

*HIPAA Issues for Counties –  
PHI, Prisoners, Disaster Preparedness  
and Homeland Security*

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# *Critical County Issues for HIPAA Privacy*

- HIPAA covered entity status
- Notice of Privacy Practices
- Designated Record Set (DRS)

# *HIPAA “Entities”*

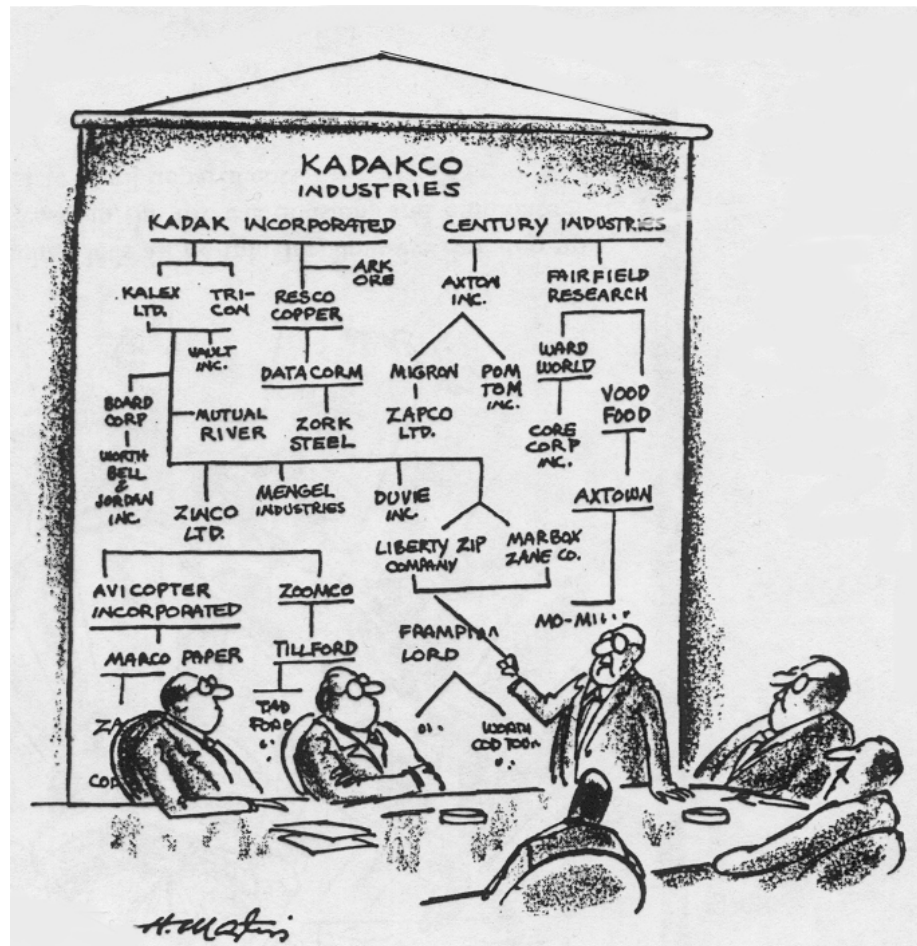
- Single entity
- Single affiliated entity
- Hybrid entity
- Organized Health Care Arrangement

# *How to Determine if you are a Covered Entity under HIPAA*

- Are you a health plan? You are a covered entity.
- Are you a clearinghouse (take non-compliant data and make it compliant)? You are a covered entity.
- Are you a provider? It depends
  - do you perform one of the eight transactions that have a HIPAA standard format? Then you are a covered entity.

# *HIPAA National Electronic Transaction Standards*

- Enrollment and Disenrollment in a Health Plan (834)
- Health Care Premium Payments (820)
- Health Care Eligibility Benefit Inquiry and Response (270/271)
- Referral Certification and Authorization (278)
- Health Care Claims or Equivalent Encounter Information (837)
- Health Care Claim Status (276/277)
- Health Care and Remittance Payment Advice (835)
- Coordination of Benefits (837)
- First Report of Injury (145) (Delayed)
- Additional Claim Information (275) (Delayed)



*“And now, let’s determine if we are a covered entity, affiliated single covered entity, hybrid covered entity or organized health care arrangement.”*

# *Notice of Privacy Practices (NPP)*

- Health Care Provider vs. Health Plan
- State Preemption Issues
- One vs. Multiple County NPPs

# *Designated Record Set*

- A group of records maintained by or for a covered entity that is:
  - The medical records and billing records about individuals maintained by or for a covered health care provider
  - Used, in whole or in part, by or for the covered entity to make decisions about individuals
  - Enrollment, payment, claims adjudication and case or medical management records maintained by or for a health plan.
- “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for a covered entity.



