

HIPAA for Governments & Municipalities

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HIPAA's Applicability to Government





Administrative Simplification: What Does HIPAA Do?

- **Transaction Standards**
- **Privacy Standards**
 - **Restrictions on use and disclosure of PHI**
 - **Individual rights**
 - **Administrative requirements**
- **Security Standards**
 - **Ensure confidentiality, integrity and availability of electronic PHI**
 - **Protect against reasonably anticipated threats to security or integrity of electronic PHI**
 - **Protect against reasonably anticipated uses or disclosures of electronic PHI**
 - **Ensure compliance by workforce**



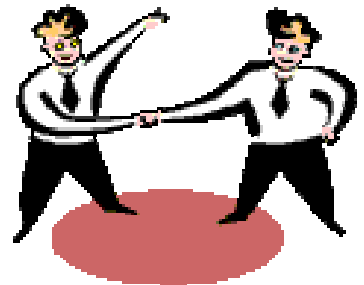
Covered Entities Under HIPAA

- Health care providers engaging in electronic covered transactions
- Health plans
 - Insurers
 - Group health plans (e.g., employee benefit plans)
 - Employee welfare benefit plan established for employees of two or more employers
 - Medicaid
 - Approved state child health plan
 - Not a health plan: other government-funded programs
 - Principal purpose is other than providing or paying the cost of health care or
 - Principal activity is direct care or making grants to fund direct care
- Health care clearinghouses
- Sponsors of Medicare prescription drug cards



Others Affected by HIPAA

- **Business associates**
 - Perform certain functions on behalf of Covered Entity
 - Involves receipt, use, disclosure, creation of PHI
 - Written assurances that meet specific minimum requirements
- **Plan sponsor**
 - Fiduciary duty to ensure HIPAA compliance of its plan(s)



Hybrids



- Single legal entity
- Covered functions = covered entity
- Business functions include both
 - Covered functions
 - Noncovered functions
- May designate “health care components”
 - Component that would be a covered entity if a separate legal entity
 - Other components may be added
 - Health care components are treated as separate from rest of the legal entity
 - Document designation

Affiliated Covered Entity



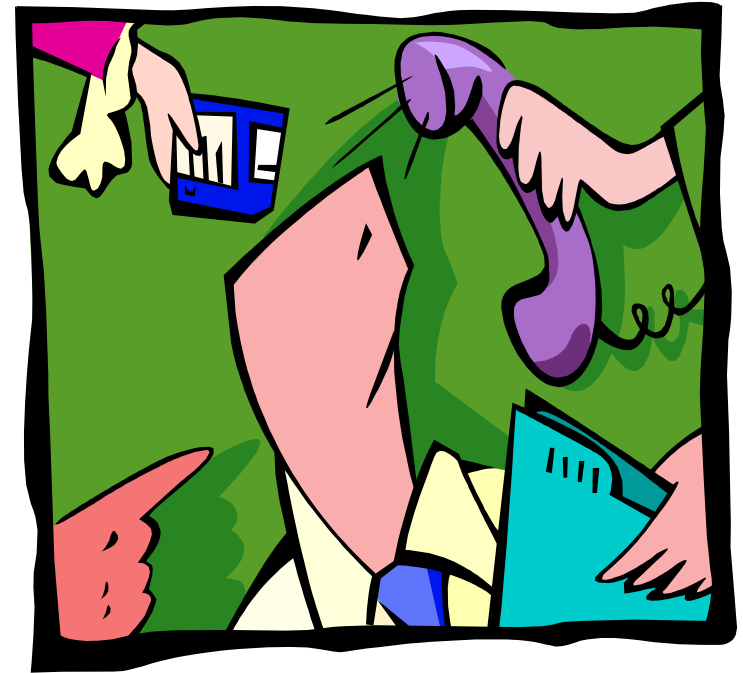
- Covered entities under “common ownership” or “common control”
 - Common ownership – ownership or equity interest of 5% or more
 - Common control – entity has the power, directly or indirectly, to significantly influence or direct the actions or policies
- Designation to act as a single covered entity

