

# Healthcare Transactions and Code Sets, Privacy, Data Security and HIPAA/GLB Compliance



The Future of Technology, the Internet and EDI in Healthcare

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Robert R. Belair

Mullenholz, Brimsek & Belair

bobbelair@aol.com: (202) 296-2861

# Privacy In American Business - Lessons From Other Industries



- **HIPAA will be implemented during the most privacy-sensitive period in American history**
  - **Public concern about privacy remains high**
  - **Distrust index high**
  - **Media coverage-firestorm a week**
  - **Identification theft**

# Privacy In American Business - Lessons From Other Industries



- **Technology will keep privacy on the front pages**
  - **The Internet**
  - **Location tracking technologies**
  - **biometric technologies**
  - **Emerging technologies**

# Privacy In American Business - Lessons From Other Industries



- **Keep working to make HIPAA better (and to prevent others from making HIPAA worse)**
  - **The GLB experience**
  - **The FCRA experience**

# Privacy In American Business - Lessons From Other Industries



- **Develop a strategy for dealing with state law (HIPAA doesn't preempt and HIPAA won't preempt)**
  - **FCRA**
  - **GLB**
  - **State activity**
    - **Legislative**
    - **Attorneys General**

# Privacy In American Business - Lessons From Other Industries



- **Develop a strategy for dealing with other federal privacy law (HIPAA won't be an exclusive or universal federal authority)**
  - **Safe Harbor**
  - **Online privacy**
  - **Genetic privacy**

# Privacy In American Business - Lessons From Other Industries



- **Expect HIPAA to accelerate calls for federal legislation to address all personally identifiable health information**
  - COPPA encourages comprehensive online privacy
  - GLB encourages comprehensive financial privacy
  - EU Directive encourages domestic privacy safeguards

# Privacy In American Business - Lessons From Other Industries



- **Expect HIPAA to create an environment conducive to privacy litigation**
  - **Other industries are seeing a dramatic increase in litigation**
  - **Patient litigation and state and federal regulatory activity likely to increase**



# Privacy In American Business - Lessons From Other Industries



- **Expect HIPAA to spur calls for employee privacy protections in your workplace**
  - Information privacy safeguards
  - E-mail and Internet usage
  - Workplace surveillance
  - Background checks

# Privacy In American Business - Lessons From Other Industries



## ■ Acquisition of data

- Not all health information is equally sensitive - state law re: AIDS and mental health data
- Combining information and creating profiles is radioactive - the Double Click experience
- It's not about minimization, it's about having a legitimate business reason -- the EU Directive

# Privacy In American Business - Lessons From Other Industries



- | Acquiring data directly from consumers is always better than from third parties
  - | FCRA
  - | The public record debate
  - | Genetic research and family sources

# Privacy In American Business - Lessons From Other Industries



- **Maintenance of data**
  - **Expect challenges (technical and legal) to anonymization**
  - **Expect challenges (technical and legal) to security**

# Privacy In American Business - Lessons From Other Industries



## ■ Disclosure of data

- Be wary of business partner disclosures: CVS and Giant
- Marketing disclosures are radioactive: CPNI and the telecommunications industry
- Disclosures with consent or authorization -- subsequent challenges -- lessons from the EU
- Disclosures of customer lists; Sabre; AOL; Toysmart
- Disclosures to government agencies -- a re-emerging privacy focus

# Privacy In American Business - Lessons From Other Industries



- **Providing consumers with privacy rights**
  - **The pitfalls of privacy notices -- the GLB nightmare**
  - **Consumer access and correction -- the credit score experience; the EU experience; the CHRI experience**
  - **Maintaining an accounting of disclosures -- the CHRI experience**

# Privacy In American Business - Lessons From Other Industries



- **Administering a privacy program**
  - **Living with a CPO**
  - **Living with a privacy regulatory agency**
    - **The EU/DPA model**
    - **The FTC model**
    - **The financial regulatory agency model**
  - **Living with a periodic privacy assessment -- the IRSG experience**
  - **Living with an independent dispute resolution mechanism -- the Safe Harbor experience**

# Privacy In American Business - Lessons From Other Industries



- **What's good about living with a comprehensive, legally imposed privacy standard?**
  - **Removes uncertainty - the CPNI experience**
  - **May discourage or at least create a venue for legislative improvements - the FCRA experience**
  - **Creates a level playing field -- the GLB experience**



# Privacy In American Business - Lessons From Other Industries



- Rewards entities with the resources and commitment to manage a privacy program - the FCRA experience
- Improves public confidence - the EU experience