# *Designated Record Set Issues*

- The health care component of the hybrid entity must be able to define and then track all elements of the DRS
  - Major challenge:
    - Most are not electronic
    - Staff is not familiar with the concepts
    - Security of paper and oral as well as electronic records
    - Psychotherapy notes
    - More than medical information

# *Exchange of Information In and Out of the County Hybrid Entity*

- Agencies or Divisions that have been determined to be outside the health care components of the hybrid entity may use PHI of the “inside” agencies.
- Via a Memorandum of Understanding .
- Obviates need for Agencies or Divisions to be set up as Business Associates within the county.

# *Critical County Issues for HIPAA Security*

- HIPAA Security
  - General Requirements
  - Flexibility of Approach
  - Subject Areas
  - Thoughts to Ponder
- Homeland Security
  - General Requirements
  - Thoughts to Ponder
- Risk Management – Cost-Benefit Analysis
- Best Practice/HIPAA Compliance Program/Roadmap
- Questions & Answers

# *“HIPAA Speak”*

- New foreign language created by legislation for the express purpose of making the learner feel as though they have landed in a parallel universe where basic common sense and plain language are unheard of.

# *HIPAA Security – General Requirements*

- All “covered” entities must do the following:
  - Ensure the confidentiality, integrity, and availability of all electronic protected health information (EPHI) the covered entity creates, receives, maintains, or transmits.
  - Protect against any reasonably anticipated threats or hazards to the security or integrity of such information.
  - Protect against any reasonably anticipated uses or disclosures of such information.
  - Ensure compliance by workforce.

# *HIPAA Security – Flexibility of Approach*

- Required (R) or Addressable (A)
  - Required: implementation of the specification is mandatory. Entity may consider the following factors in selecting the appropriate safeguards:
    - The size, complexity and capability of entity
    - Technical infrastructure, hardware, software security capabilities
    - Cost of security measures.
    - Probability and criticality of risk to EPHI

# *HIPAA Security – Flexibility of Approach*

- Required (R) or Addressable (A)
  - Addressable: implementation of the specification may be optional. However, the entity must consider the following factors:
    - Reasonable and appropriate in protecting EPHI
    - If not reasonable or appropriate:
      - Document why it would not be
      - Implement an equivalent alternative measure

# *The HIPAA Security Standards: Subject Areas*

- Administrative Safeguards [§164.308] – 9 Standards
  - 12 Required, 11 Addressable
- Physical Safeguards [§164.310] – 4 Standards
  - 4 Required, 6 Addressable
- Technical Safeguards [§164.312] – 5 Standards
  - 4 Required, 5 Addressable
- Organizational Requirements [§164.314]
- Documentation Requirements [§164.316]



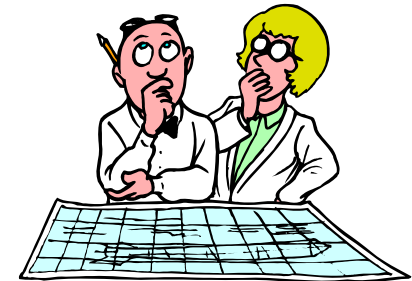
# *HIPAA Security – Thoughts to Ponder*

- Regulations finalized on February 20, 2003
- Compliance Date: April 21, 2005
- Applies to all workforce with access to EPHI
- Technology neutral
- Focus is on administration
- Final rule less stringent
  - Encryption
  - Intrusion detection
  - Auditing



# *HIPAA Security – Thoughts to Ponder*

- Technology Neutral
- Consolidation & Organization of Draft Rule:
  - Definitions mesh with Privacy
  - Electronic Information Only
  - Removed electronic signature standard
  - “Required” vs. “Addressable”
- Regulations are “best practices/industry standards”
- Why wait???



# *Homeland Security – General Requirements*

- Title II – Information Analysis and Infrastructure Protection
  - Critical Infrastructure Information Act of 2002
    - Makes a crime disclosure of “planned or past operational problems or solutions”.
  - Cyber Security Enhancement Act of 2002
    - Directs the amendment of sentencing guidelines for computer crimes.

# *Homeland Security – General Requirements*

- Title V – Emergency Preparedness and Response
  - Inter-operative Communications Technology
    - Manages Federal Gov response to terrorists or major disaster.
    - Emergency Response may require the use of national private sector networks.

# *Homeland Security – General Requirements*

- Title VII – Management
  - Homeland Security Information Sharing Act
    - Federal Gov may share information with “State” and “Local” government officials.

# *Homeland Security – General Requirements*

- Title X – Information Security
  - Amends Federal Law to require
    - OMB Director to “oversee agency information security policies and practices; and
    - Each Federal Agency Head to provide information security protections.
      - Selection of security hardware and software left to each agency.
      - Perform independent evaluation of the information security program and practices to determine effectiveness.
      - Maintain inventory of information systems.

