



**Presentation to  
The Fourth National HIPAA  
Summit**

**April 26, 2002**

**Sharon King Donohue  
General Counsel**

**National Committee for Quality Assurance**



# NCQA and HIPAA

- Proposed standards changes for 2003
- Impact of the NPRM and quality assessment
- Certification of Business Associates
- NCQA's model Business Associate Contract

# Proposed Standards Changes for 2003

## Consent and Notice:

- Removed requirements for MCOs to obtain routine consent
- For uses beyond TPO, authorization still required
- Must give notice of privacy practices (no signature required)

# Proposed Standards Changes for 2003

## **Consent and Notice (continued):**

- Requirement to disclose confidentiality policies via MCO's Web site

# Proposed Standards Changes for 2003

## Member Rights:

- Right to access PHI, request restrictions on use, amend and request accounting of disclosures
- Include HIPAA protections before PHI can be shared with employers

# Proposed Standards Changes for 2003

## **Confidentiality Process:**

- Confidentiality committee no longer required (may be Chief Privacy Officer)
- Oversight of confidentiality policies
- Appeals process for confidentiality issues
- Process to review requests to use PHI

# Proposed Standards Changes for 2003

## Contracting Requirements for Delegates:

- Similar to Business Associate contracting requirements
- Likely to be applicable July 2003 for new delegates
- All others likely to be applicable July 2004

# Proposed Standards Changes for 2003

## Contracting Requirements for Delegates (continued):

- If delegate arrangement includes use of PHI, contract must:
  - identify permitted uses
  - describe delegates safeguards to protect PHS from inappropriate use or disclosure
  - stipulate that delegate will ensure that subdelegates have similar safeguards



# Proposed Standards Changes for 2003

## **Contracting Requirements for Delegates (continued):**

- require delegate to inform MCO if breaches occur
- provide for return, destruction or protection of PHI if delegation ends

# The NPRM

- Unintended consequence of consent - restricting the flow of PHI needed for quality assessment and measurement (HEDIS®)
- Elimination of consent for TPO permits information to flow among Covered Entities in a way that is positive for quality assessment, measurement and improvement

## The NPRM (continued)

- Explicit acknowledgement that Covered Entities can disclose PHI to other Covered Entities for quality assessment
- NCQA is commenting on the need for additional modifications to minimum necessary requirements

# Certification of Business Associates

- NCQA is considering a program to certify business associates
- “Satisfactory safeguards” of privacy practices
- Includes security review and policies and procedures
- Possible launch early 2003

# NCQA's Business Associate Contracting

- NCQA is implementing HIPAA readiness initiatives
- Preparing model business associate contract language
- Field test — 7/02 - 10/02
- Implement from 10/02 - 4/04