



Multnomah County Department of County Human Services

Mental Health and Addiction Services Division
Christina Gardner MPA, Privacy/Security Compliance Officer
Ray Hudson MS, Alcohol and Drug Program Manager

May 2010

Work Session Objectives:

- Provide overview of HIPAA - including key amendments post American Recovery and Reinvestment Act (ARRA - Stimulus Bill).
- Provide overview of “Part 2” – Code of Federal Regulations (CFR) Title 42 PART 2 Confidentiality of Alcohol and Drug Abuse Patient Records
- Compare and Contrast both Rules
- Provide efficiencies when your entity is covered by both.

Pre-Test: In which of the two rules do these acronyms belong?

- CE – Covered Entity
- TPO – Treatment, Payment, Operations
- PII – Patient Identifying Information
- PHI – Protected Health Information
- QSOA – Qualified Service Organization Agreement
- OHCA – Organized Healthcare Arrangement
- BAA – Business Associate Agreement
- AOD – Alcohol and Other Drug



The HIPAA Privacy Rule

45 CFR Parts 160 and 164

Health Insurance Portability and Accountability Act (HIPAA)

Purpose: to improve the efficiency and effectiveness of the health care system by standardizing the electronic exchange of administrative and financial data -(Administrative Simplification Provisions.)

- Privacy Regulations

April 14, 2003

- Standardized codes/transaction sets

October 16, 2003

- Security Regulations

April 20, 2005

HIPAA Implementation cont.

These three provisions of the Act set out general requirements:

- Privacy/Security Protection of Information
- Individual Rights
- Administrative Requirements
- Duty to be Informed

Regulations Apply To:

Covered Entities:

- Health Plans
- Health Care Clearinghouses
- Health Care Providers who transmit any health information electronically in connection with certain transactions set forth in the regulations

Further Definition:

What is a Health Care Provider?

A healthcare provider is any person who furnishes, bills or is paid for health care in the normal course of business.

Are all Health Care Providers Covered?

Health care providers are covered only if they transmit health information electronically in connection with a transaction covered by the HIPAA Transaction Rule, directly or through a Business Associate.

Health Information:

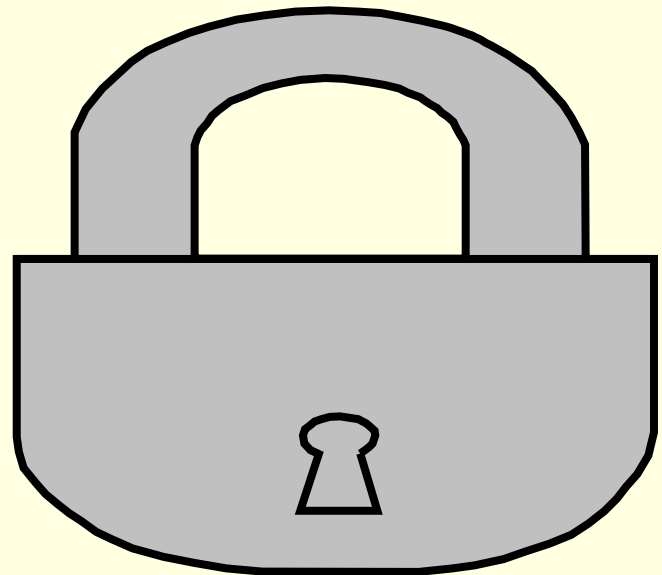
Refers to any information, whether oral or recorded in any form or medium, that:

1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

Protected Health Information:

Health information that is identifiable to an individual and that is transmitted or maintained in any form or medium, including oral, paper, or electronic, by an employer or a health care provider, health plan, or health care clearinghouse.



Basic Rule:

- All use and disclosure of Protected Health Information is prohibited,



UNLESS...A Permission can be identified.

Minimum Necessary Context:

The Minimum Necessary standard limits uses, disclosures, and requests for PHI made pursuant to the regulations to the minimum necessary amount.*

Limits on Uses:

A CE is required to identify who, within its workforce, needs access to what types of PHI to carry out their duties, and any conditions associated with such access.

Limits on Disclosures and Requests:

For routine disclosures and requests, p&p are required that limit PHI to only the amount reasonably necessary to achieve the purpose of the disclosure or request.

