

HIPAA

Health Insurance Portability and Accountability Act

What it means to you.

HIPAA — Health Insurance Portability and Accountability Act — Effective April 14, 2003 for most entities and April 14, 2004 for small health plans. A small health plan is described as having less than five million in annual receipts.

In the event a plan is not compliant, it may continue its operations and cash flow provided that a good faith, and ongoing effort is being made to become compliant and can be reasonably demonstrated.

- For electronic transaction and code sets rule, the deadline was October 16, 2003.
- Security standards must be met by all covered entities by April 21, 2005.

- Secure patient records to prevent disclosure.
- Enter into business associate agreements and other trading partner agreements as are necessary and when required.

The Act provides a general prohibition on the use of an individual's information for the purposes of marketing. However, there are certain expectations.

Can a health plan network communicate products and services of participating providers or its own products and services?

Yes. It is not considered "marketing" under the Act for a plan provider or insurance carrier to mail information about a preferred provider list to its participants. For example, if a doctor develops a new treatment device, such as a new skin lotion, it is not considered marketing for that doctor to mail information about the new lotion to his/her patients even if they had not been treated for the particular symptom for which the lotion was developed.

Can care providers and pharmacists mail reminders to patient's homes?

Yes. Care providers are allowed to communicate with patients about their treatment. This includes the mailing of reminders about appointments, prescription refills, and in certain instances product and service information.

When is a written and signed authorization required (such as for marketing) versus a voluntary consent?

A written, signed detailed authorization is required generally for communications other than those related to treatment, payment, health care operations or to disclose information to a third party. An authorization must specify those specific elements or items for which the authorization is granted as well as description of the protected health information to be used and disclosed; the person authorized to make the disclosure or use; the person or entity to whom the disclosure is to be made; an expiration date for the authorization; and in some cases the purpose for which the disclosure is to be made.

Who is covered by the Act?

Those engaged in the business/financial transactions of provided healthcare services, including:

- Health plans
- Health care clearinghouses
- Health care providers

What is the "average" health care provider required to do?

- Notify patients about their rights and how their information will be used.
- Adopt and implement privacy procedures for its practice.
- Train employees so that they understand the privacy policy.
- Designate an individual to be sure compliance with the policy is carried out.

FAQ

What does the Act do?

The Act creates national standards to protect individual's medical records and personal health information. It sets boundaries over the use and release of those health records.



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Can health plans communicate about health related products or services to enrollees that add value but are not part of the plan?

Yes. Communications about value added services may qualify under the marketing exception, even if the services are not part of the plan. To qualify, for the exclusion, the value added product or service must meet two conditions:

- 1) They must be health related (discounts off of eyeglasses would meet this condition if available only to members of a plan or patients of a provider and not to the general public, discounts to a movie theater would not) and,
- 2) such products or services must add value to the plan's membership and not simply be part of a larger pass through discount that is offered to the public at large. For example, if the public can obtain the same discount offer for eyeglasses through the eyeglass outlet, then specific authorization to send the offer to members would be needed.

Can a doctor or pharmacy be paid to make/send a prescription or appointment reminder without prior authorization?

Yes. It is not marketing for a doctor or pharmacist to be paid to make a prescription refill reminder, even if a third party is paying for the communication as an appointment reminder is considered to be part of the treatment. The reminder is considered part of a patient's treatment and no prior authorization is required. Similarly, suggesting an alternate medication or treatment is excluded from the definition of marketing. Under the Act. In addition, covered entities (those covered or governed by the Act) may use a legitimate business associate to assist them in making such communications. Such as a pharmacist using a mail house or fulfillment entity to send out prescription reminders to the pharmacist's patients. However, if the data is sold, then the entity would need to obtain prior authorization from the patients.

Can telemarketers obtain and use my health care information to contact me about goods and services?

Under the Act, information may be shared with a telemarketer only if the covered entity has obtained prior written authorization to do so or has entered into a business associate relationship with the telemarketer for the purpose of making a communication that is not marketing, such as to inform the individual about the covered entity's own goods and services.

Do health care providers have to mail out notices in connection with changes in its notice policy?

