

HIPAA COMPLIANCE

Financing Medical A/R: What Does HIPAA Require?



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HIPAA Cash Flow Concerns

- Provider may not be prepared to submit compliant electronic transactions
- Payors may not be prepared to process compliant electronic transactions
- Paper claims will take forever to process

If you extend credit:

- **Conduct due diligence—will provider be able to comply with HIPAA?**
- **Take security interest in A/R—how will you collect upon default?**

Security Interest

- Gives lender the right to the proceeds (\$\$\$)
- But does not authorize provider to disclose PHI in order for lender to bill and collect the secured A/R

Aren't banks exempt?

- Section 1179 exempts financial institutions when using PHI for “consumer initiated” services
- This includes cashing or depositing checks, processing credit card transactions, and similar conduct
- Doesn't include disclosures for collection of secured A/R

Disclosing PHI for Payment

Provider may disclose PHI to:

- Purchasers who will be “covered entities”
- Payors
- Business associates

Sale of PHI for other purposes could result in fines of up to \$250,000 plus 10 years in prison

Is Bank a Purchaser?

- Will it be a “covered entity” such as a clearinghouse?
- If so, bank would be subject to HIPAA

Is Bank a Payor?

- Is the loan considered payment for health services?
- If so, bank may be considered a “health plan”
- Could become a “covered entity”
- Could be subject to state insurance regulations

Is Bank a Business Associate?

- Bank must perform a service for the provider—such as collecting A/R on provider's behalf
- The bank can still retain the right to keep all collected A/R

Medicare A/R

- Special measures required when collecting secured Medicare A/R
- Medicare “reassignment rules” require:
 - Payment made in provider’s name
 - Deposit in bank that is not providing financing
 - Provider has sole control of account and can revoke transfer instructions

Collection Accounts

- Set up one account for collection of A/R from sources other than Medicare or Medicaid—under Bank's control
- Set up second account (in different bank) subject to provider's orders—sweep on a daily basis
- Obtain court order if provider revokes sweep order

Other Issues

- **If Bank takes over billing function, claims must comply with HIPAA**
- **Not a “true sale” – if provider becomes insolvent, the secured A/R is subject to bankruptcy rules**

Business Associate Agreement

Business Associate Agreement must include description of services and require that business associate will:

- **Not use or disclose PHI except as allowed by contract or law;**
- **Allow patients to exercise privacy rights, including access, amendment, and accountings of disclosures;**
- **Require agents and subcontractors to comply with same standards;**

Business Associate Agreement

(continued)

- Report improper uses and disclosures of PHI;
- Safeguard the integrity, availability, and confidentiality of PHI;
- Allow inspections by DHHS;
- Allow termination upon material breach, and return or destroy all PHI—if not feasible, must continue to abide by applicable terms of agreement.

Questions?



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