General HIPAA Considerations



Covered Entity With Multiple Covered Functions

- **Single covered entity that engages in**
 - **Provider**
 - **Plan**
 - **Clearinghouse and/or**
 - **Medicare prescription drug sponsor**
- **Must comply with each applicable set of requirements**
 - **Based on each distinct function**



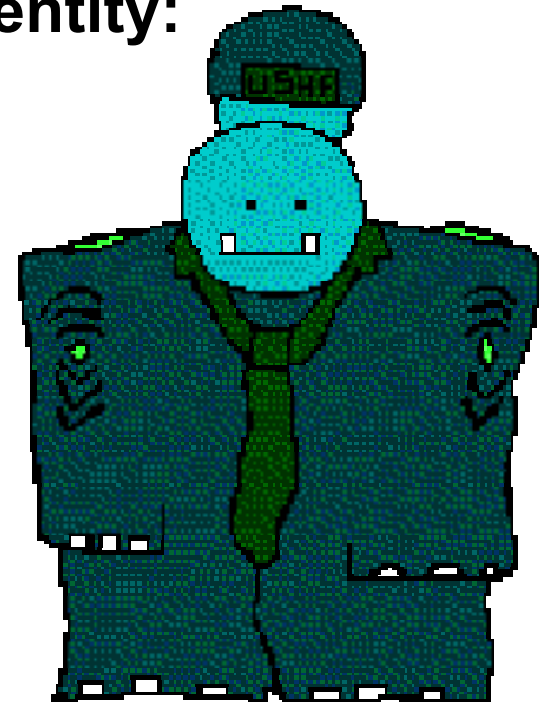
General HIPAA Considerations: Preemption

- Is the State law contrary to HIPAA?
- If not contrary, both requirements apply
- If contrary
 - HIPAA preempts or supercedes contrary state law
 - UNLESS state law provides
 - Greater privacy protections
 - Greater individual rights



General HIPAA Considerations

- HIPAA may apply to
 - Government agency (or component) itself
 - Covered entities that deal with government agencies
- If agency needs/wants information from covered entities or is a covered entity:
 - Identify applicable permitted and required disclosures
 - Educate on applicable requirements
 - Bring into compliance correspondence, forms, etc.



General HIPAA Considerations

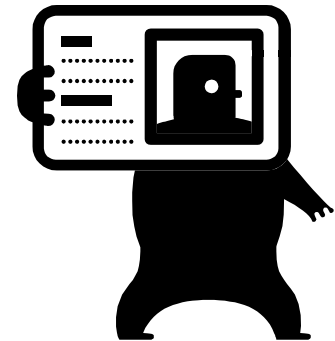
- **Minimum necessary**
 - **Must make reasonable efforts to**
 - **Limit PHI to the minimum necessary to accomplish the intended purpose**
 - **Applies to uses, disclosures and requests**
 - **Not applicable to**
 - **Treatment**
 - **Required by law**
 - **Authorizations**
 - **Access to patient**
 - **Disclosures to HHS**



But note: Only to the extent specifically permitted or required

General HIPAA Considerations

- **Verification requirements**
 - **Identity**
 - **Authority**
 - **Documentation, statements or representations that otherwise may be necessary**
- **Notice of privacy practices**
 - **Bound by notice**



General HIPAA Considerations

- **Individual Rights**
 - **Access**
 - **Amendment**
 - **Accounting of disclosures**
 - **Requests for additional privacy protections**



Activities Under HIPAA



HIPAA in Inter-Agency/ Interdisciplinary Teams

- Governments often use multidisciplinary teams
- Allows combination of expertise and focus
- May include:
 - Covered entities/
covered components
 - Non-covered entities
- Can PHI be shared among these teams?



