
HIPAA

Administrative Simplification

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- ◆ The information in this presentation does not represent official views of the U.S. Department of Health and Human Services

Genesis of Administrative Simplification - 1993-94

- ◆ Health reform initiative:
 - 25% of health care costs were spent on administration, not care
 - duplication
 - paper transactions conducted with paper records between businesses
- ◆ Proposal: standardize these transactions to permit them to be conducted electronically

Health Insurance Portability and Accountability Act of 1996

- ◆ Established health insurance portability requirements
- ◆ Sections 261 through 263 added “Administrative Simplification” provisions to Title XI of the Social Security Act
- ◆ Section 264 added privacy provisions

HIPAA directs the Secretary of HHS to regulate:

- ◆ Standards necessary for national electronic health data systems
- ◆ Health care plans, clearinghouses and those providers who conduct designated transactions electronically
- ◆ Transmission, uses, storage and disclosure of health information

HIPAA standards:

- ◆ To be adopted from existing voluntary consensus standards, developed by ANSI approved SDO where possible
- ◆ Standards different from voluntary consensus standards may be adopted only through negotiated rulemaking
- ◆ Secretary to develop missing standards

Standards required for:

- ◆ Administrative transactions
- ◆ Code sets
- ◆ Identifiers
- ◆ Security
- ◆ Electronic signatures
- ◆ Privacy of individually identifiable health data

HIPAA standards:

- ◆ Will apply to:
 - All health plans
 - All health data clearinghouses
 - Providers who conduct transactions electronically
- ◆ Will NOT apply to:
 - Employers
 - Life, casualty, disability or worker's compensation insurers
 - Other users of health information

Standards Implementation

- ◆ Numerous administrative requirements
- ◆ Compliance two (or, for small health plans, three) years following adoption
- ◆ Civil and criminal enforcement
 - By Secretary for failure to follow standards
 - By Department of Justice only for wrongful use or disclosure of information
 - No private right of action

Preemption

- ◆ HIPAA did not repeal existing federal laws
- ◆ State laws will be preempted by HIPAA standards except for laws:
 - determined to be necessary by the Secretary of HHS
 - for public health or
 - for state regulatory reporting
- ◆ Special preemption for state privacy laws

Notices of Proposed Rulemaking published summer of 1998 for:

- ◆ Transactions and Code Sets
- ◆ National Provider Identifier
- ◆ National Employer Identifier
- ◆ Security and Electronic Signatures

Transactions and Code Sets: Key Concepts

- ◆ Standards required for:
 - Claims, remittance advices and payment, eligibility, enrollment, claims attachments, premium payments, claim status, referral certification and authorization, and first report of injury
- ◆ ANSI approved standards available for most designated transactions
- ◆ Code sets are the code sets in current use

National Provider Identifier: Key concepts

- ◆ No ANSI standard
- ◆ Single unique number, with no intelligence in number
- ◆ Required for use in standard transactions
- ◆ Future use in computerized patient record

National Employer Identifier: Key concepts

- ◆ “Employer Identifying Number” issued and maintained by the Internal Revenue Service
- ◆ Already in common use
- ◆ Will require choice among multiple numbers

Security Standards: Key concepts

- ◆ ANSI standards available only for pieces
- ◆ Approach: framework or matrix
- ◆ Technologically neutral, insofar as possible
- ◆ One size does not fit all
- ◆ Industry involvement sought
 - ANSI Standard Setting Organizations
 - Security Forum

Electronic Signature Standard: Update

- ◆ 1998 -- HIPAA NPRM proposed adoption of digital signature for health care
- ◆ 1999 -- Government Paperwork Elimination Act
- ◆ 2000 -- Electronic Signatures in Global and National Commerce Act

Electronic Signatures in Global and National Commerce Act

- ◆ Will give electronic documents and signatures the same legal effect as paper versions
- ◆ Consumer choice and protections
- ◆ Effective October 1, 2000
- ◆ “an electronic sound, symbol or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”

Regulations under development:

- ◆ Standard for national plan identifier
- ◆ Standard for claims attachments
- ◆ Standards for supplemental transactions
- ◆ Enforcement

Standard on hold:

- ◆ Congress ordered work on the national individual identifier standard suspended until comprehensive privacy protections are in place
- ◆ Assorted bills before Congress to repeal the national individual identifier

Privacy Standards

- ◆ Since Congress failed to enact comprehensive federal health privacy legislation by August 26, 1999, the Secretary of HHS is required to promulgate privacy regulations to protect individually identifiable health information
- ◆ No standards available from ANSI accredited standards development organization

Individually Identifiable Health Information (IIHI)

- ◆ Identifies the individual or offers a reasonable basis for identification;
- ◆ Is created or received by a covered entity or an employer; and
- ◆ Relates to past, present, or future
 - physical or mental health or condition
 - provision of health care or
 - payment for health care

Privacy Regulations

- ◆ Notice of Proposed Rulemaking:
“Standards for Privacy of Individually Identifiable Health Information”
was published November 3, 1999
- ◆ Comment period closed February 17, 2000
- ◆ Over 50,000 comments received

Key Concepts

- ◆ Floor of minimum privacy protections
- ◆ No consent required for treatment, payment or health care operations
- ◆ Business partners covered by contract
- ◆ Patients as “third party” beneficiaries
- ◆ Disclosures limited to “minimum necessary”
- ◆ Mechanism for de-identifying information
- ◆ Protections extended two years after death

Proposed regulations address:

- ◆ Obligations of plans, clearinghouses, and providers
- ◆ Rights of individuals
- ◆ Permitted uses and disclosures
 - authorized by individual
 - authorized by law or regulation
- ◆ Enforcement
- ◆ Relationship to existing laws

Affirmative obligations of plans, clearinghouse and providers:

- ◆ To ensure integrity and confidentiality of health information
 - Security
 - Administrative procedures
- ◆ To use and disclose information only as authorized
 - by subject individual
 - by law
 - by this regulation

Rights of Individuals

- ◆ Receive Notice of Information Practices
- ◆ See and copy own records
- ◆ Request corrections
- ◆ Obtain accounting of disclosures

Uses and disclosures permitted by regulation without consent:

- ◆ Public health
- ◆ Health oversight
- ◆ Law enforcement
- ◆ Research
- ◆ Judicial and administrative proceedings
- ◆ Coroners and medical examiners
- ◆ Government health data systems
- ◆ Directory services

More uses and disclosures permitted without consent:

- ◆ Banking, as necessary for payment
- ◆ Emergency circumstances
- ◆ Next-of-kin
- ◆ Otherwise required by law
- ◆ Specialized classes:
 - Military services
 - Veterans' Affairs
 - Intelligence
 - Department of State

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Uses and disclosures for which consent IS required:

- ◆ Patient requested releases
- ◆ Non-health care marketing
- ◆ Fund raising
- ◆ Sale of data
- ◆ Anything not otherwise expressly
 - permitted
 - prohibited

Limited role for patients:

- ◆ No consent for most uses or disclosures
- ◆ No control over form or method of handling data
- ◆ No right to prohibit specific uses or disclosures
- ◆ No private right of action to file suit in federal court to seek relief if privacy violated

Issues in the regulations:

- ◆ Scope:
 - incomplete universe
 - electronic versus paper and other media
- ◆ Enforcement
 - civil monetary penalties
 - criminal penalties
- ◆ Conflicts of laws

Choices

- ◆ These regulations
- ◆ Comprehensive health privacy laws
- ◆ Piecemeal fixes to existing laws
- ◆ Scott McNealy, Sun Microsystems CEO:
You already have zero privacy: Get over it!

Resources

- HHS Administrative Simplification Web Site
 - <http://aspe.hhs.gov/admnsimp/Index.htm>
 - NCVHS Web Site
 - <http://aspe.hhs.gov/ncvhs>
 - Washington Publishing Company Web Site
 - http://www.wpc-edi.com/hipaa_40.asp
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More resources

- ◆ Health Information and Technology Committee and Listserv:
[http://HIT@HealthLawyers.org](mailto:HIT@HealthLawyers.org)
- ◆ For Security Forum:
www.healthcaresecurity.org

And still more resources:

- ◆ For computer based record:
<http://www.CPRI-HOST.org>
- ◆ For CPRI Toolkit
<http://healthcare.3com.com/securitynet/hipaa/toc.html>