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# OHCAs, ACEs and Hybrid Entities

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# Complex Organizations

- ◆ Affiliated covered entity
- ◆ Hybrid entities
- ◆ Organized health care arrangements
- ◆ Group health plans and their sponsors and insurers



# Affiliated Covered Entity

- ◆ Separate covered entities under common ownership or control may designate themselves a single covered entity
  - Ownership means an interest of 5% or more
  - Control means significant influence
- ◆ Treated a single entity under HIPAA



# Hybrid Entities

- ◆ Covered entity that has covered and non-covered functions
- ◆ Must designate health care components
- ◆ Covered with respect to its health care component
- ◆ May not disclose PHI to other components, except as permitted to third parties (but it doesn't need BA agreements among its components)



# Organized Health Care Arrangements

- ◆ Three kinds:
  - Clinically integrated setting involving more than one provider
  - A health care system that holds itself out as a system and has shared UR, QA or risk payment arrangements
  - Group health plan and its insurer or HMO
- ◆ No designation required



# Organized Health Care Arrangements

## ◆ Covered entities in an OHCA

- May share information for health care operations of the OHCA (*45 CFR 164.506(c)(5)*)
- May agree to use a joint notice of privacy practices (*45 CFR 164.520(d)*)
- Are not necessarily one another's business associates (*45 CFR 160.103 – definition of "Business Associate"*)



# Examples

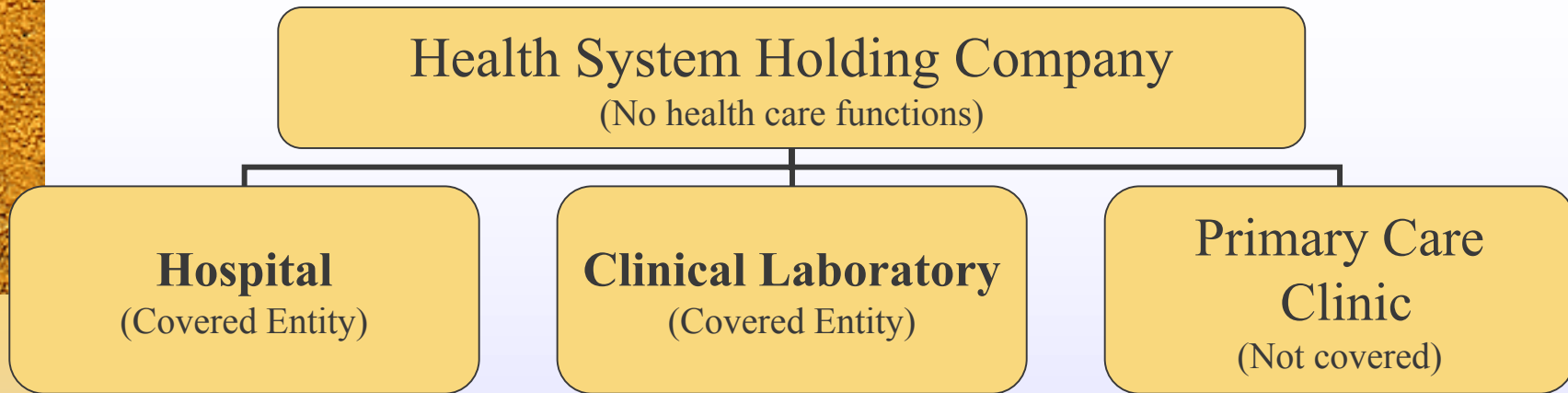
- ◆ Hospital and independent medical staff
- ◆ Health system
- ◆ Provider contracting network

# Hospital and Independent Medical Staff

- ◆ Integrated care setting OHCA
- ◆ Covered entities in OHCA may
  - Use a joint notice of privacy practices
    - If they agree to it
  - Share PHI for purposes of OHCA
    - Treatment
    - Operations
  - Are not one another's business associates
- ◆ Are all the physicians covered entities?



