

HIPAA

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The Golden Rule from The Book of HIPAA

- A covered entity may not use or disclose protected health information, except as permitted or required

Protected Health Information

- **Patients have a right to see their health information**
- **Patients have a right to know about disclosures**

Protected Health Information

- **Employment records of covered entity as employer are not protected health information**
- **But PHI received in health care capacity is PHI**

Protected Health Information

- **6 years (other payment, treatment, health care operations, or otherwise authorized) of accountings**
- **Corrections (!), restrictions (?)**

Saving Millions of Dollars

- **“The Privacy Rule was estimated to produce net costs of \$17.6 billion, with net present costs of \$11.8 billion (2003 dollars) over ten years (2003-2012).”**
- **“The Department estimates the modifications in this proposal would lower the net cost of the Privacy Rule by approximately \$100 million over ten years.”**

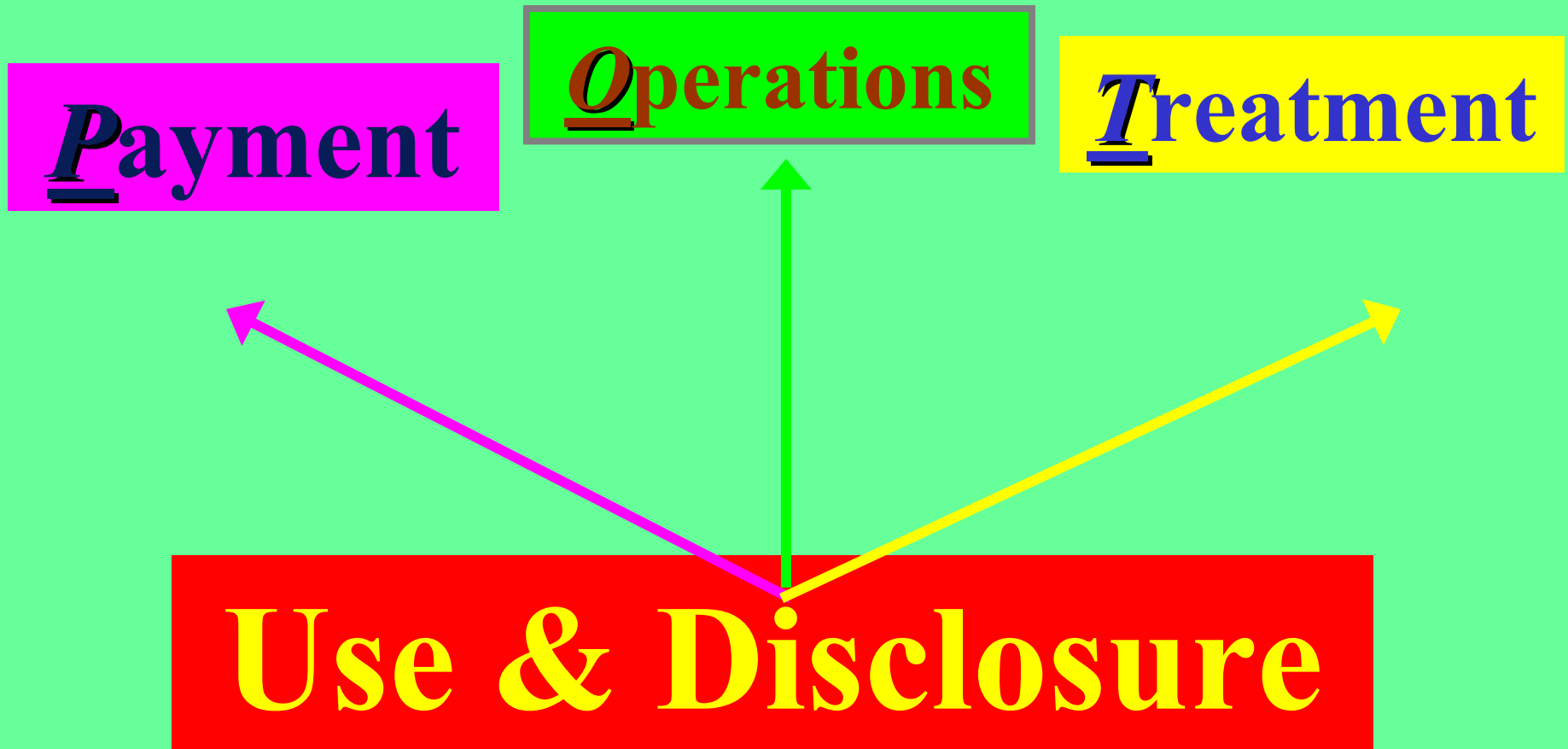
HIPAA Agreements

- **Notice of Privacy Practices**
- **Business Associate**
- **Chain of Trust**
- **Trading Partner**
- **Limited Data Set Data Use**

