HIPAA in the Division of Public Health

November 18, 2002
Handouts

- HIPAA Definitions
- AG Advisory Opinion - Definition of Health Plan
- AG Advisory Opinion - Applicability of HIPAA to DECs
- DPH Coverage Determination Memorandum
- DPH Work Area Coverage and Impact Summary (Draft)
- AG Advisory Opinion - Applicability of HIPAA to DPH Functions (public health and health oversight exceptions)
- DPH Programs and Functions Legal Reference (Draft)
HIPAA in DPH

Public Law 104-191:
Health Insurance Portability and Accountability Act of 1996

What are the HIPAA Regulations?

• Electronic Transactions and Code Sets
  • Standardizes the data content and format of 10 financial or administrative transactions related to health care (e.g., claims, payments)
  • Standardizes medical codes (no local codes, e.g. “Y” codes)
  • Compliance deadline: October 16, 2003

• Privacy of Individually Identifiable Health Information (IIHI)
  • Regulates uses and disclosures of individually identifiable health information
  • Provides patient rights with respect to their health information
  • Establishes requirements to assure privacy of patient IIHI
  • **Compliance deadline:** April 14, 2003
What are the HIPAA Regulations

- Proposed Standards for Security and Electronic Signatures
  - Electronic Signature Standards Final Rule - projected availability TBD
  - Compliance deadline: 2 years after Final Rule (2005)

- Proposed Standards for Identifiers
  - National Employer Identifier (Final Rule published - no impact)
  - National Provider Identifier (Final Rule projected early 2003)
  - National Health Plan Identifier (Proposed rule projected early 2003)
  - National Identifier for Individuals - on hold indefinitely
  - Compliance deadline: 2 years after final rules (2005)
Who is covered by HIPAA - Covered Entities?

- Health plans
  - Provides or pays for the cost of health care services
  - Includes Medicaid, Medicare, HealthChoice, Veterans Health Program, Military Health Plan, Indian Health Service, others
  - Excludes most all other government-funded programs
    
    *DPH Programs are not considered “health plans” (e.g., Ryan White, Sickle Cell Program, Cancer Control Program, etc.)* - See Handout - AG Opinion on Health Plan

- Health care providers who conduct any of the HIPAA-regulated transactions electronically
  
  *DPH Program Participants such as local health departments, State Lab, public and private health care providers, are covered entities if they electronically process any of the 10 transactions.*

- Health care clearinghouses - not applicable to DPH
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Who is covered in DHHS?

• DHHS is a “hybrid entity” whose primary purpose is not to provide health care, but has components that perform covered functions (health plan, health care providers services). The areas within DHHS that perform HIPAA covered functions are called covered health care components. Health care components must comply with HIPAA fully.

• Business Associates of Health Care Components - A business associate performs functions specified by HIPAA on behalf of a covered entity (or health care component) that involves access to or exchange of IIHI. Examples are claims processing or billing, accounting, consulting, legal, data analysis, data processing, quality assurance, utilization review. Within DHHS, DPH performs functions on behalf of covered health care components. DPH also performs functions on behalf of external covered entities. Covered entities must gain formal assurances from their associates that they will provide privacy protection for health information. Business associates by extension must comply with HIPAA privacy regulations.
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Health Care Components in the Division of Public Health
- State Laboratory of Public Health (Indirect Treatment Provider)
- Development Evaluation Centers - 13 state owned and operated (Provider)

Business Associates in the Division of Public Health
- Administrative, Local, and Community Support Section
  - IT (Lab and DECs)
  - HSIS Business Liaison (local health depts, Lab, DECs)
  - Local Technical Assistance and Training (local health depts)
  - Medicaid Reimbursement and Liaison (DMA)
- State Center for Health Statistics (DMA)
- Children and Youth Branch - Specialized Services Unit - Children’s Special Health Services (DMA)

See Handouts - Memorandum-HIPAA Internal Business Associates
Table - DPH HIPPA Coverage
What are the Transaction and Code Set impacts on DPH?

- Health Services Information System (HSIS) provides billing service for local health departments, Lab, DECs and submits claims electronically to Medicaid
- Direct impact on State Lab, DECs, and HSIS and local support section (as owner of HSIS)
- DIRM is remediating with DPH business oversight and participation
- Indirect potential impact on POMCS for data content for DME Medicaid claims

- DPH programs and supporting applications must adopt the new standard codes
  - HSIS local code conversion
  - No other direct DPH impacts identified, except “Y” code used by POMCS for DME
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Privacy Regulation - Key Concepts

- The Privacy Regulation establishes a federal floor of safeguards to protect the confidentiality of health information
- Applies to Protected Health Information (PHI), which is:
  - Individually identifiable health information
  - Transmitted or maintained in any form or medium (electronic, written, oral)
- IIHI is any information, including demographic information collected from an individual, that:
  - a) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and;
  - b) 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 of the provision of health care to an individual, and; that (i) Identifies the individual, or (ii) With respect to which there is a reasonable basis to believe that the information can be used to identify the individual
Privacy Regulation - Key Concepts

