

HEALTH PRIVACY UNDER HIPPA

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HIPAA Privacy

GOALS

- Permit health information to flow inside the health care system
- Make it difficult for information to get outside the system
- Let patients know how their health information will be used and provide some control.

Four Basic Legal Document

- Consent
- Authorization
- Business Associate Agreement
- Notice of Privacy Practices

Goal 1: Permit PHI to flow within the health care system

Consent Requirements

- Informs individual that PHI may be disclosed for treatment, payment or health care operations
- Written in Plain English
- Refers individuals to the Privacy Notice
- Informs of right to revoke consent
- Signed and dated

**PROVIDERS MAY CONDITION
DELIVERY OF TREATMENT ON
OBTAINING A SIGNED
CONSENT**

Goal 2: Make it difficult for information to get outside the health care system

- Authorization
- Business Associate Agreement

Authorization Requirement

- Clearly describes what information will be used or disclosed
- Who will receive it
- What it will be used for
- Revocable by individual
- Expiration date

**PROVIDERS MAY NOT
CONDITION SERVICES ON
SIGNING AN AUTHORIZATION**

Business Associate Contracts

Business Associate Definition: An entity which receives protected health information from a covered entity in order to perform a service for or on behalf of a covered entity.

OBLIGATIONS OF THE BUSINESS ASSOCIATE:

The contract must:

- Restrict BA from any use or disclosure not expressly permitted or required by the contract or as required by law
- Require BA to use appropriate safeguards to prevent unauthorized use or disclosure
- Require BA to report to Covered Entity any use or disclosure of PHI not permitted by contract
- Require BA to pass on privacy protection to agents and subcontractors
- Require BA to make PHI available to individual and respond to requests for amendment of PHI

OBLIGATIONS OF THE BUSINESS ASSOCIATE: (Cont'd)

The contract must:

- Require BA to provide an accounting of disclosures of PHI (for non-TPO uses and disclosures)
- Require BA to make its internal practices, books and records available to HHS
- Require BA to return or destroy PHI at termination of contract, if feasible
- Authorize termination of contract for material breach by BUSINESS ASSOCIATE

Goal 3: Let patients know how their health information will be used and provide them with some reasonable degree of control.

Notice of Privacy Practices

- Informs individual of how their phi may be used or disclosed and explains their rights with respect to such information.

Notice of Privacy Practices

- The notice must...
 - be in plain language
 - include a description of the types of uses and disclosures that the covered entity is permitted to make
 - include at least one example for each.

Refer to any applicable state law limitations on uses and disclosures of phi that are more stringent than the federal regulation's requirements.

Patients' Rights

- Right to receive notice of privacy practices
- Right to inspect and copy your medical record
- Right to request amendment of your medical record (diagnosed with disease you don't have)

Patients' Rights (Cont'd)

- Right to request restrictions on use and disclosures of PHI provider is not required to grant request
- Right to confidential communications provider must accommodate reasonable requests
- Right to receive accounting of disclosures of PHI – not for tpo
- No private right of action under HIPAA, but potentially under state law

NOW WHAT DO I DO?

- HIPAA is a policy and compliance effort, not a technology effort.
- Can't buy privacy in a box

Build on Your Current Compliance Structure

- Assign responsibility for HIPAA compliance
- Consult widely in your organization
- Prepare job descriptions for the officials required by HIPAA
 - privacy officer
 - person to receive complaints

Build on Your Current Compliance Structure

- Appoint a privacy official
- Develop and implement policies and procedures
- Train employees
- Provide a complaint procedures
- Impose sanctions for violations, take corrective action