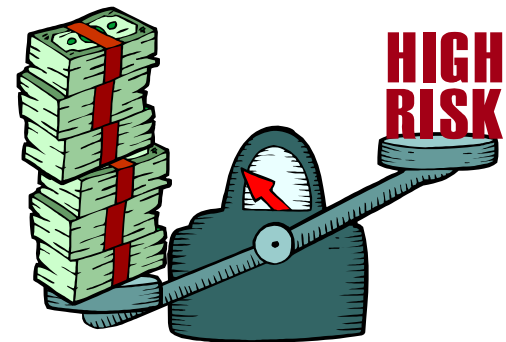
# *Homeland Security – Thoughts to Ponder*

- Broad Requirements
- Vague Specifications
- “Best Practices”
- In synch with HIPAA (...and all other applicable regulations?)
- Don't wait!!!



# *Risk Management – Cost-Benefit Analysis*

- A Balanced Approach to Costs & Operations:
  - Threats/Vulnerabilities
  - Assets
  - Safeguards



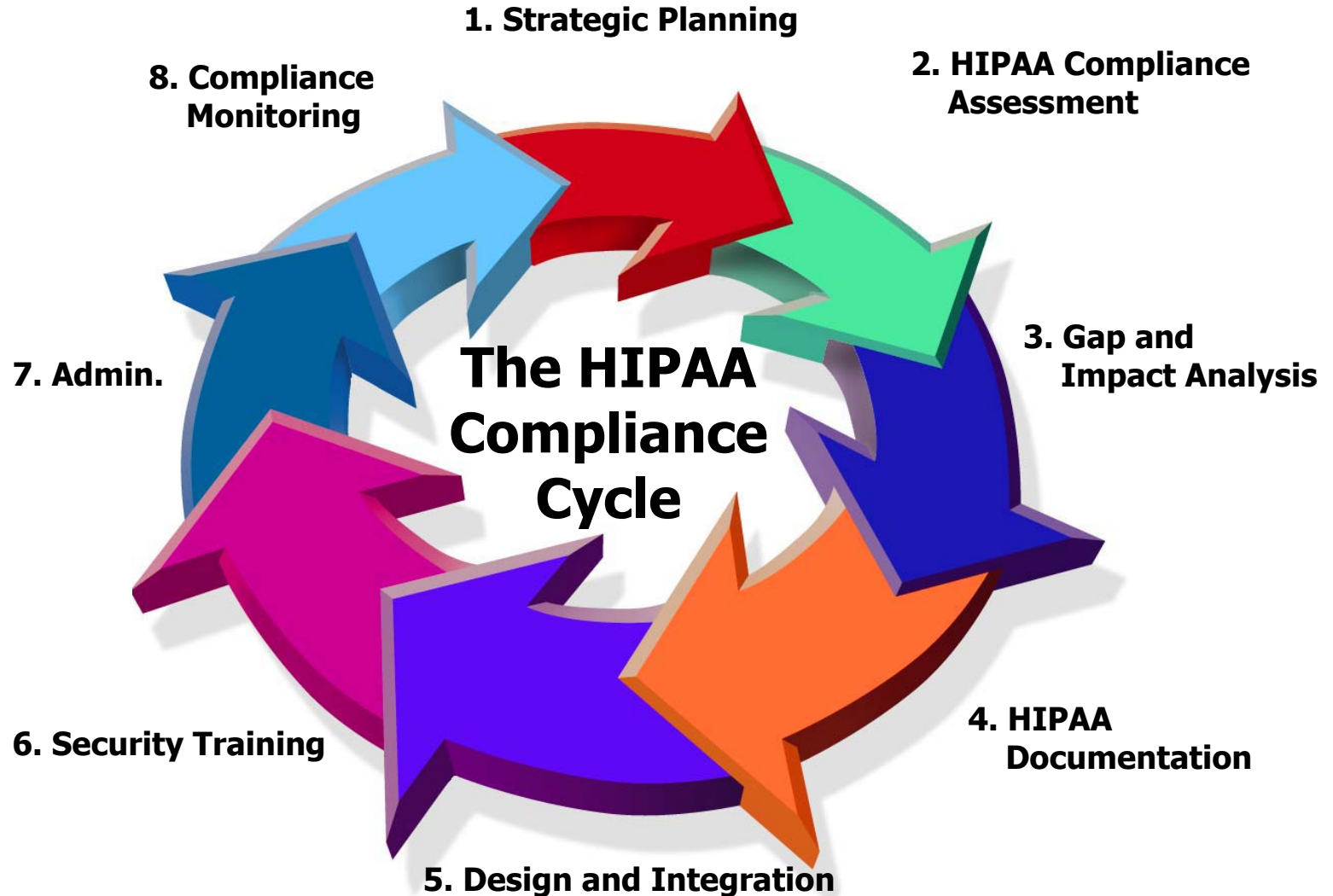


# *Best Practice/HIPAA Compliance Program*

- Perform Assessment of Risk
- Senior Management decides on level of risk tolerance
- Integrate security into corporate culture
- Form security committee
  - Senior management
  - Clinical
  - HR
  - Legal
  - IS
  - Compliance/Audit



# *Best Practice/HIPAA Compliance Roadmap*



WATCH  
FOR  
ICE



# Question & Answers



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