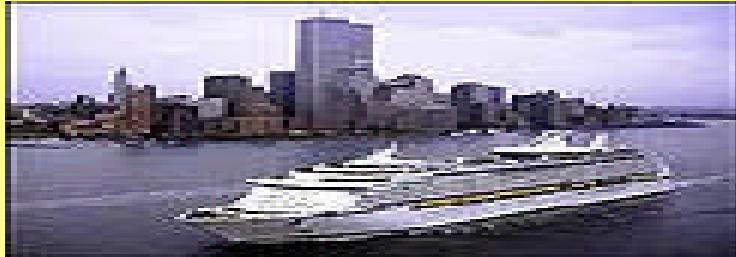


HIPAA AT HARVARD

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Boston, Massachusetts & Washington, DC

Alan S. Goldberg, JD, LLM

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WELCOME TO THE WORLD OF HIPAA

Who Am I

- **Join My Ministry of Spirit of HIPAA**
- **Goulston & Storrs, 1967**
- **First computer Osborne 18+ lbs.**
- **Past Pres. American Health Lawyers**
- **Piano: “Typhoons Twist”, 1959**
- **Adjunct Professor of Law**

Suffolk University Law School

Professor Goldberg's Honest Lawyer Privacy Policy

- **Nothing I say in this room is private**
- **Everything you in this room is public**
- **We have zero privacy in this room: get over it!**

*Healthcare Still Runs On
Dead Tree Media*

But that will change

The Privacy Monologues ***(Courtesy of Eve Ensler)***

*If a privacy law could talk,
what would it want to say?*

- **281,000,000 patients care**
- **HIPAA is a metaphor**
- **Wake up & smell the
HIPAA**

***HIPAA IS THE TIP-A THE
PRIVACY ICEBERG***

Elevators vs. Escalators

TV President Josiah Bartlet Has Health Care Secret In West Wing

- HIPPA

- HIPA

- HIPPA A

- HIPAA It's Powerful
And Awesome

HIPAA COVERS:

Fifty States of the United States

Guam

US Virgin Islands

District of Columbia

Puerto Rico

BUT NOT AMERICAN SAMOA, YET

Health Care Privacy

**Int'l
Law**

**Professional
Obligations**

**State
Law**

Privacy Before HIPAA

HIPAA IN A BOX?



HIPAA ABOVE THE CLOUDS



HIPAA Is About Standards

Standard Transaction

- **Transmission of information between two parties to carry out financial/administrative activities related to health care**

HIPAA Applicability

- **Health plan**
- **Health care clearinghouse**
- **Health care provider that transmits health information electronically in connection with covered transaction**

Covered Health Care Provider

- **Provider of medical or health services & any other person or organization who furnishes, bills, or is paid for health care in the normal course of business**

Lost HIPAAginity

What Is HIPAA Healthcare

HIPAA Is About Privacy
What Is the Weakest Link?

HIPAA Is About Security

On internet nobody knows you're a dog

HCFA Internet Security Policy

- **1997 – Drop Dead Internet**
- **1998 - Internet Communications Security & Appropriate Use Policy**
- **Encryption, authentication**
- **Temporary pre-HIPAA**

Public Key Encryption

Public Key

**Trusted
Authority**

Private Key

Creator of Message

Protected Health Information

- **Any individually identifiable health information transmitted by or maintained in electronic media or in any other form or medium**

De-Identified

- **If person with appropriate knowledge of & experience with generally accepted statistical & scientific principles & methods for rendering information not individually identifiable determines that risk is very small that information could be used, alone or in combination with other reasonably available information, by anticipated recipient to identify individual who is subject of the information**

Identifiable

- **ID of patient, relatives, employers, household**
- **(A) Names; (B) Geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, & geocodes; (C) birth date, admission date, discharge date, date of death; (D) E-mail addresses; (E) Telephone, Fax, Social Security, Medical record, Health Plan Beneficiary, Account, Certificate/license, Vehicle, License Plate; (F) Full face photo**



Workforce

- **Employees, volunteers, trainees, & others who work under direct control of a covered entity, whether or not paid**
- **Must train & oversee**