- Sets boundaries on the use and disclosure of health records
- Establishes appropriate safeguards health care providers and others must achieve to protect privacy of client information
- Holds health care providers accountable with civil and criminal penalties if they violate individual’s privacy rights
- Ensures that each covered health care component protects the health information it maintains
- Ensures that an individual’s health information is not used inappropriately
- Ensures that the minimum amount of information is used or disclosed whenever possible
  - Does not apply to treatment
  - Limits the amount of information to be used or disclosed to what is minimally necessary to accomplish intended purpose
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Privacy Regulation - Key Concepts

- Requires identification of members of the workforce who need access to IIHI and the types (categories) of information to which access is needed
- Requires training of all staff members
- Requires appropriate administrative, technical, and physical safeguards to protect health information
- Requires new policies and procedures to address privacy protections and an individual’s access rights
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Privacy Regulation - Key Concepts

• Establishes new rights for individuals regarding access to their personal health information
• Ensures individuals have more control over when and how their personal health information is used

Individual Rights

• Right to be informed of about protections on and use of their health information through a notice of privacy practices
• Right to inspect, copy, and review their record
• Right to request amendments to their record
• Right to request restrictions on use and disclosure of health information
• Right to request reasonable personal communications
• Right to an accounting of disclosures of their health information
• Right to file a complaint against covered entity
What is DHHS doing for privacy compliance?

- Developed HIPAA compliance plan, methodologies, and tools
- Assessed department-wide HIPAA impacts
- Determined HIPAA coverage
- Appointed DHHS Privacy Official
- Coordinating and overseeing department compliance efforts
- Developing DHHS privacy policies
- Providing continued privacy guidance and templates for agency implementation

Extension of DHHS Privacy Policies

- DHHS privacy policies will apply to all areas that “create, maintain, or receive individually identifiable health information during its regular course of business.” This extends privacy protections beyond HIPAA covered health care components and business associates. Areas within an agency that have IIHI will follow applicable privacy policies and procedures.
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What are the Privacy impacts on DPH?

- Ensure DPH compliance with department privacy policies
- Develop procedures, based on DHHS department privacy policies, to ensure the protection of individually identifiable health information within the agency
- Implement DPH privacy requirements by incorporating new operational privacy practices into existing business practices
- Develop and provide applicable privacy training to staff
- Provide a designated DPH contact for privacy complaints and assure that all complaints are appropriately documented
- Monitor DPH agency compliance with DHHS department privacy policies
- Assure appropriate use and disclosure of individually identifiable health information and appropriate client accessibility to health information
- Provide reasonable protections for individually identifiable health information within DPH
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What are the Privacy impacts on DPH? (see handout)

- Appoint Agency Privacy Official

  Agency Privacy Officials guide agency activities required to comply with DHHS department policies regarding the use and disclosure of individually identifiable health information, in accordance with state and federal laws and best business practices.

  Responsibilities:

  - Serve as primary agency contact for privacy issues and concerns regarding the use and disclosure of health information and for appropriate client accessibility to health information
  - Serve as the agency liaison to the DHHS Privacy Officer for privacy-related activities
  - Coordinate and facilitate efforts to support the agency in the accomplishment of its privacy compliance activities
What are the Privacy impacts on DPH?

• Privacy Regulation impact on DECs
  • DECs are exempt from Privacy Rules because their records are considered “education records” under FERPA (Family Educational Rights and Privacy Act) (see handout - AG Opinion Applicability of HIPAA to DECs)
  • DECs will follow and comply with FERPA privacy requirements and will integrate HIPAA and DHHS privacy policies into their procedures
  • Train staff
What are the impacts on DPH?

- Privacy Regulation impact on State Laboratory
  - Follow DHHS HIPAA privacy policies and develop and implement procedures regarding uses and disclosures of individually identifiable health information
  - Implement appropriate safeguards to protect individually identifiable health information
  - Define minimum necessary requirements
  - Implement LIMS application system access controls
  - Train staff

- Certain Privacy Rules do not apply to State Lab:
  - Notice of privacy practices *(indirect treatment relationship, provide only on request)*
  - Individual’s right to access and amend health data *(Lab data is exempt because data falls under CLIA and statutory restrictions)*
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What are the impacts on DPH?

- Privacy Regulation impact on business associates (within DHHS)
  - Follow DHHS HIPAA privacy policies and develop and implement procedures regarding uses and disclosures of individually identifiable health information
  - Implement appropriate safeguards to protect individually identifiable health information
  - Define minimum necessary requirements
  - Provide access to and amendment of unduplicated patient information at request of covered health component
  - Receive privacy training

- Privacy Regulation impact on business associates (external)
  - Same as above
  - Complete business associate agreements to ensure privacy protections

- Privacy Regulation impact on other non-HIPAA covered areas within DPH
  - Identify and confirm areas that have IIHI and how it is used
  - Determine applicable policies/procedures and implement within DPH areas
What are the impacts on DPH?