# Health System



# Health System

- ◆ Affiliated covered entity
  - Which organizations may participate?
  - Should the covered entities be an ACE?
    - Consolidated privacy administration
      - Shared notice of privacy practices
      - Shared privacy official
      - Shared responsibility for compliance
    - Sharing of PHI
      - For treatment
      - For operations



# Sharing Information for Operations

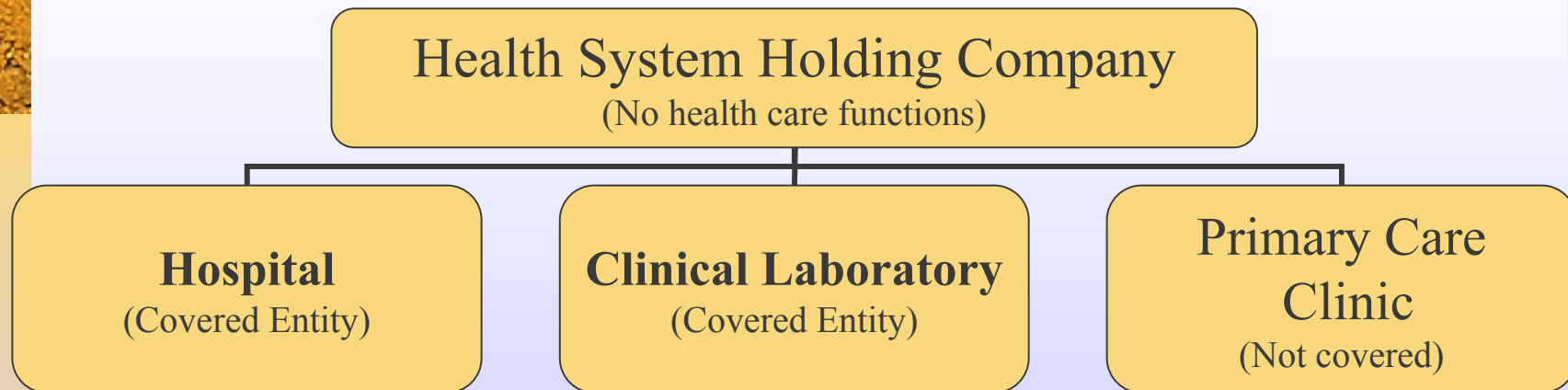
- ◆ Inside an ACE, limited only by minimum necessary rule
- ◆ Outside an ACE, requires relationship with individual, and limited to:
  - Quality assessment and improvement
  - Population-based health improvement or cost reduction activities
  - Protocol development
  - Case management and care coordination
  - Notification about treatment alternatives
  - Peer review and credentialing
  - Professional training
  - Licensing, accreditation and certification
  - Fraud and abuse compliance

# Health System

- ◆ Organized health care arrangement
  - Does it qualify?
    - Shared UR, QA or risk payment arrangements
  - Advantages
    - Joint notice of privacy practices
    - Ability to share PHI for purposes of OHCA

