



HIPAA PRIVACY RULE

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Three Major Purposes

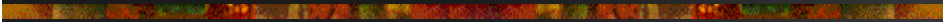
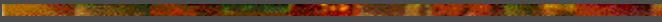
- 1. Protect and enhance the rights of consumers* by providing them access to their health information and controlling the inappropriate use of that information
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2. *Improve the quality of health care in the U.S. by restoring trust in the health care system among consumers, health care professionals, and the multitude of organizations and individuals committed to the delivery of care*

3. *Improve the efficiency and effectiveness of health care delivery by creating a national framework for health privacy protection that builds on efforts by state health systems, and individual organizations and individuals*

Patient concerns that information shared with practitioner is not protected

- Growth in number of organizations involved in provision of care and claims processing
 - Growing use of electronic information technology
 - Increased efforts to market health care and products to consumers
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- Increased ability to collect highly sensitive information about current and future health status due to advances in scientific research
 - Variation in state laws governing privacy
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Protecting Personal Health Information

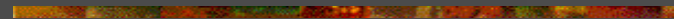
*A framework for Meeting the Challenges
In a Managed Care Environment*

JCAHO/NCQA 1998



More Meaningful Consent:

- Consent form accompanied by detailed notice of providers health practices





CONSENTS:

- Cover routine uses and disclosure of health information

AUTHORIZATIONS:

- Cover non-routine disclosures
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Delivery of Care

Final Rule More Facilitative,
but still cumbersome



Positives

- Most uses of health care data still O.K.
 - Sharing information for treatment does not generally invoke MN Rule
 - Transition for using existing consents
 - uniform floor of patient rights
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Concerns

prescriptive in certain administrative areas

cost & burden could be significant

readiness issues

Definition of “Protected Data”

- Sweeping Definition
 - Beyond current context of medical record laws and privacy laws at the state level
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Definition (continued)

- Record in any form or medium that relates to physical or mental health
 - Now protects individually identifiable health information of inmates
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Minimum Necessary

One of the most burdensome aspects of the rule – but may be applied across classes of information and uses made on a routine basis

Health Promotion?

Disease Management?

- The HIPAA's abyss!



Pharmacy Dispensing/PBMS



JC Monitoring Sensitivities

- Requirements that interfere with timely and appropriate treatment and communication with patient/families when implemented
 - Confusing requirements that are not uniformly interpreted or implemented
 - Unusual patterns of complaints
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Why does the Joint Commission need patient identifiable information?

- Conduct onsite survey at sites of care
 - Properly assess patient-centered care
 - Evaluate complaints
 - Investigate responses to patient safety incidents
 - Performance measurement activities
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JCAHO's Involvement is *from 2 perspectives*

- As part of Health Care Operations
part of basic patient consent
 - As a Business Associate
contract with covered entities
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JCAHO's Task List acting as an accreditor

- Update standards
 - Evaluate compliance
 - Handle HIPAA complaints
 - Train surveyors
 - Assure that patient's are aware of what we do as part of health operations
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*Whatsoever things I see or hear concerning the life of men,
in my attendance on the sick or even apart therefrom,
which ought not to be noised abroad, I will keep silence
thereon, counting such things to be as sacred as secrets.*

Hippocrates

Update Standards

- Significant Information Management Standards in current accreditation manuals
 - Information practices protect confidentiality, security, and integrity of information
 - Scalable
 - Data can be retrieved timely without compromising security & confidentiality
 - Staff educated and constantly reminded
 - Network notifies data users and the uses & limitations of information
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Update Standards

- Current standards provide infrastructure
 - But geared more toward paper transactions than all of the electronic uses
 - Provide flexibility in administrative areas
 - Recognize state laws for record maintenance
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Standards (continued)

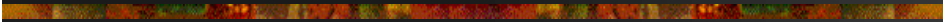
- Expert Panel
 - Consider new areas, e.g.
 - Access to one's own medical record
 - Six year record rule
 - Loci of responsibility within the organization
 - Evidence of HIPAA policies and training
 - Information tracking systems
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Assess Compliance

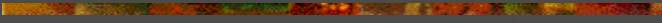
- JCAHO accredited organizations must comply with state and federal laws
 - Assess compliance through survey process for any newly incorporated standards
 - Consider other compliance vehicles
 - documented independent audits
 - self-attestation for some items
 - Recognize HIPAA compliant Information systems
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Handle Complaints

- Triage HIPAA complaints
 - Expect accredited organizations to have processes in place to handle
 - Data sharing with Office of Civil Rights?
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Covered entities are protected from liability regarding disclosure when an employee business associate discloses PHI to an accreditation organization or other oversight agency.



Train Surveyors

- Understand HIPAA basic goals and requirements
 - Understand organizations expected responses
 - Understand penalties/obligations as surveyors who have access to PHI
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Patient Awareness

- Covered entities should explicitly refer to accreditation as a health care operation in the notice of privacy practices they provide to patients or enrollees about the uses of their health care information.
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JCAHO's Task List as a Business Associate

- Ensure comprehensive policy on how we handle and maintain information
 - surveyors
 - central office staff
 - Negotiate 19,000+ contracts with health care organizations
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Confidentiality Policy

- Joint Commission covered by Illinois peer review statute
 - Surveyors sensitized to removing identifiers
 - Accreditation reports and public information documents never have contained identifiers
 - Subpoenas negotiated with federal authorities
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Confidentiality Policy (continued)

- Assess survey protocols across programs
 - Not uniform now
 - Evaluate need for access to information and data sources
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Business Associate Contracts

- Current survey application documents for accredited organizations revised
 - New agreements will be expanded
 - 8 categories of information (e.g., uses, prohibitions, safeguards, reports, subcontractors, amendments, DHHS, return or destroy)
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Business Associate (continued)

- May be different for health plans, hospitals, ambulatory surgery centers, nursing homes, home health agencies, hospices, behavioral health organizations, assisted living programs, PPOs, clinical laboratories, community health centers, school health clinics, methadone treatment facilities, etc.
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Health Plans “To Do” List

- Obtain consent at time of enrollment
 - Develop & disseminate privacy practices
 - Expect firewalls
 - Business Associate agreements
 - Develop policies regarding HIPAA complaints
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Providers “To Do” List

- Expand current consent forms
 - Develop & disseminate disclosure policies & information practices to patients
 - Assign loci of responsibility for privacy practices and for handling complaints
 - Apply minimum necessary rule
 - Institute information tracking systems
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“To Do” List (continued)

- Develop procedures for providing access for patient's to view, copy and amend PHI
 - Develop complaint handling procedures
 - Develop procedures for handling authorizations, refusals, changes, and opt-outs
 - Have protocols for changing any information practices
 - Educate staff – establish culture
 - Negotiate Business Associate contracts
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Closing

- Would like to work with health professional organizations on model forms
 - Would like to get broad-based input on where JC standards should be amended
 - Would like to change HIPAA rule to make accreditors health oversight agencies
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