



Paramore Consulting Inc.  
e-commerce for healthcare

# Permitted Disclosures Under GLB & HIPAA

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# Project Overview

- Client: Large Health Plan
  - Health insurer, Disease management, HMO, Hospital, Primary Care, Clinic, Home health
- Privacy Compliance Assessment
  - GLB Primary Focus
  - HIPAA (where overlaps exist)
- Timeline: 6-8 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



## 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



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## “Information” Under the Laws

- HIPAA
  - Protected Health Information
  - Use
  - Disclosure
- GLB
  - Personal Information
  - Privileged Information



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## GLB: Personal Information

“Any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual’s character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. It includes an individual’s name and address and medical-record information, but does not include privileged information or any information that is publicly available.”





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## GLB: Privileged Information

“Any individually identifiable information that relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual and is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual.”



## HIPAA: Use v. Disclosure

- Use – “the employment, application, utilization, examination, or analysis of protected information within an entity that maintains the information.”
- Disclosure – “the release, transfer, provision of access to, or divulging in any other manner of protected information outside the entity holding the information.”

In short, 'use' occurs inside an entity, while 'disclosure' occurs outside an entity.



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## Permitted Disclosure Comparison

- HIPAA
  - Written Authorization
  - Minimum Necessary
  - Written Business Associate Agreements
- GLB
  - Written Authorization
  - Reasonably Necessary
  - Written or Oral Agreements With Recipient



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## Project Process

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



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## 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

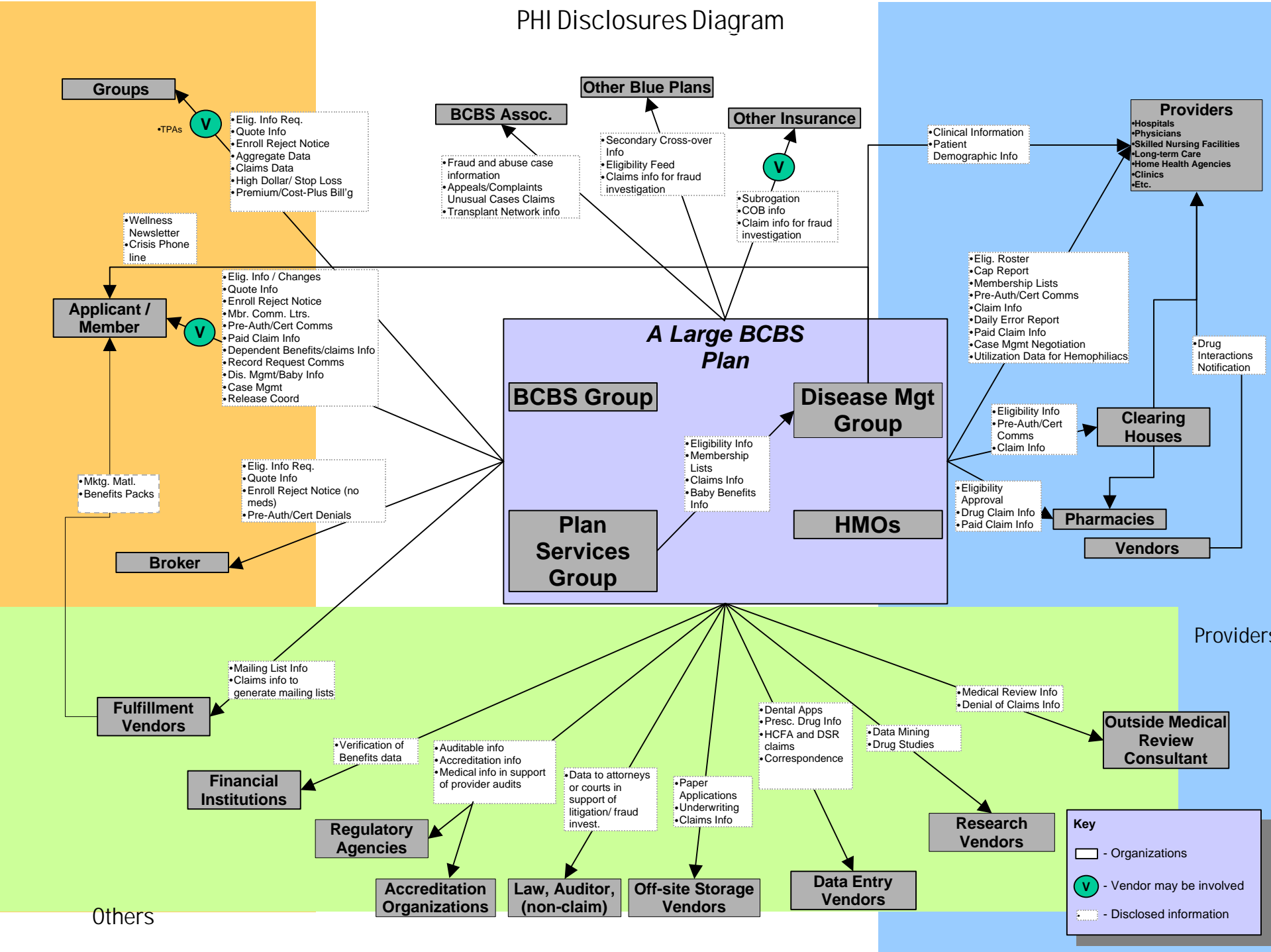


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## Work Products

- PHI Flow Diagram
- Business Associate Inventory
- Uses & Disclosures Inventory
- HIPAA Disclosures Key
- GLB Disclosures Key
- Master Document Catalog

# PHI Disclosures Diagram





# Uses & Disclosures Inventory

- From
- To
- What Information
- Purpose
- On Whose Behalf
- BAA Required?
- Permitted Disclosure Rationale (Key)
- Notes / Additional Detail / Issues

## 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

- 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



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## 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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## Questions?

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