- There is a risk that health care providers may resist providing individually identifiable health information to DPH citing HIPAA as reason to withhold

- Public Health Exemption
  - Understand the “public health exemption” provisions of HIPAA
    (see handout - AG Opinion Applicability of HIPAA to DPH Functions)
  - HIPAA permits disclosures without authorization for health information required by law
  - HIPAA permits disclosures without authorization to “public health authorities” for public health activities and purposes
  - HIPAA permits disclosures without authorization to a health oversight agency for oversight activities
  - HIPAA does not require public health disclosures
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HIPAA’s Public Health Exemption Provisions

Public Law 104-191 (Health Insurance Portability and Accountability Act or HIPAA) carved out a specific provision to avoid impeding certain public health laws:

“Public Health. --Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.” (P.L. 104-191, Sec. 1178(b)).

45 CFR Part 160
§ 160.203 General rule and exceptions.

“A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met:

…

(c) The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.”
HIPAA’s Public Health Exemption Provisions

45 CFR Part 162
§ 164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.
...
(b) Standard: uses and disclosures for public health activities.
...
“(1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;…”
HIPAA’s Public Health Exemption Provisions

45 CFR Part 162
§ 164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.

... 

(d) Standard: uses and disclosures for health oversight activities.

... 

“(1) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system;

(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or

(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.”
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What are the impacts on DPH?

- Public Health Exemption Guidelines
  - Be knowledgeable about your program’s/function’s legal basis for collecting individually identifiable health information
    (see handout - Table DPH Programs/Functions using IIHI)
  - Restrict request for health information to that required by law or to that which is minimally necessary to accomplish purpose
  - Remember that public health data is still protected and its use is for public health purposes
  - Other protections beside HIPAA govern health information
    - Federal Laws
    - NC General Statutes
    - NC Administrative Codes
    - Professional Standards
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Privacy Steps to Compliance (now to April 14, 2003):

- Develop DHHS privacy policies and standard forms
  - HIPAA Office with agency workgroup participation
  - Review by agency, approval by DHHS management
  - 25 policies - administrative, uses and disclosures, client rights
    Examples:
    - Authorizations
    - Disclosures without authorizations
    - Accounting for disclosures
    - Minimum necessary requirements
    - Safeguards
    - Notice of privacy practices
    - Right to access IIHI
    - Right to amend IIHI
    - Privacy officials
    - Privacy complaints
    - Workforce (training, sanctions)
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Privacy Steps to Compliance (now to April 14, 2003):

- Develop DPH procedures to comply with DHHS privacy policies
- Implement DPH procedures
- Develop training for workforce in affected DPH areas
  - HIPAA privacy
  - DHHS privacy policies and DPH privacy procedures

- Some specific tasks in implementing procedures
  - Complete physical safeguard review (St. Mary’s, Lab, DECs, Royster, Cotton, Cooper buildings)
  - Implement no to low-cost physical safeguards (e.g., door locks, visitor access, locked file cabinets, password protected screen savers, reconfigured workspaces)
  - Identify/validate DPH areas with IIHI and determine protections and client access health information
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Privacy Steps to Compliance (now to April 14, 2003):

• Some specific tasks in implementing procedures
  • Update consolidated agreement with health departments to address HIPAA
  • Update contracts with DPH external business associates to include HIPAA business associate agreement addendum
  • Communicate with providers regarding public health exception
  • Implement HSIS privacy changes (system administrators, additional access controls, privacy restriction indicator)
  • Implement LIMS privacy changes (extend access controls already in place)

• HIPPA-related requests from outside DPH
  • Status of DHHS, DPH, or program area HIPAA coverage
  • Request to sign their business associate agreement

Do not respond directly
Do not sign
Contact DPH Privacy Official/Implementation Support
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Privacy Steps to Compliance (now to April 14, 2003):

- HIPAA is not going away
- Sets new privacy standard and public expectation for privacy protections and rights to access health information
- Civil and criminal penalties for non-compliance
- Additional regulations forthcoming
- Changes to standards expected
- Expanded use of electronic transactions
- Congressional pressure to tighten privacy protections (e.g., consents, marketing)
Useful Links:

HIPAA Regulations (federal site)
http://aspe.os.dhhs.gov/admnsimp/

Office of Civil Rights (privacy)
http://www.hhs.gov/ocr/hipaa

CDC HIPAA Information
http://www.cdc.gov/nip/registry/pcs.htm

DHHS HIPAA Office
http://dirm.state.nc.us/hipaa/

NC Public Health Law
http://www.ncleg.net/gascripts/statutes/StatutesTOC.pl?0130A

NC Administrative Rules (Title 15A)
http://ncrules.state.nc.us/ncadministrativ_title15aenviron_default.htm

Local Health Departments
http://sph.unc.edu/hipaa
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