No. For any changes to an existing policy, the provider must post in a conspicuous place in the office the policy with the

changes and copies of the changes to the notice policy must be made available on request to a patient. In addition, the revised notice must be provided to patients at the first service delivery (first time a patient comes in for treatment or consultation).

Can communications be issued to individuals having a specific condition to make them aware of particular products and services for that condition?

Yes. If the communication is related to the individual's treatment, case management, care coordination or is used to recommend alternative therapies. Similarly, communications targeted at individuals obtained from clinical information may be provided so long as they are in the area of health education or disease prevention and as such are not considered marketing when they promote health in a general manner.

Are hospitals or other care providers required to provide their notices to patients treated under emergency conditions?

No. The Act requires that notice be provided to patients with a direct treatment relationship when practical, after the emergency situation has ended. In addition, the care provider is relieved from its obligation of having to make a good faith effort to obtain written consent to receipt of the notice under emergency conditions.

Can information such as name, address, and social security number be disclosed for public health purposes?

Yes. So long as the disclosure is needed for public health purposes and the disclosure is reasonably limited to that which is minimally necessary to accomplish the public health purpose.

Can the notices of care providers be provided with or as part of other mailings or distributions?

Yes. Special mailings are not required to distribute notices to patients and the notice information may be included with other mailings, such as other products and services offered by the care provider. However, a good faith effort to obtain the written consent to receipt of the notice should be made.

What is a business associate under the Act?

A business associate is any person or entity, other than the covered entity (e.g. health plan), that performs functions or services to a covered entity that involve the use or disclosure of individually identifiable health information. Examples of such entities include: Data analysis, claim processing, billing, consulting, plan administration, financial services, legal review and others.

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When is a business associate agreement needed?

An agreement is needed where information is going to be shared with another entity. The agreement must include provisions for the protection of information, accounting for disclosures of protected information and certifications by the associate concerning the use and treatment of the information in compliance with applicable law.

When is a data sharing agreement needed?

A data sharing agreement is needed in those situations where only a limited data set is being exchanged, such as in connection with performing quality analysis of hospitals in a network.

Is a software vendor considered to be a business associate?

The mere selling or providing software to a covered entity does not rise a business associate relationship if the vendor does not have access to protected information. If access is required, then the vendor would be considered a business associate of the care provider or covered entity and would be required to enter into a business associate agreement.

What safeguards are needed for such practices as posting medical charts?

Care providers are not prohibited from making disclosures by posting a patient's chart outside an examination room or from engaging in common and important health care practices. However, the provider must take steps to limit access and restrict how that information is used and disclosed.

Can I use a log book or other form to acknowledge receipt of notice?

Yes. Provided that the log book or form clearly indicates what the patient is acknowledging and that care is taken to limit access to the information.

May care providers use sign in sheets?

Yes. Such sign in sheets may be used provided that the information disclosed is appropriately limited and care is taken to limit access to the information. Such an incidental disclosure is permitted where the covered entity has implemented reasonable safeguards.

Does the authorization have to contain an expiration date?

Yes. The acknowledgment must contain either a time limit for which the authorization is granted ("authorization expires one year from the date it was signed") or an expiration event ("attainment at the age of majority").

Can an email, facsimile, or copy suffice as a signed authorization?

Yes.

When is an authorization required from a patient before a provider of a health plan can engage in marketing to that individual?

An authorization is required for all marketing activity, prior to the commencement of such activity, except where the communication occurs in a face to face encounter or the communication involves a promotional gift of nominal value. If the marketing campaign involves compensation to the covered entity from a third party, then the authorization must state that remuneration is involved.

Can information be disclosed in an effort to collect payment?

Yes. Information may be disclosed to a collection agency in an effort to collect payment for services that have been rendered. The information disclosed must be reasonably limited and kept to a minimum.

Is the notice required to be posted at the care facility?

Yes. Care providers must post the entire notice in a conspicuous place, however, no particular form of the posting is prescribed by the Act.

The preceding document has been provided to our customers to be used as a reference guide only. Please consult your current HIPAA instructional manuals should you have other concerns regarding HIPAA regulations.

Sincerely,



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