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How Healthcare Providers Can Comply with HIPAA in their CRM Programs

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First of All

- I'm not an attorney
- Information presented here based on
 - *conversations with our attorneys*
 - *interpretation of HIPAA*
 - *research*
 - *ethics*



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It's Final--HIPAA a Reality

- President Bush announced on 4/12/01 that HIPAA would take effect on 4/14/01 as written by Clinton administration
- Left door open for later revisions or clarifications to address “legitimate concerns” of the healthcare industry. Asked HHS Secretary Tommy Thompson to suggest “appropriate modifications”



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Compliance Timeframe



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- Two year compliance for most organizations by 4/14/03
- Small health plans with with \$5 million in receipts or less have three years or until 4/14/04
- After these dates, violators will be subject to civil and criminal penalties
 - *Prison time*
 - *\$100 per incident*
 - *Up to \$250,000*

HIPAA History



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- Health Insurance Portability & Accountability Act 1996
 - Intention
 - To protect and enhance the rights of consumers
 - To improve the quality of health care in the U.S. by restoring trust in the health care system
 - To improve the efficiency and effectiveness of health care delivery
 - Many implications to HIPAA
 - *Our Concern: Security and privacy standards to protect personal health information and medical records*

Reactions to Finalization

- Democrats, consumer groups and privacy advocates were happy
- Hospital executives and other health care providers said they were profoundly disappointed. - New York Times, 5/13/01
- Tommy Thompson: “Our citizens must not wait any longer for protection of the most personal of all information—their health records.”
- Billy Tauzin (House Commerce Committee Chair): “In addition to being too costly and too complex, the regulations fail to fully protect the privacy of all Americans.”



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Possible Revisions?

- Detractors immediately called for amendments after Bush's announcement
- Thompson said he'll keep 24,000 comments in mind and consider necessary modifications to ensure quality of care does not suffer
- *New York Times* reported (4/13/01) "Bush's decision guarantees a new struggle over the details of the rules and their interpretation."



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Working with HIPAA

- What we can do today
- HIPAA as it relates to patient privacy and customer relationship management (CRM) programs
- CRM data systems



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Who's Covered—Covered Entities



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- Health Plans
 - *HMOs, health insurers, group health plans, including employee benefit plans*
- Healthcare Clearinghouses
 - *Entities that process health information going from healthcare provider to payer*
- Certain Healthcare Providers
 - *Organizations that use computers to transmit health claims information*

Business Associates



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- Draft regulations used term “business partner,” now “business associate”
- Final regulations define “business associate” as:
 - *Persons who perform functions or activities involving use or disclosure of protected health information on behalf of “covered entity.”*
 - *Written contract is necessary between business associates and covered entities to receive information—to ensure compliance.*

What's Covered

- Only use and disclosure of “protected health information” (PHI) is covered.
- Final regulation covers all PHI regardless of format—oral, paper, electronic.
- Pushback about inclusion of oral communications—AHA says that restriction would seriously hamper exchanges between physicians, nurses and even patients.



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PHI Defined As:

- “Individually identifiable” health information that is:
 - *Transmitted by electronic media*
 - *Maintained in any medium—electronic, paper, oral*
 - *Transmitted or maintained in any other form or medium*



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“Individually Identifiable” Defined



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- Is a subset of health information including demographic information collected from an individual, and:
 - 1. *Is created or received by a healthcare provider, health plan, employer or healthcare clearing house; and*
 - 2. *Relates to the past, present or future physical or mental health or condition of an individual; and:*
 - That identifies the individual; or
 - Can be reasonably used to identify the individual

"De-Identifiable" Defined



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- Removal of:
 - *Name*
 - *Geographic Designations smaller than state*
 - *Telephone, Fax and other identifying numbers*
 - *URLs and Email addresses*
 - *Photographic and Biometric Identifiers*
- Data that a qualified statistician determines that the risk of re-identification is very small

