

# **HIPAA PRIVACY RULE IMPLEMENTATION – WHAT'S UP AFTER 4/14/03?**

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# Disclaimer

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- The presentation and materials are not to be perceived as legal advice.

# INTRODUCTION

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- Discussion topics:

- Pre 4/14/03 – General Comments

- Post 4/14/03

- Implementation of Patient Rights
    - Investigation of Potential Privacy Breaches
    - Policies and Procedures
    - Training

# Pre 4/14/03

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- HIPAA gave several rights to patients:
  - Access to own PHI
  - Request for an Accounting
  - Request for Amendment
  - Request for Confidential Communications
  - Request for Restrictions

# Pre 4/14/03

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- Hospitals identified gaps between current practice and the new rights
- Gaps did not always indicate something was wrong
- They merely reflected the difference between what was ok before 4/14/03 and what would be ok after 4/14/03

# Pre 4/14/03

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- Closed many gaps by:
  - Revising and writing policies and procedures
  - Conducting training

# Post 4/14/03 - What continues to face hospitals?

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# Post 4/14/03 - What continues to face hospitals?

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- Centralized approach?
- Decentralized approach?
- Combination of both approaches?





# Post 4/14/03 - What continues to face hospitals?

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- Centralized approach
  - All processing is handled under the auspices of a designated department

# Post 4/14/03 - What continues to face hospitals?

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- Decentralized approach
  - All processing is carried out in areas
    - Where medical records are maintained or
    - Where reporting activities occur

# Post 4/14/03 - What continues to face hospitals?

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- Designated record set
  - Medical and billing records and any other record used to make decisions about an individual
  - Used to define the set of information that the individual can access, copy, and request amendment to

# Post 4/14/03 - What continues to face hospitals?

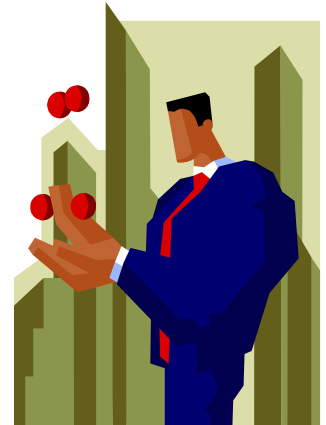
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- Implementation of patient rights under HIPAA

# Post 4/14/03 - What continues to face hospitals?

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- We have decentralized approach to maintaining medical records and to the ROI function
- We have an ongoing process for centralizing the ROI function
  - Requires mechanism to alert entity responsible for implementing the request



# Post 4/14/03 - What continues to face hospitals?

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- Request for Access to DRS

# Post 4/14/03 - Request for Access to DRS

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- Decentralized medical record maintenance process
  - Pt must go to several different locations to gain access to all components of the designated record set

# Post 4/14/03 - Request for Access to DRS

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- Problems with this approach
  - Patient does not know where DRS is maintained
  - Staff across institution may not know that other components exist, or, if so, where they exist
  - Patient has to re-qualify right to access in each department or treatment area



# Post 4/14/03 - Request for Access to DRS

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- Benefits of centralizing process
  - Greater likelihood policies and procedures will be followed
  - Patient is more confident he/she has been given access to entire DRS
  - Patient only has to go to one location (better customer service)

# Post 4/14/03 - What continues to face hospitals?

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- Request for Accounting

# Post 4/14/03 - Request for Accounting

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- A new patient right
- Had no formalized processes in place
- Had patients before HIPAA wanting to know who had seen their records

# Post 4/14/03 - Request for Accounting

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- Uses and disclosures that must be included in an Accounting
  - Public interest disclosures
  - Research disclosures under a Waiver of Authorization
  - Disclosures in violation of HIPAA

# Post 4/14/03 - Request for Accounting

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- We decided to implement this right on a centralized basis in the HIM Department

# Post 4/14/03 - Request for Accounting

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- Options for creating an Accounting
  - Central database
  - Accounting on Demand

# Post 4/14/03 - Request for Accounting

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- Central database – First Approach
- Data entered by one department only
  - Advantage
    - Greater likelihood policies will be followed
  - Disadvantages
    - Must gather all information from source departments
    - No guarantee for obtaining all information
    - Very time consuming

# Post 4/14/03 - Request for Accounting

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- Central database - Second Approach
  
- Data entered by source department
  - Advantage
    - Data entry responsibilities spread over several departments
    - Data may be more accurately entered
  - Disadvantages
    - May be more difficult to monitor and hold departments accountable



# Post 4/14/03 - Request for Accounting

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- Regardless of who enters data into a centralized database
  - Only enter actual ROI activities
  - Do not need to enter “multiple disclosures” (discussed later)

# Post 4/14/03 - Request for Accounting

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- Accounting on Demand
- Make list of disclosures only when patient requests an accounting
  - May implement as long as process is in place to assure that the HIM department can accurately identify all required disclosures
  - The accounting meets the HIPAA mandate
    - (Ref: CHA HIPAA Seminar, Nov 2003)

# Post 4/14/03 - Request for Accounting

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- Accounting on Demand
  - Advantages
    - Less time consuming overall
    - Potentially less costly