*There are certain situations where MN does not apply

Required Exceptions to the Rule:

- When an individual requests access regarding PHI about themselves. This includes requests pursuant to their right to Inspect and Copy and their right to an Accounting of Disclosures.
(ARRA amendment!)
- When compelled by the Secretary (of Health and Human Services) for Compliance and Enforcement Purposes.

Disclosure for Treatment, Payment, Operations:

- Most commonly used Permission:

Treatment: providing, coordinating, and managing health care; consultations between health care providers; and referrals of patients and consultations between providers. (Applies to CE's own or other Health Care Provider.)

Payment: billing, managing claims, collection activities, determining eligibility or coverage, coordinating benefits, adjudicating health claims, utilization review, and certain disclosures to consumer reporting agencies. (Applies to CE's own or another CE or Health Care Provider.)

Operations: broad variety of activities including quality assessment and improvement, case management and care coordination, peer review, accreditation, licensing, credentialing, etc. (Applies to CE's own or certain operations of another CE.)

Disclosure pursuant to a Business Associate Agreement

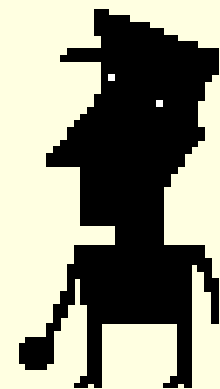
Is defined as a person or entity that performs or assists in the performance of a service or function on behalf of a medical practice when the function or activity involves the use or disclosure of health information including claims processing, data analysis, processing or any other function or activity regulated by the Privacy Rule. (ARRA amendment!)

Security Regulations: final “leg” of HIPAA

- Unlike the Privacy Rule, which applies to PHI regardless of form, the Final Security Rule only applies to PHI that is maintained or transmitted in electronic format. Certain transmissions ARE NOT considered electronic; paper, fax, voice and telephone.

Five categories of Security Requirements

- 1) General Rules
- 2) Administrative Safeguards
- 3) Physical Safeguards
- 4) Technical Safeguards
- 5) Documentation Requirement



General Security Provisions: 45 CFR § 164.306(a)

- Ensure confidentiality, integrity, and availability of ePHI
- Protect against reasonably anticipated threats or hazards to the security or integrity of ePHI
- Protect against uses or disclosures not permitted by Privacy Rule
- Ensure compliance by workforce
- Applies to all ePHI regardless of format
- Internal and external communications

Flexibility of Approach – 164.306(b)

- Covered Entities may use any security measures that allow them to reasonably and appropriately implement the standards and implementation specification of the Rule.

Worth Mentioning: The HITECH Act

- Health Information Technology for Economic and Clinical Health – signed 2/17/09.
- Requires Breach Notification
- Strict Requirements for Business Associates

<http://www.hhs.gov/ocr/privacy/hipaa/administrative/enforcementrule/hitech-enforcementifr.html>



Ensuring Individual Rights Under HIPAA



Rights under HIPAA

- Right to Inspect and Copy (Access) *
- Right to an Accounting of Disclosures *
- Right to Request Amendment
- Right to Request Restrictions *
- Right to Request Confidential Communications (Alternate Communications)
- Right to File a Complaint

Question: how are clients/patients told about these rights?



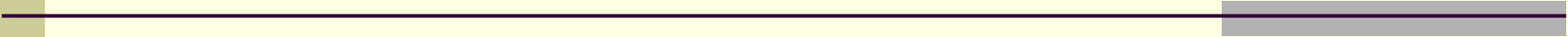
Administrative Requirements

Administrative Requirements


- Notice of Privacy Practices – required header and content, in plain language.
 - Includes the ability of a CE to change terms of the notice.
 - Distribution, acknowledgement, and posting requirements.
- Customized Policy and Procedures
 - Establish methods of implementing required protections and adhering to individual rights.
 - Retention period (written or electronic) copy for 6 years from the date of creation, or last effective, whichever is later.

Administrative Requirements cont.

- Designated Privacy and/or Security Officer
- Training, and related documentation
- Administrative, Technical and Physical Safeguards
- Established Complaint/Grievance Process
- Personnel Sanction with related documentation
- Mitigation Process
- Prohibition against intimidation or retaliatory acts
- Prohibition against requiring individuals to waive their HIPAA rights as a condition of treatment, payment, eligibility or enrollment.