Disconnect and Confusion



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- “Sharing of patients confidential data, such as prescriptions, for marketing or fundraising appeals—is still legal under the rule...”
 - Washington Post, 2/26/01
- HIPAA “prevents you from going into your database to pull out the names of everyone whose clinical record puts them at risk, say for heart disease. The exceptions still don’t allow room for using the data for individualized marketing purposes.”
 - *Data Strategies and Benchmarks*, March 2001

Good News



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- For marketing and fundraising, hospitals and health plans may use PHI to contact patients at least once.
- In that contact, organization must give customer the opportunity to *opt out* of future communications. If person doesn't opt-out, you can continue future communications.
- Good news is we can use most data that is “reasonably acceptable” to communicate with our customers in interest of improving their health.

Good News Gone Bad



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- Since release of final regulations last December, public sentiment has been whipped up with outrageous examples:
 - *Doing condom marketing to individuals with STDs or HIV*
 - *Sending birth control information to someone who had an abortion whose family did not know about it*

A Question of Balance

- Who would actually condone or attempt such an approach?
- Anyone to do so would be quickly out of business.
- Provision of healthcare long a balance between patients' right to privacy and the need to ethically share information for better health, research advancement, disease cures.



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From the Final Regulations



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- “A covered entity is not required to obtain authorization under 164.508 when it uses or discloses protected health information to make a marketing communication to an individual that:
 - *Occurs in a face-to-face encounter*
 - *Concerns products or services of nominal value, or concerns health-related products and services of the covered entity or of a third party*

Communication Requirements



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- Identify organization
- State any third party compensation that could result
- If PHI is used to target communications based on health status or condition:
 - *Organization must make prior determination of benefit to recipients*
 - *Communication must explain why person is receiving the message and why product or service is beneficial*
 - *Sender must offer opt-out and make reasonable efforts to ensure opt out choice is honored in future*

Permission Marketing is Dead



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- Prior consent to communicate with individuals NOT required by final HIPAA regulations
- HIPAA allows contact with appropriate opt-out language. If after first communication individual does not opt-out, you may continue to contact with continuation of opt-out option with each message

Strengthening Customer Relationships

- Develop, maintain and strengthen relationships with customers by sending information that will educate them and improve their health
- Ethical approach to marketing communications programs and good business practice—examples:
 - *Preventive screenings and immunizations*
 - *Features of services and locations*



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It Takes Data



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- CRM requires data to know, communicate with and respond to needs of individual customers.
- Several types of healthcare data:
 - *Encounter/service (visit) data*
 - *From health risk assessments*
 - *From purchased lists*

HIPAA and Data Use



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- Purchased lists
 - *HIPAA says you can use this information without opt-out provision because it is de-identified*
 - *Doesn't identify individuals or use PHI*
- In good faith, might also include opt-out language on communications based on such purchased lists

Use of Purchased Lists

- New Movers Programs
- Generic health newsletters that cover a variety of topics
- Lifetime Connections on preventive check-ups, screenings, immunizations



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Lifetime Connections™



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- If list is pulled from geodemographic data alone, not opt-out language is required
- If list is pulled from protected health information, opt-out language must be included
 - *Example: “Periodically we send information to our patients that may improve their health. If you do not want to receive future messages such as this, please contact us at (phone #, email address, etc.)*

Use of HRA Data



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Health Risk Assessments (HRA) used to identify potential risks and provide

- for follow up information to be sent on basis of answers, medical status
- used to send information to individuals
- survey—include opt-out language

Use of Encounter/Service Data



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- Data collected about service rendered and financial impact
- Personal and identifiable
- Such information can be used for contacts with opt-out message, with exception of psychotherapy data that is restricted from any use without prior written consent

What You Can Do Today



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- Assess development of your corporate privacy policy
 - *Appoint a privacy officer*
 - *Map outflow/inflow of patient communications*
 - *Consider other legislation/efforts that may affect privacy efforts such as Gramm-Leach-Bliley, which affects financial institutions, insurers and health plans*

Rewrite Business Associate Agreements

- Include purposes for which BA can use PHI
- State that BA will not use or further disclose information beyond contract or by law
- Gives BA permission to use data for database construction



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Reference to Privacy Policy



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- Add a paragraph to forms for new inpatients and outpatients that states intended uses of their information--billing, communications, etc.
- Include reference to organization's privacy policy and where to obtain it
- Make privacy policy available: online, paper and phone

Develop Opt-Out Language

- Use on ALL marketing pieces that use PHI in the list pull
- State purpose of communication
- Sample language: “You received this information because we care about your health. If you don’t want to receive future communications like this, please e-mail or call us at.....”