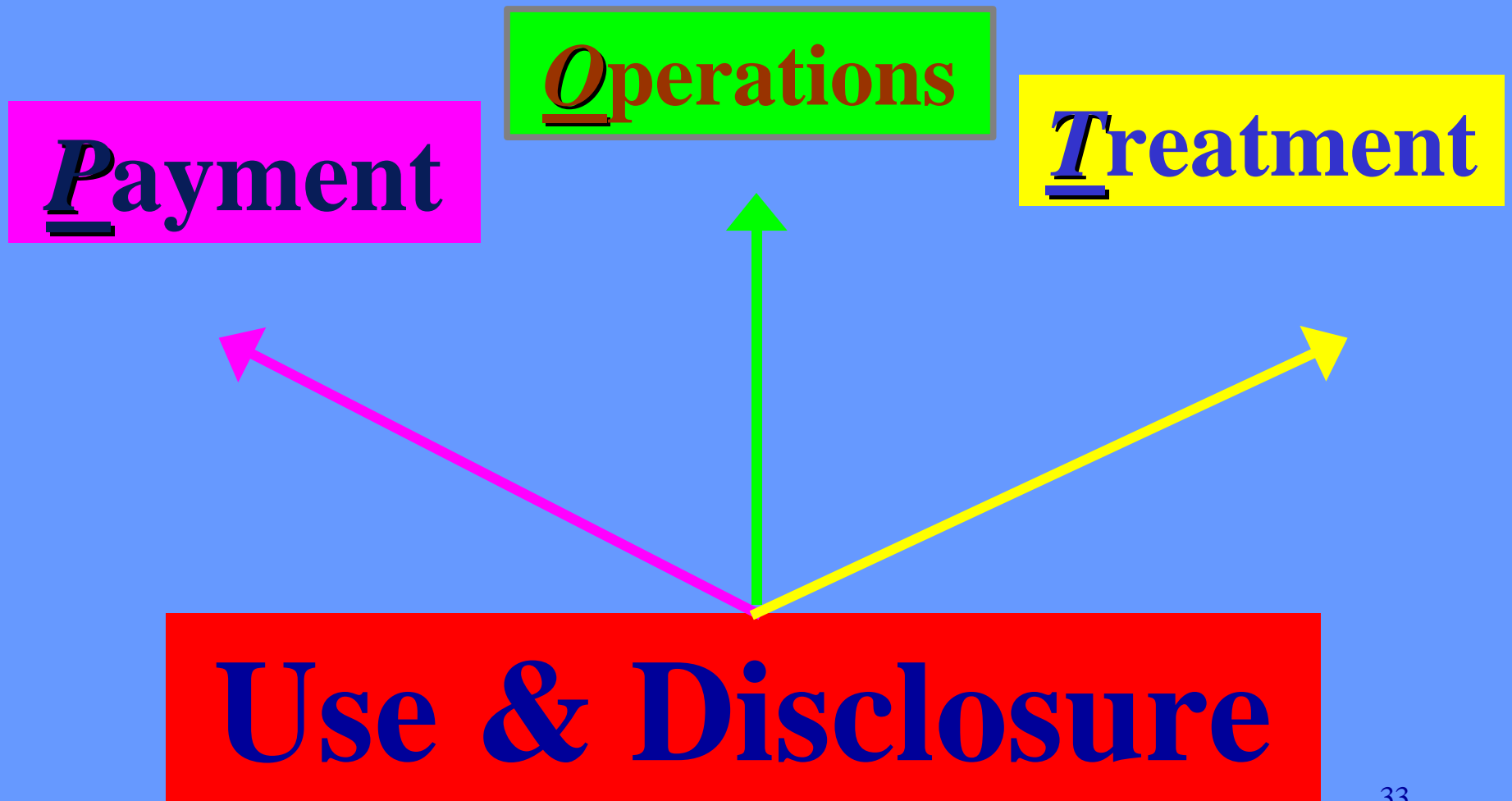
Business Associate

- **Financial, actuarial, accounting, consulting, claims, data aggregation, management, administrative, legal, accreditation, financial services**
- **Must have individually identifiable health information**

HIPAA Privacy

- *Protected health information:* individually identifiable health information transmitted by or maintained in electronic media or in any other form or medium
- *Consent:* use/disclose for payment, treatment, healthcare operations
- *Authorization:* outside use or disclosure

Provider Needs Consent



Use

- **Sharing, employment, application, utilization, examination, or analysis of individually identifiable health information within an entity that maintains such information**

Disclosure

- **Release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information**

Authorization Beyond Consent

- **Covered entity may not use or disclose protected health information without valid written & time-limited authorization**

Minimally Necessary

- **Using/disclosing/requesting protected health information from another covered entity**
- **Covered entity must make reasonable efforts to limit protected health information to minimum necessary to accomplish intended purpose**

Except for Treatment

- No “minimally necessary” for disclosures to or requests by health care provider for treatment **(BUT USE)**

HIPAA Safeguards

- **Transmission of health information in electronic form**
- **Ensure integrity & confidentiality of information**
- **Protect against reasonably anticipated threats/hazards to security/integrity**
- **Prevent unauthorized use/disclosure**