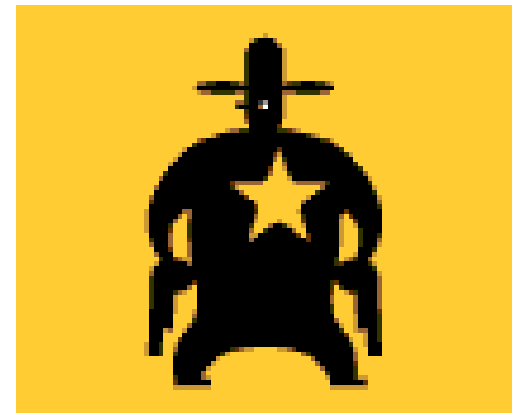
Inter-Agency/Interdisciplinary Teams – HIPAA Permitted Disclosures

- **Treatment, payment or health care operations**
 - **May use or disclose PHI for TPO**
 - **May disclose PHI for the treatment activities of a provider**
 - **May disclose PHI for the payment activities of a provider or covered entity**
 - **May disclose PHI to another covered entity for recipient's limited health care operation**
 - **Both have/had a relationship with individual**
 - **Operations pertain to that relationship**
 - **Limited operations: QA, credentializing, training and fraud and abuse detection**



Inter-Agency/Interdisciplinary Teams – Permitted HIPAA Disclosures

- **May disclose when required by law**
 - **Only to the extent required**
 - **Note additional requirements**
 - **Bring disclosure under standards for**
 - **Abuse/ neglect reporting;**
 - **Judicial and administrative proceedings, or**
 - **Law enforcement**
- **Public health reporting**
- **Health care oversight**



Inter-Agency/Interdisciplinary Teams – Permitted HIPAA Disclosures

- **Special rules for covered government programs providing public benefits**
 - **Government program health plan may disclose certain eligibility and enrollment information to another agency administering/providing public benefits if required or authorized**
 - **Covered government agency administering a public benefits program may disclose PHI to another like agency if**
 - **The programs serve similar populations**
 - **Necessary to coordinate covered function or to improve administration/management**



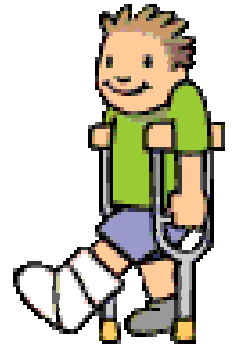
Inter-Agency/Interdisciplinary Teams – Permitted HIPAA Disclosures

- **Authorization**
- **Must comply with all applicable laws**
 - **HIPAA**
 - **State law**
 - **Heighten confidentiality requirements**
 - **Protected classes of information**
 - **Substance abuse regulations**
 - **Privacy Act**
- **Draft to include all relevant team players**



HIPAA in Public Health

- Tension between
 - Benefits of total access to all health information
 - Public concern over confidentiality
- Permissible disclosures without patient authorization
 - Required by law (e.g., mandatory reporting, gunshot wounds, certain communicable diseases), births and deaths, birth defects)
 - Prevention and control of disease, injury
 - Communicable disease notification
 - Child abuse or neglect reporting
 - FDA-regulated product or activity
 - Work-related injury or illness
 - Necessary to avert a serious threat to health or safety
 - Other abuse, neglect or domestic violence
 - TPO
 - De-identified information and limited data set



HIPAA in Public Health: De-Identification

- Information is presumed de-identified if—
 - Qualified person determines that risk of re-identification is “very small” or
 - The following identifiers are removed:

Name	Address	Relatives	Employer
Dates	Telephone	Fax	e-mail
SSN	MR#	Plan ID	Account #
License #	Vehicle ID	URL	IP Address
Fingerprints	Photographs	Other unique identifier	

- And the CE does not have actual knowledge that the recipient is able to identify the individual



HIPAA in Public Health: Limited Data Set

- Limited Data Set = PHI that excludes direct identifiers except:
 - Full dates
 - Geographic detail of city, state and 5-digit zip code
- Not completely de-identified
- Special rules apply