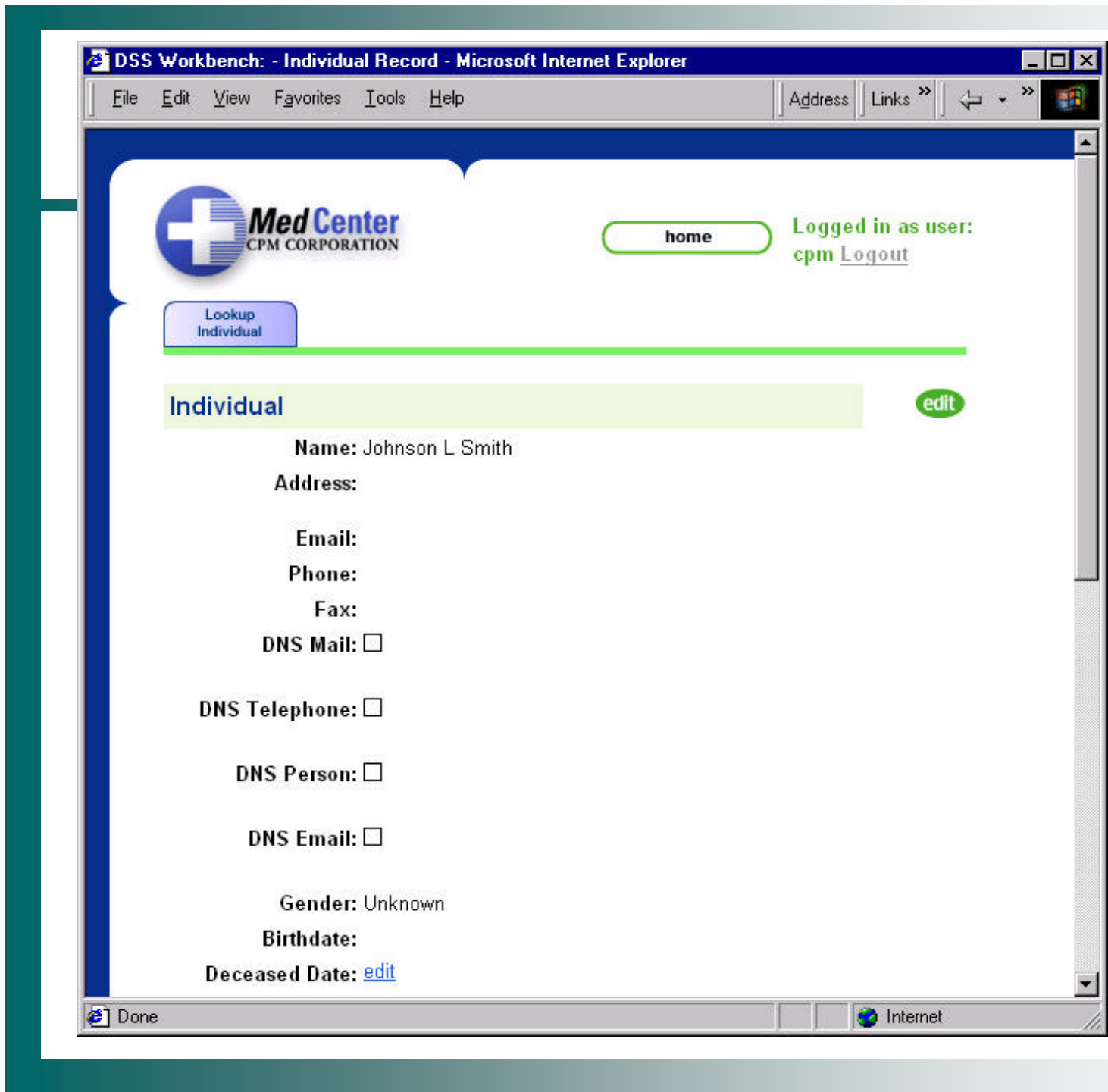
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Take Immediate Action