Covered Entity: Duty to Be Informed



Requirements Nutshell

- Maintain the privacy of PHI
- Preserve Rights of individuals
- Abide by the terms of your Notice of Privacy Practices
- Implement meaningful Policies and Procedures
- Cooperate with the Secretary in Compliance Reviews
- Know your State Confidentiality Laws



42 CFR Part 2:

Confidentiality of Alcohol and Drug
Abuse Patient Records



What does the rule say?

- Prohibits the disclosure of records or other information concerning any patient in a (federally assisted) alcohol or drug program.
- Even if the seeker has a subpoena or warrant, or already has the information and is seeking to confirm...
- If a program receives a request, in the absence of release, it must refuse to comply, and must be sure to do so in a way that does not reveal that the individual is or ever has been a client. ‘federal law prohibits me from disclosing that information’

What is a 'Program'?

- Any person or organization that provides alcohol or drug abuse diagnosis, treatment, or referral for treatment.
- An family MD working in her/his office making a diagnosis of addiction and noting it in the chart – not covered by Part 2. (Almost certainly covered by the Privacy Rule)
- An MD working in the local ER (assuming the hospital does not provide A&D services) sees a patient, notes in the chart evidence of addiction – not covered by Part 2 (Again, certainly covered by the Privacy Rule)
- Either of the two MDs above, now working in either a large family clinic that does offer A&D services, or a hospital that does, making the same chart notes – are now covered by Part 2.

Why the 'Rule' (42 CFR Part 2)?

Recognizing that the stigma associated with substance abuse and fear of prosecution deterred people from entering treatment, Congress enacted this confidentiality legislation. (early 1970s)

Information Protected under Part 2

- What programs? Substance abuse treatment programs
Not hospitals, not MDs, not your dentist, unless they also provide substance abuse treatment.
- If you are a substance abuse treatment program, then:
- Any and all information that could reasonably be used to identify an individual is protected
- Not 'a number assigned to a patient by a program, if...'
- When does protection begin? '...any person who has applied for...(or been given..)

When & How to Disclose Under Part 2

- When the patient has consented in writing (on a form that meets the requirements established by the regulations).
- When disclosing, include written statement that the disclosed information cannot be redisclosed.
- Subpoena – if patient signs consent OR a court order that complies with the rule is presented (See the rule, subpart E on court orders).
- Qualified Service Organizations – sign appropriate agreements, etc. Partner organizations must agree to - resist judicial proceedings to obtain access to the information, except as permitted by the rule.



Compare Part 2 and HIPAA

Exceptions or “Permissions”

Part 2

- 1) Internal Communication
- 2) Anonymous Disclosure
- 3) Qualified Service Organization Agreement
- 4) Medical Emergency
- 5) Research
- 6) Audit and Evaluation
- 7) Authorizing Court Order
- 8) Patient Threat/Crime on Program Premises or Against Personnel
- 9) Reporting Suspected Child Abuse

HIPAA*

- 1) Covered Entities Own Treatment, Payment or Operations
- 2) Limited Data Set*
- 3) Business Associate Agreement
- 4) Averting a Serious Threat to Health or Safety
- 5) Research
- 6) Health Oversight Activities
- 7) Judicial and Administrative Procedures
- 8) Law Enforcement Purposes
- 9) Victims of Abuse, Neglect, or Domestic Violence

Key Differences:

- Definition of “Information”

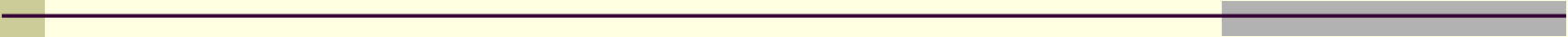
HIPAA treats medical record numbers and Health Plan Beneficiary numbers as PHI. Part 2 would permit a program to disclose a number because the regulation does not apply to “a number assigned to a patient by a program, if that number does not consist of, or contain numbers...which could be used to identify a patient with reasonable accuracy and speed from sources external to the program.”

- Revocation of a Consent/Authorization


Part 2 permits revocation of a Consent orally, HIPAA requires written revocation of an Authorization.

- HIPAA affords additional Rights

Right to Request Restrictions of Uses and Disclosures, Right to Amend and the Right to an Accounting of Disclosures.



Please remember to always check with your attorney/other counsel if you have questions on how to interpret a specific situation within your program.



Thank you for your attention!