HIPAA Summit West II
San Francisco, CA
March 13-15, 2002

HIPAA Implementation Strategies for Small and Rural Providers

By Edward A. Meyer, Attorney at Law
McDonald & Meyer, PLLC, Greensboro, North Carolina

www.mcdonaldmeyer.com
emeyer@mcdonaldmeyer.com
HIPAA Humor?

“The Department believes that the requirements of the final rule will not be difficult to fulfill, and therefore, it has maintained the two year effective date.” 65 Fed Reg 82758 (December 28, 2000).

Is this persuasive authority?
Key Observations

- 82.6% of all health care establishments in the U.S. are “small entities”

- Small providers often have limited financial and educational resources

- Privacy Rule too voluminous for small providers to digest

- No general small entity exception under HIPAA

- Delay of Privacy Rule is unlikely (but assumed by many small providers)
Outline of Presentation:

- Addressing Implementation Timelines
- Enforcement Restrictions, Scalability, and Reasonableness
- Making HIPAA Rules Understandable and Brief
- Review of cooperative arrangements and resulting tools:
  - NCHICA and the State of Maryland Health Care Commission
  - HPAA Earlyview™ Privacy software tool
Addressing Implementation Timelines with Providers

- Recognize that small providers generally unaware of HIPAA
- Emphasize that HIPAA imposes current obligations on covered entities

Addressing Implementation Timelines with Providers

HIPAA Safeguard Statute: 42 U.S.C. Sec. 1320d-2(d):

“Each person described in section 1320d-1(a) of this title who maintains or transmits health information shall maintain reasonable and appropriate administrative, technical, and physical safeguards –

(A) to ensure the integrity and confidentiality of the information

(B) to protect against any reasonably anticipated –

(i) threats or hazards to the security or integrity of the information; and
(ii) unauthorized uses or disclosures of the information; and

(C) otherwise to ensure compliance with this part by the officers and employees of such person.”
Enforcement Restrictions, Scalability and Reasonableness under HIPAA
Enforcement Discretion:

- No CMP where person demonstrates to satisfaction at the Secretary that person “did not know, and by exercising reasonable diligence would not have known” HIPAA violated [42 U.S.C. 1320d-5(b)(2)]

- NO CMP if failure due to reasonable cause and not to willful neglect; and the failure is corrected within 30 days [42 U.S.C. 1320d-5(b)(3)(A)]

- Thirty (30) day correction period may be extended by Secretary [42 U.S.C. 1320d-5(b)(3)(B)(i)]
Enforcement Discretion (Continued):

- Secretary authorized to provide technical assistance during correction period:
  “in any manner determined appropriate by the Secretary” [42 U.S.C. 1320d-5(b)(3)(B)(ii)]
- If CMP is excessive vis-à-vis compliance failure:
  then Secretary may waive if failure due to reasonable cause and not willful neglect
  [42 U.S.C. 1320d-5(b)(4)]
Enforcement Discretion (Continued):

“As to enforcement, a covered entity will not necessarily suffer a penalty solely because an act or omission violates the rule. …[T]he Department will exercise discretion to consider not only the harm done, but the willingness of the covered entity to achieve voluntary compliance.”

“Scalability” of Regulations:

• Privacy regulations are scalable to reflect variations among covered entities

  - HHS expects small entities will develop “less expensive and less complex privacy measures”

• HHS’s scalable approach may benefit smaller providers

  - Limitations on small providers taken into account

• Regulations consider current business practices

  - Small providers “will not be required to change their business practices dramatically”
“Reasonableness” under Regulations

• There is no blanket “reasonable efforts” qualifier to privacy regulations

• “Reasonable efforts” approach is provision specific

Examples:

• Minimum Necessary Rule
• Mitigation of violations by business associates
• Consents after emergency treatment
Additional flexibility factor:

HHS belief that “the requirements of the final rule will not be difficult to fulfill”
Implementation Strategy: Make HIPAA Rules Understandable and Brief

STEP ONE: Be brief

STEP TWO: Educate

STEP THREE: Break Up the Privacy Rule to its essential tasks and identify scalability

STEP FOUR: Perform gap analysis

STEP FIVE: Identify available forms and implement in accordance with gap analysis report
Additional Implementation Strategy:

- Consider where groups of small entities can work through implementation together
- HHS encourages cooperative efforts
- State or local associations/societies as a resource
STEP ONE: Be Brief

- Convey that the HIPAA Regulations are about “Standards”

- Health Care Provider should understand underlying purpose of HIPAA privacy rule
STEP TWO: Educate

• Who to educate (versus who to train)

• Accomplish the “HIPAA Epiphany”

• Recognize available education resources
  - HHS Press Releases and Fact Sheets
  - Web sites:
    www.hhs.gov/ocr/hipaa
    www.hipaasummit.com
    www.wedi.org (also White Paper)
STEP THREE: Break Up the Privacy Rule to its Essential Tasks and Identify Scalability

12 Essential Tasks/Scalability

1. Appoint a Privacy Officer and assign duties.
   - Implementation will vary by size of CE.

2. Adopt a notice of privacy practices.
   - Notice is complex. Use a form.

3. Adopt a HIPAA Consent form for Treatment, Payment and Health Care Operations.
   - Recognize consents are distinct from authorizations.
12 Essential Tasks/Scalability (Continued):

   - Consider using a form developed by professional society/trade association.

5. Obtain patient Consents and Authorizations under adopted forms.
   - Consider procedure that makes sense given what CE currently doing.

6. Identify all “Business Associates,” adopt a form contract and enter into Business Associate Agreements with all “Business Associates.”
   - Final regs more workable than proposed rule.
   - Standard industry practice?
12 Essential Tasks/Scalability (Continued):

7. Adopt policies & procedures to handle patient requests regarding their protected health information.
   - Consider how currently handling requests.

   - Similar to current practices?

9. Train all employees on HIPAA privacy standards, policies & procedures.
   - Nature and method of training left to CE.

10. Amend employee manual regarding the HIPAA privacy rules.
   - Small providers permitted more limited policies/procedures.
11. Implement HIPAA security safeguards.
   - Proposed security regulations are just that: proposals
   - But remember current statutory obligation

12. Adopt HIPAA privacy compliance record-keeping policies, including means to meet disclosure accounting requirement.
   - Documentation requires are extensive
   - Create checklists
STEP FOUR: Gap Analysis

- Identify the gaps:
  - Current policies, procedures, forms and contracts
  - Where CE maintains, uses, discloses, or accesses PHI
  - Where current policies/procedures/forms/contracts need to be modified or new ones added
STEP FOUR: Gap Analysis (cont’d)

- Start with assessment checklist; then do formal analysis
- Create implementation work plan
- Software Tools are available
STEP FIVE: Identify Forms and Implement in accordance with gap analysis report

- Forms available through many sources
- Obtain professional consensus on good (i.e., HIPAA compliant) forms
- Recognize that forms reflect the drafters
- Consider Trade or Professional Associations for source
- Remember: If your client adopts it, then it must comply with it.
Review of Cooperative Arrangements: NCHICA and the State of Maryland Health Care Commission

What is NCHICA?
North Carolina Healthcare Information and Communications Alliance

Approximately 200 members of NCHICA
- Health Plans
- Clearinghouses
- State and Federal Agencies
- Local Governments
- Vendors
- Professional Associations and Societies
- Research Organizations
- Law Firms
NCHICA’s
HIPAA Implementation Task Force

Work groups:
- Transactions, Coding and Identifiers
- Privacy
- Network Interoperability
- Data Security
- Awareness Education and Training

Over 300 participants have been involved in these efforts.
NCHICA “Deliverables”

- Education components.

- Forms:
  Consents, Authorizations, Notices.

- Checklists for creation of HIPAA compliant forms.


- A HIPAA privacy regulation analysis flow chart.

- Identification of North Carolina State Laws and analysis of the “more stringent state laws” under the regulations.
HIPAA Earlyview™ Privacy Software Tool

• Incorporates Maryland Guide to Privacy Rule with NCHICA “Deliverables”

• 33 Requirements from the Privacy Rule

• 43 Questions keyed to requirements

• Incorporates industry “best practices”
HIPAA Earlyview™ Privacy Software Tool
(Continued):

• Includes recommended “action items” to fulfill each Requirement

• Links to online sample documents, document portfolio management facility

• Includes cross references to regulations, definitions, and related requirements within HIPAA