HIPAA NOTICE

- **“THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.”**

Direct Provider Used To Need Consent - No More



Notice of Privacy Practices

- **Direct provider must make good faith effort to obtain written (NOT oral) acknowledgment of receipt**
- **Health plans need not but may**
- **“initial moment” other than emergency**
- **Signature, “initial,” electronic receipt**
- **If first encounter via telephone, mail Notice & request acknowledgment be mailed back**

Notice of Privacy Practices

- **Provide Notice in “plain language”**
- **NOT required to review & discuss Notice or “rights”**
- **If Notice changes, direct treatment provider must make revised Notice available upon request**
- **Post on any physical delivery site**
- **May use joint Consent & Acknowledgment**

HIPAA Applicability

- **What were you doing at 11:59 PM on the evening of April 13, 2001?**

Business Associate

- **What will you be doing at 11:59 PM on the evening of October 14, 2002?**

Business Associate Agreement

- **Written contract**
- **Model provisions provided by HHS but NOT mandatory provisions**
- **States of confusion**
- **Which state law applies?**
- **Third party beneficiary/private right of action**

Business Associate Agreement

- **Burden & cost & two years too brief**
- **“stop gap” contracts (NOT oral)**
- **“deemed compliant” through APR 14, 2004 if existing on OCT 14, 2002 & NOT renewed or modified prior thereto**
- **“evergreen” renewal, “automatic inflation adjustment” are okay**
- **Avoid inadvertent changes**

Limited Deemed Compliance Period Business Associate

- **BUT “deemed compliant” agreements do NOT avoid all requirements**
- **“Limited deemed compliance period”**
- **Covered entity must comply with “Compliance” requirements, access to information, amendments to PHI, accounting, & mitigation, with respect to PHI held by business associate**

Chain of Trust Agreement

- **Contract entered into by two business partners in which the partners agree to electronically exchange data & protect the integrity & confidentiality of the data exchanged**
- **Part of HIPAA security administrative procedures to guard data integrity, confidentiality, & availability**

Trading Partner Agreement

- **Agreement related to exchange of information in electronic transactions, whether distinct or part of larger agreement, between each party to agreement**
- **May specify, among other things, duties & responsibilities of each party to agreement in conducting a standard transaction**

Limited Data Set Use Agreement

- **Agreement by recipient of limited data set information (that does not include directly identifiable information) to limit use for research, public health & health care operations**

Limited Data Set

Data Use Agreement

- Excludes specified direct identifiers of individual, relatives, employers, or household members
- Dates & geographic subdivisions/ZIP codes okay
- Use PHI/LDS for research, public health, or health care operations

Certification/Testing

- **Risk management**
- **Loss prevention**
- **Investigation strategy**
- **Litigation defense**

Got A Date?

- **Enactment date**
- **Publication date**
- **Effective date**
- **Enforcement date**
- **Compliance date**

Got A Date?

- **OCT 14, 2002**
- **OCT 15, 2002**
- **OCT 16, 2002**
- **APR 14, 2003**
- **APR 16, 2003**
- **OCT 16, 2003**
- **APR 14, 2004**

Security vs. Privacy

- **“We do not require covered entities to guarantee the safety of protected health information against all assaults. This requirement is flexible and scalable to allow implementation of required safeguards at a reasonable cost...This provision is not intended to incorporate the provisions in the proposed Security regulation into this regulation, or to otherwise require application of those provisions to paper records.”**

Where's the Final HIPAA Security Rule?

- **Former Vice President Gore hid it in a lockbox**
- **Vice President Cheney moved it to a secure location**
- **The FBI computer team lost it**

HIPAA Preemption

- Final security rule preempts state law
- Final privacy rule does not preempt contrary/more stringent state law
- Final standards/data sets rule preempts state law

First Guidance Overview

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

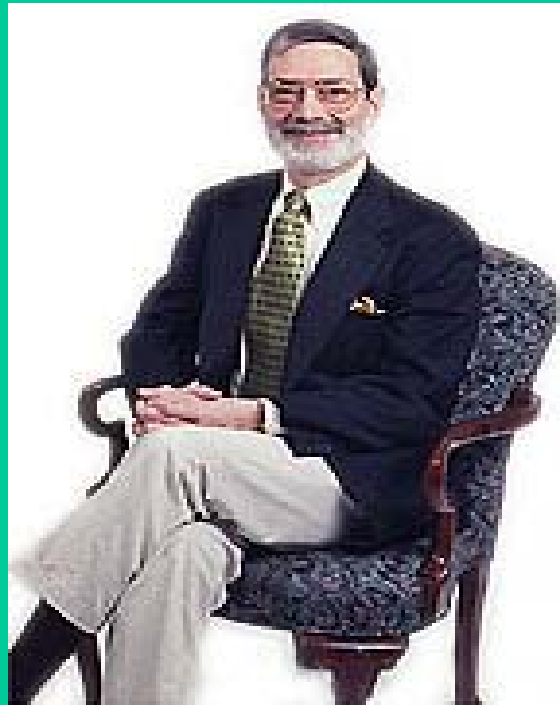
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