Standard Transaction

- **Transmission of information between two parties to carry out financial/administrative activities related to health care**

Standard Transaction

- **(1) Health care claims or equivalent encounter information.**
- **(2) Health care payment & remittance advice.**
- **(3) Coordination of benefits.**
- **(4) Health care claim status.**
- **(5) Enrollment & disenrollment in health plan.**

Standard Transaction

- **(6) Eligibility for health plan.**
- **(7) Health plan premium payments.**
- **(8) Referral cert. authorization.**
- **(9) First report of injury.**
- **(10) Health claims attachments.**
- **(11) HHS prescribed transactions.**

Covered Health Plans

Group Health Plan

- **ERISA Emp. Wel. Ben. Plan**
- **=>50 participants or TPA**
- **Insurer, HMO, 'Care, 'Caid**
- **Or any other individual or group plan that pays for cost of medical care**

Stringency & Preemption

- **A privacy regulation promulgated by HHS shall *not* supercede a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are *more stringent* than the requirements, standards, or implementation specifications imposed under the privacy regulation**

No HIPAA for Undertakers

I Feel Your Pain

Congressional Testimony

- HCFA [CMS] lacks specially trained personnel to oversee security
- HCFA's contractors are outright obstructive to providing sound security
- Compounding these errors was HCFA's inability to catch or prevent errors

Guidance Overview

- **17 “reasonable(ly)”** steps, criteria, reliance, efforts, safeguards, precautions
- **18 “professional(ly)”**
- **7 “professional judgment”**
- **23 “appropriate(ly)”**

Clarifications

- HHS & most parties agree that privacy protections must not interfere with a patient's access to or the quality of health care delivery

Clarifications

- *Phoned-in Prescriptions* – permit pharmacists to fill prescriptions phoned
- *Referral Appointments* – permit direct treatment providers receiving first time referral to schedule procedures before obtaining consent

Clarifications

- *Allowable Communications* – okay to have whatever communications required for quick, effective, high quality health care, including routine oral communications
- *Minimum Necessary Scope* – common practices, such as use of sign-up sheets & X-ray lightboards, & maintenance of patient medical charts at bedside, are okay

Clarifications

- HIPAA does NOT require:
- Private rooms
- Soundproofing of rooms
- Encryption of wireless or other emergency medical radio communications which can be intercepted by scanners
- Encryption of telephone systems

Clarifications

- **The Privacy Rule does not “pass through” its requirements to business associates**
- **Set of contractual obligations far narrower than the provisions of the rule**
- **Covered entities do not need to ask their business associates to agree to appoint a privacy officer [sic], or develop policies & procedures for use & disclosure of PHI**

Clarifications

- Covered entity not liable for privacy violations of business associates
- Covered entities not required to actively monitor or oversee how business associate carries out safeguards or extent to which business associate abides by requirements of contract

This privacy thing will be easy....

***Privacy President says:
Use Tax Refund to Pay for HIPAA***

Professor Goldberg's

Year 3000 *Readiness Disclosure*

- **To the best of my knowledge, this presentation will not cause the interruption or cessation of, or other negative impact on, business or other operations, attributable directly or indirectly to the processing (including but not limited to calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 22nd centuries, and during the calendar year 1998 and thereafter (including but not limited to the calendar years 1999-3000), and leap year calculations, or give rise to the inability of one or more computer software or hardware programs, machines or devices accurately to receive, store, process or transmit data on account of calendar information applicable to such programs, machines or devices, including without limitation calendar information relating to dates from and after August 19, 2001.**

Coming Attractions

- **Gramm Leach Bliley Act**
- **European Union Privacy Directive**
- **State Attorneys General**
- **US Federal Trade Commission**
- **Privacy Right of Action**
- **HIPAA Enforcement**
- **Loss Prevention & Risk Management**

Practice Safe Computing



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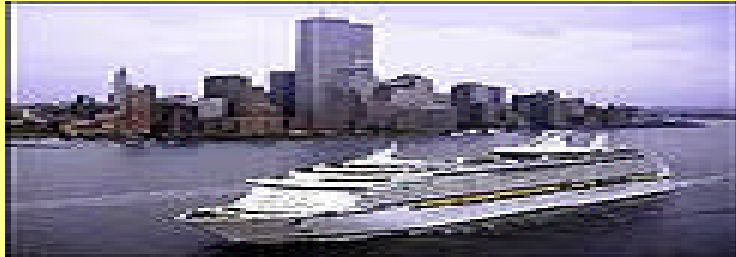
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That's All Folks!

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