• User Guide
The EarlyView™ Privacy Tool
Greeting/Splash Screen
(reprinted with permission of NCHICA)
Main Menu (Others)
(reprinted with permission of NCHICA)
Glossary
(reprinted with permission of NCHICA)

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act (160.103)</td>
<td>The Social Security Act</td>
</tr>
<tr>
<td>ANSI (160.103)</td>
<td>The American National Standards Institute</td>
</tr>
<tr>
<td>Authorization (MD Guide)</td>
<td>An authorization is a written document signed by a patient giving permission to disclose protected health information for purposes other than treatment, payment and health care operations. An</td>
</tr>
<tr>
<td>Business Associate (MD Guide)</td>
<td>A person or entity who performs a function for or assists a covered entity or health care arrangement with a function or activity involving the use or disclosure of individually identifiable health information</td>
</tr>
</tbody>
</table>

(c) 2001 Edward A. Meyer, Esq. www.mcdonaldmeyer.com
Performing the Assessment
(reprinted with permission of NCHICA)

Questions in logical sequence

Explanations and clarifications at each step

Reports

Supporting sample documents, forms, and policies

“Action Items”
References Screen
(reprinted with permission of NCHICA)
Clarification of Requirement

(reprinted with permission of NCHICA)
Suggested Approach Screen
(reprinted with permission of NCHICA)

Verify contact information and address as part of scheduling office visits. Include a section for alternative contact information on patient registration form.

Define the boundaries of "reasonable" in the Notice of Privacy Practices document by noting when your office will provide health information to an alternative address or by an alternative means.

Evaluate Health Information System to determine if it can accommodate alternate locations for sending bills, etc.
Action Items for Requirement
(reprinted with permission of NCHICA)

- Develop a Notice of Privacy Practices for the medical practice
- Develop policies and procedures to handle patient PHI requests
- Develop and implement a training program for all employees
Explain Action Item
(reprinted with permission of NCHICA)

**Explanation of Action**

**Develop a Notice of Privacy Practices for the Medical Practice**

This Notice is your public statement and documents your practice’s privacy policies and procedures. It needs to be written in plain language, and contain the following information:

- a. Information about how the practice uses and discloses PHI
- b. Clarification of an individual’s privacy rights, i.e. access to PHI
- c. The practice’s responsibilities under HIPAA
- d. How to file a complaint with the practice or with the Secretary of HHS
- e. The name, title, and phone number of the practice’s contact person
- f. The effective date of the notice

**OK**
Documents for Action Item
(reprinted with permission of NCHICA)

<table>
<thead>
<tr>
<th>Name of Document</th>
<th>Available</th>
<th>Required</th>
<th>Web Search</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of Privacy Practices</td>
<td>Edit</td>
<td>x</td>
<td>WWW</td>
</tr>
<tr>
<td>Policies and Procedures for Patient PHI Requests</td>
<td>Edit</td>
<td>x</td>
<td>WWW</td>
</tr>
<tr>
<td>Syllabus for Privacy Training</td>
<td>Edit</td>
<td>x</td>
<td>WWW</td>
</tr>
</tbody>
</table>
Create, Edit, Store and Print Documents from the Portfolio

reprinted with permission of NCHICA)
A Web Document (Linked)
(reprinted with permission of NCHICA)

SAMPLE – For Illustrative Use Only

Notice of Privacy Practices
Practitioner and Facility Development Tips

An individual has a right under most circumstances to adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's rights and the covered entity's legal duties with respect to protect health information. The Notice of Privacy Practices outlines how medical information about a patient may be used and disclosed and their access to this information. This document provides practitioners and facilities with best practice guidelines for developing an organization specific Notice of Privacy Practices.

Best Practices – Development Guidelines:

- Include a description, including at least one example, of the types of uses and disclosures that the covered entity is permitted using protected health information for treatment, payment, and health care operations.
Multiple Reports

(reprinted with permission of NCHICA)
HIPAA Summit West II
San Francisco, CA
March 13-15, 2002

HIPAA Implementation Strategies for Small and Rural Providers

By Edward A. Meyer, Attorney at Law
McDonald & Meyer, PLLC, Greensboro, North Carolina

www.mcdonaldmeyer.com
emeyer@mcdonaldmeyer.com

(336) 389-9599 (office)
(336) 389-9598 (facsimile)