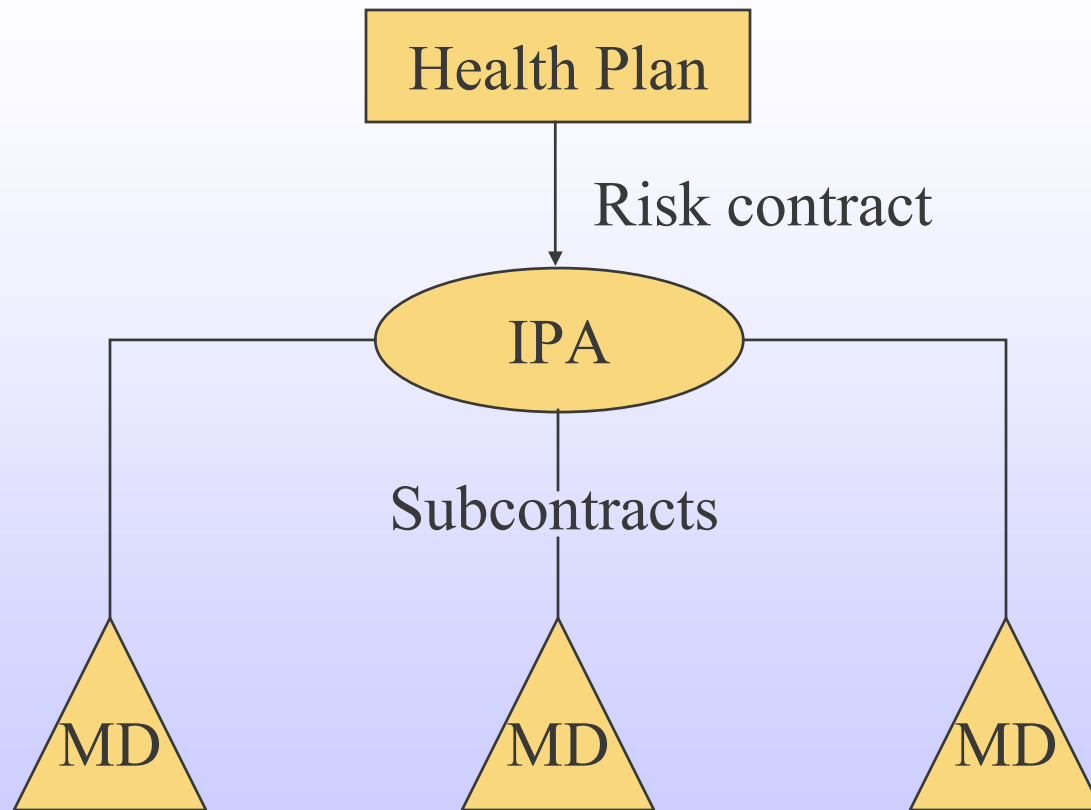
# Health System

## Business associate relationships



# Provider Contracting Network

## Independent Practice Association





# IPA Physicians as an OHCA

- ◆ Covered entities in an OHCA
  - Can share information for the OHCA
  - Can use a joint notice of privacy practices
  - Are not one another's business associates



# The IPA Entity

- ◆ Is it--
  - A health care provider?
  - A health plan?
  - A health care clearinghouse?
  - A business associate?





# Who is a Health Care Provider?

- ◆ A provider of medical or health services
- ◆ Any other person or organization who furnishes, bills or is paid for health care in the normal course of business.

Is a treatment relationship required?



# Health Plans

- ◆ 16 specific kinds (not including PHOs and IPAs), plus
- ◆ “Any other individual or group plan . . . That provides or pays for the cost of medical care.”



# What is a “Plan”?

A plan--

- ◆ Offers a plan of benefits
- ◆ Has an insurance function

A PHO—

- ◆ Contracts with licensed plans
- ◆ Shares financial risk among providers

Commentary to the regulations treats an IPA as an arrangement of physicians, and ignores the entity.



# Business Associates

- ◆ CEs must have contracts with business associates
  - BA is any contractor that has access to PHI to assist the CE
  - But a contract not required for disclosures to providers for treatment
- ◆ The contract must require the BA to:
  - Safeguard the confidentiality and security of the PHI
  - Restrict uses and disclosures to those permitted to the CE
  - Return or destroy PHI on termination, if feasible



# IPA as Business Associate

- ◆ Health plans
- ◆ Physician contractors
  - Risk contracts
  - PPO contracts
  - Administrative services



# Business Associates

## Contract Terms

- ◆ No use or disclosure of PHI not permitted for CE
- ◆ Safeguards to prevent unauthorized use or disclosure
- ◆ Report unauthorized disclosures to CE
- ◆ Ensure subcontractors comply with same restrictions
- ◆ Make PHI available to individuals for access and accounting
- ◆ Make records available to DHHS for compliance
- ◆ Return or destroy all PHI upon termination

# Transactions

## Standard Transactions

- ◆ Claims or encounter information
- ◆ Health plan eligibility
- ◆ Referral certification and authorization
- ◆ Health care claim status
- ◆ Enrollment and disenrollment
- ◆ Payment and remittance advice
- ◆ Premium payments
- ◆ Coordination of benefits

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- Deferred:
- ◆ First report of injury
  - ◆ Claims attachment

# Transactions

## Requirements for Covered Entities

- ◆ Providers don't have to conduct electronic transactions, but they must use the standards if they do
- ◆ Health plans must--
  - use the standards for electronic transactions
  - accept standard transactions from providers, and process them promptly
- ◆ Providers and plans may use clearinghouses to comply
- ◆ CEs are not permitted to vary the standards





# Is the IPA a Clearinghouse?

A clearinghouse . . .

- ◆ Processes health information received from another entity in a nonstandard format . . . into standard data elements
- ◆ Or vice versa



# Where is the Transaction?

(Assume a risk contract)

- ◆ Provider submits claim to IPA
  - Covered transaction (?)
- ◆ IPA submits encounter data to plan
  - Not a covered transaction (?)



# IPA as OHCA

- ◆ Organized Health Care Arrangement:
  - A health care system that holds itself out as a system and has shared UR, QA or payment arrangements
  - Clinically integrated setting involving more than one provider
  - Group health plan and its insurer or HMO



# Organized Health Care Arrangement

- ◆ Covered entities participating in an OHCA--
  - Are not one another's business associates
  - May use a joint notice of privacy practices for the OHCA
- ◆ Is the IPA a covered entity?