- When someone opts-out of future communications, take IMMEDIATE action to mark the person as “do not contact” in the database.
- Rapidly updateable systems are crucial to your customer relationships and reputation.
- Use a centralized marketing system to track requests for opt-out



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Use Common Sense

- The lines between marketing and education/treatment can be blurry
- Correct package design is required for certain sensitive information (envelope vs. postcard)
- Marketing messages should not specifically point to past encounters
- Use medical information to exclude individuals from communications on basis of treatment/service history—they won't receive anything in certain campaigns



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Database Design

- Use PHI only as stated by HIPAA and only as “reasonably necessary for task.”
- Don’t use psychotherapy encounter information. New regulations prohibit use of this information without *prior written* authorization.
- Obscure any individually-identifiable information during list selection and analysis.



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Database Design



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- Use aggregate data with selection process that separates medical information from names and addresses
- Use a centralized marketing system that audits all marketing efforts.
- HIPAA permits the use of information that has been stripped of all identifiers, but such information is of limited use for CRM programs

Enhance the Database

- Add prospect names and addresses missing from other lists.
- Add market/consumer segmentation selection system such as CPM's Consumer Healthcare Utilization Index (CHUI™).



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Enhance the Database

- CHUI™ built from millions of individual encounters using de-identified information
- CHUI™ scores person's propensity to need services with number from 0 – 999
 - *Level 1: CHUI MDC™ Groups*
 - *Level 2: CHUI Service Interest™ Groups*
 - *Level 3: CHUI DRG™ Groups*



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Secure the Database

- Strong firewalls and encryption designed to deny all access unless explicitly necessary
- Servers locked in separate room with card access only, strict monitoring, motion detectors
- Strict authentication required for any use of database such as maintenance, running reports



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Secure the Database

- Employee security policies and training, signed confidentiality agreements
- Ensure audit trail for database use
- Run only necessary programs
- Use only latest versions of OS and program software
- Biggest concern—"wetware" or people—not hardware or software



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Inform Your Employees, Your Customers

- Educate all employees about HIPAA and how it affects their jobs
- Have appropriate personnel sign agreements that requires their protection of the data
- Place articles about HIPAA in employee newsletters, hospital community newsletters, and general press to inform these groups about your organization's commitment and compliance efforts



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Monitor Privacy Developments

- Keep an eye on the news for any modifications in regulations and/or implementation
- Balance privacy needs with ability to provide outstanding healthcare to the community.



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HIPAA and State Laws

- HIPAA is first comprehensive federal standard for medical privacy
- State laws now supercede HIPAA if they are more stringent
- BUT as happened with workplace and environmental laws, HIPAA federal law could become overall standard and wipe out inconsistent and patchy state laws



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On-line Resources

- Department of Health & Human Services, <http://www.dhhs.gov> (search for “administrative simplification.”)
- Health Care Financing Administration, <http://www.hcfa.gov>
- Health Care Compliance Association, <http://www.hcca-info.org>
- American Hospital Association, <http://www.aha.org>



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On-line Resources

- American Health Information Management Association, <http://www.ahima.org>
- Health Privacy Project, Georgetown University, <http://www.healthprivacy.org>
- Internet Privacy Coalition, <http://www.privacy.org/ipc>

- Source: *Internet Healthcare Strategies*, 3/2001



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Questions/Discussion

- For more information – read our new white paper: “Patient Privacy, HIPAA and Implications for Customer Relationship Management Programs” at www.cpm.com or contact us at 1-800-332-2631



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