GLB & HIPAA efforts
- Determine your organizations' definition of "disclosure"
- Determine when attorney-client privilege is necessary
- Examine identity of subsidiaries
- Map information exchanges

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