# Post 4/14/03 - Request for Accounting

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- Accounting on Demand
  - Disadvantages
    - May be difficult to implement because of decentralized “public interest” reporting
    - Hospital does not have specific department or individual responsible for identifying all circumstances that should be included in an accounting
    - Hospital must have a system for maintaining all copies of disclosure requests
    - (Ref: CHA HIPAA Seminar, Nov 2003)

# Post 4/14/03 - Request for Accounting

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- Cost of maintaining database vs accounting on demand
  - Number of requests for accounting
  - Potential size of database
  - Confidence in decentralized data entry
  - Confidence in centralized data entry

# Post 4/14/03 - Request for Accounting

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- Regardless of option selected, should include monitoring the process in the ongoing HIPAA Program monitoring plan

# Post 4/14/03 - Request for Accounting

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- Difficult Accounting Problems
  - Accounting for multiple disclosures
  - Accounting for research under a Waiver of Authorization
  - Residents collecting information

# Post 4/14/03 - Request for Accounting

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- Accounting for multiple disclosures of:
  - A particular patient to the same person or entity
  - Multiple patients to the same person or entity



# Post 4/14/03 - Request for Accounting

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- Multiple disclosures to a third party for review constitutes a disclosure even if third party does not review any particular record
  - (Ref: CHA HIPAA Seminar, Nov 2003)

# Post 4/14/03 - Request for Accounting

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- Accounting for multiple disclosures
  - Must maintain documentation of all records included in the universal set of records provided to the third party
  - May be too time consuming to enter into centralized database
  - May be better to use the accounting on demand approach
    - (Ref: CHA HPAA Seminar, Nov 2003)

# Post 4/14/03 - Request for Accounting

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- May be easier to check documentation of multiple disclosures whether creating the accounting using a centralized database or the accounting on demand approach

# Post 4/14/03 - Request for Accounting

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- Approach taken may also depend on whether interfaces exist between the source system and the accounting system

# Post 4/14/03 - Request for Accounting

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- What about JCAHO record reviews?
  - Some say:
    - Don't include because this is HCO
    - Don't include because JCAHO is a BA
    - Include in accounting

# Post 4/14/03 - Request for Accounting

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- 2<sup>nd</sup> difficult accounting issue – research
  - Not required to include PHI disclosed pursuant to an authorization, in Limited Data Sets, and as de-identified data
  - Must account for research under a Waiver of Authorization

# Post 4/14/03 - Request for Accounting

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- Accounting for research under a Waiver of Authorization
  - Modified accounting procedure if protocol involves 50 or more individuals, and the individual's PHI *may* have been disclosed

# Post 4/14/03 - Request for Accounting

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- May find it better to track specific protocols
- May find it better to do accounting on demand
- May encourage researchers to use Limited Data Sets



# Post 4/14/03 - Request for Accounting

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- 3<sup>rd</sup> difficult accounting issue – residents
  - Need information to take boards
  - Collect information on patients they have treated to start their practice

# Post 4/14/03 - What continues to face hospitals?

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- Request for Confidential Communications

# Post 4/14/03 – Request for Confidential Communications

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- Patients are requesting hospitals to provide information by alternative methods

# Post 4/14/03 – Request for Confidential Communications

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- We implemented on decentralized basis
- We are applying our ongoing ROI centralization process

# Post 4/14/03 – Request for Confidential Communications

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- Patients are requesting information via e-mail
  - Current options
  - Issues with current options
  - Alternative option – content scanner

# Post 4/14/03 - What continues to face hospitals?

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- Request for Restrictions

# Post 4/14/03 - Request for Restrictions

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- Opting out of directory
- Identifying who is or is not permitted to receive information as a participant in care
- Opting out of marketing, fundraising, and research
- Identifying any entity who is not permitted to receive information

# Post 4/14/03 - Request for Restrictions

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- We implemented on decentralized basis
- We are applying our ongoing ROI centralization process
  - Requires mechanism to notify those responsible for implementing request



# Post 4/14/03 -

## What continues to face hospitals?

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- Investigating potential breaches

# Post 4/14/03 - Investigating Potential Breaches

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- Have policy and procedure in place
- Work with IT Department
- Work with HR Department
- Work with Medical Staff Leadership
- Work with Educational Program Leadership

# Post 4/14/03 - Investigating Potential Breaches

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- Examples:
  - Volunteers looking up patients
  - Deliver flowers to patient opting out of directory
  - Conversations in areas with multiple patients present
  - Employee believes record accessed by another employee without need to know

# Post 4/14/03 -

## What continues to face hospitals?

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- Policies and Procedures

# Post 4/14/03 - Policies and Procedures

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- Policies and Procedures
  - Ongoing process
    - Still identifying new policies needed
    - Still identifying existing policies needing revision

# Post 4/14/03 - Policies and Procedures

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- Examples:
  - Department/specialty name in return address
  - Visitors and observers

# Post 4/14/03 -

## What continues to face hospitals?

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- Training

# Post 4/14/03 - Training

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- It didn't end on 4/14/03
- Have policy in place
  - Various categories of workforce
  - Persons not part of workforce



# Post 4/14/03 - References

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- California Healthcare Association (CHA). HIPAA Privacy and Security Seminar, Nov. 2003.
- HIPAA Privacy Regulations, Section 164.501 et seq.

# Post 4/14/03 -

## What continues to face hospitals?

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- Q & A
- Thank you