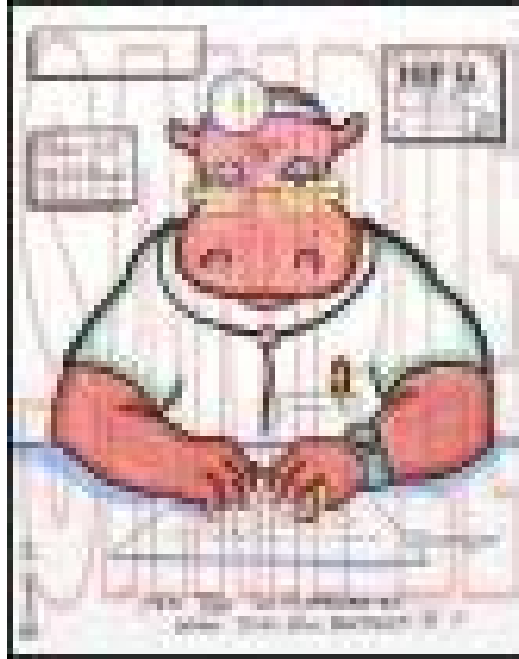


HIPAA in Public Health: Data Use Agreements

- **Limited Purposes:**
 - Research,
 - Public health
 - Health care operations
- **Recipient must enter into a Data Use Agreement:**
 - Permitted uses and disclosures by recipient
 - Who may use or receive limited data set
 - Recipient must:
 - Not further use or disclose information
 - Use appropriate safeguards
 - Report impermissible use or disclosure
 - Ensure agents comply
 - Not identify the information or contact the individuals



HIPAA in Public Health



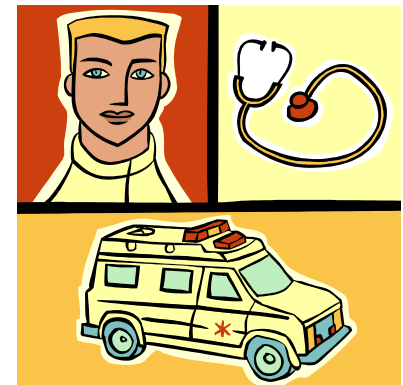
HIPAA in Disaster Situations

- Facility Directory – covered entities may disclose PHI if patient is asked for by name:
 - Name
 - Condition (e.g., undetermined, good, fair, serious, critical)
 - Location within facility
 - Religion (release to clergy only)
- Notification in Disaster Relief Efforts
 - Disclosures to public or private entity authorized to assist in disaster relief efforts
 - Disclosures for notification of individual's location or general condition to family member, personal representative or another responsible for care
- Subject to opportunity to agree or object
- Recognize professional judgment



HIPAA in EMS

- EMS generally is covered entity or covered health care component and must comply with HIPAA
- Beware of HIPAA overkill: Balance between patient care and minimum necessary
 - If name and description of condition is needed, it should be given
 - If directions are needed, get them
- Police often want information from EMS
 - Reporting crime in emergencies (not at a health care facility) to report
 - Commission and nature of a crime
 - Identity, description and location of perpetrator
 - Location of a crime or victim
 - Some disclosures require representations on part of law enforcement that may be able to be given in advance (e.g., formal annual request and representation letter)



HIPAA in Schools



- Schools have long protected confidentiality, e.g., Family Education Rights and Privacy Act
- Two-prong analysis
 - Is school – or person/entity providing services to the school – covered entity?
 - Examples – school nurse, speech therapist, psychologist, school-based clinics
 - Engage in health care provider activities
 - Engage in electronic HIPAA transaction
 - Is PHI involved?
 - Exception for FERPA – covered records (beware FERPA exceptions, such as for oral communication and sole possession)
 - Treatment records of older students exception

HIPAA in Prisons

- A covered entity may disclose PHI to a correctional institution (or law enforcement official) having lawful custody of an inmate
 - Upon institution's representation that the PHI is necessary for:
 - The provision of health care to the inmate
 - The health and safety of the inmate – or others at the correctional institution
 - The health and safety of inmates, officers or other persons responsible for transporting/transferring inmates
 - Law enforcement on correctional institution's premises
 - Administration and maintenance of the safety, security and good order of the correctional institution



HIPAA in Prisons



- Limited rights of prisoners
- Notice of Privacy Practices
 - Not applicable to inmates or correctional institutions
 - Access
 - Covered correctional institution – or provider under such institution’s direction – may deny inmate’s request for access if it would jeopardize
 - The health, safety, security, custody or rehabilitation of the individual or other inmates
 - Safety of any officer, employee or others
 - Unreviewable grounds for denial
 - Amendment
 - May be denied if the record is not subject to access
 - Accounting of Disclosure
 - Suspend right to an accounting if law enforcement
 - Represents that it may reasonably impede the agencies’ activities
 - Specify a time period for the suspension

Questions





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