

HIPAA

*goulston&storr*s
think*results*

Washington, DC & Boston & London, UK

Alan S. Goldberg, JD, LLM

www.healthlawyer.com

© Copyright 2002 Alan S. Goldberg All Rights Reserved

©www.hipaahero.com®



Who Am I

- **Rt. Rev. Ministry of Spirit of HIPAA**
- **J.D. Boston College Law School**
- **LL. M. (Taxation) Boston U. Law School**
- **Past Pres. American Health Lawyers**
- **American Bar Association e-Health**
- **Adjunct Professor of Law**

Univ. of Maryland School of Law

Suffolk University Law School

Professor Goldberg's Honest Lawyer Privacy Policy

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

HIPAA Applicability

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

Lost HIPAAginity

Health Care Provider

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

HIPAA Health Care

- Care, services, or supplies related to health
- Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, & counseling, service, assessment, or procedure with respect to physical or mental condition, or functional status, or that affects structure or function of body; &
- Sale or dispensing of drug, device, equipment, or other prescription item

Assisted Living Residence

- **Room & board, &**
- **Assistance with activities of daily living for 3 or more adult residents who are not related by consanguinity or affinity to their care provider,**
- **Directly by employees or through arrangements with another organization which the entity may or may not control or own, &**
- **Collects payments or third party reimbursements from or on behalf of residents to pay for assistance with activities of daily living or arranges for same**

Special Needs/Medicaid

- **CHAPTER 19D. ASSISTED LIVING.**
- **Chapter 19D: Section 13. Eligibility; assessments.**
- **All elderly residents or residents with special needs who seek admission to an assisted living residence & who are eligible for Medicaid program**
- **Afforded opportunity to apply for assisted living residence services, & be informed about the eligibility requirements & rights and obligations under the program**
- **Have service plan monitoring assessment conducted by an assessor at the site of the assisted living resident annually from the date of initial occupancy**

Conditions of Participation



Conditions of Participation

- Patient has right to personal privacy & confidentiality of personal & clinical records

Conditions of Participation

- Patient may approve or refuse release of personal & clinical records to any individual outside facility

Conditions of Participation

- Resident right to access all records pertaining to resident including current clinical records within 24 hours (excluding weekends & holidays)
- May buy, at cost not to exceed community standard, photocopies of records or any portions of them upon request

Conditions of Participation

- Resident has right to be fully informed in language that resident can understand resident's total health status, including resident's medical condition

Conditions of Participation

- Privacy includes accommodations, medical treatment, written & telephone communications, personal care, visits, & meetings of family & resident groups, but
- Does not require facility to provide a private room for each resident

Conditions of Participation

- Resident may approve or refuse release of personal & clinical records to any individual outside facility

Conditions of Participation

- But resident's right to refuse release of personal & clinical records does not apply when resident transferred to another health care institution record or release required by law

Medicaid State Ops. Manual

- MDS data are part of resident's clinical record
- Protected from improper disclosure by facilities

MDS Privacy Resident's Rights

- Nursing homes must inform each resident about electronic transmission of MDS to State & HCFA

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.**

Standard Transaction

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

Protected Health Information

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

Individually 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



Two
Elements =
Compound

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 than disclosures for payment, treatment, health care operations)**
- **Corrections, restrictions**

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**

Protected Health Information

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

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

Other Entity

- **Covered entity may disclose PHI for treatment/payment activities of other covered entities or other health care provider, & for certain health care operations of other entity**

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 (but not use by) a health care provider for treatment

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.”**

Different Strokes for Different Folks

- Organizing - Organized Health Care Arrangement
- Affiliating - Affiliated Covered Entities
- Hybridizing - Hybrid Entities
- Associating - Business Associates

Ten Commandments
HIPAA Business Associates

Ten Commandments

Thy business associate shall:

- 1. Not use/disclose protected health information other than as permitted by contract or required by law**
- 2. Use appropriate safeguards to prevent use or disclosure**
- 3. Report unauthorized use or disclosure of which Business Associate becomes aware**

Ten Commandments

Thy business associate shall:

- 4. Ensure that agents agree to same covenants & restrictions**
- 5. Make available PHI for individual access**
- 6. Make available PHI for amendment & incorporate amendments**
- 7. Make available PHI for accounting**

Ten Commandments

Thy business associate shall:

- 8. Make compliance books & records available to HHS for purposes of determining Covered Entity's compliance**
- 9. At end of arrangement return or destroy all PHI & return any copies or keep & protect if infeasible**

Ten Commandments

10. Thy contract must authorize termination if Covered Entity determines that Business Associate violated material term of contract

Unless inconsistent with statutory obligations of the Covered Entity or Business Associate

Single Security Standard

- **“There is no recognized single standard that integrates all the components of security (administrative procedures, physical safeguards, technical security services, & technical mechanisms) that must be in place to preserve health information confidentiality & privacy as defined in the law. Therefore, we are designating a new, comprehensive standard, which defines the security requirements to be fulfilled....”**

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**

Administrative Simplification Compliance Act

- **AN ACT To ensure that covered entities comply with the standards for electronic health care transactions & code sets adopted under part C of title XI of the Social Security Act, & for other purposes**

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

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

- 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

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

BE A HIPAA HERO ^(R)



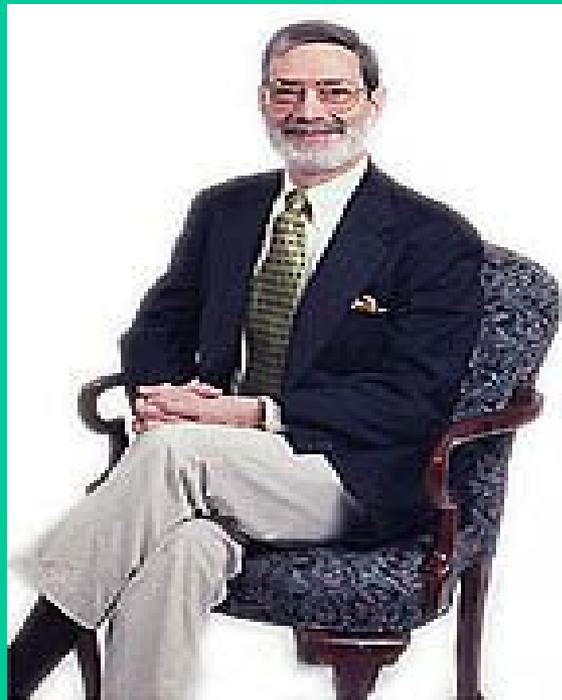
BE A HIPAA HEROINE *(sm)*



Learn the HIPAA HERO® Way



Why is this man smiling?
Practice safe HIPAA!
www.healthlawyer.com



Professor Goldberg's

Y3K 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 September 12, 2002.**