

# The Application of HIPAA Behind Bars

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"I do not have any relevant financial relationships with any commercial interests."

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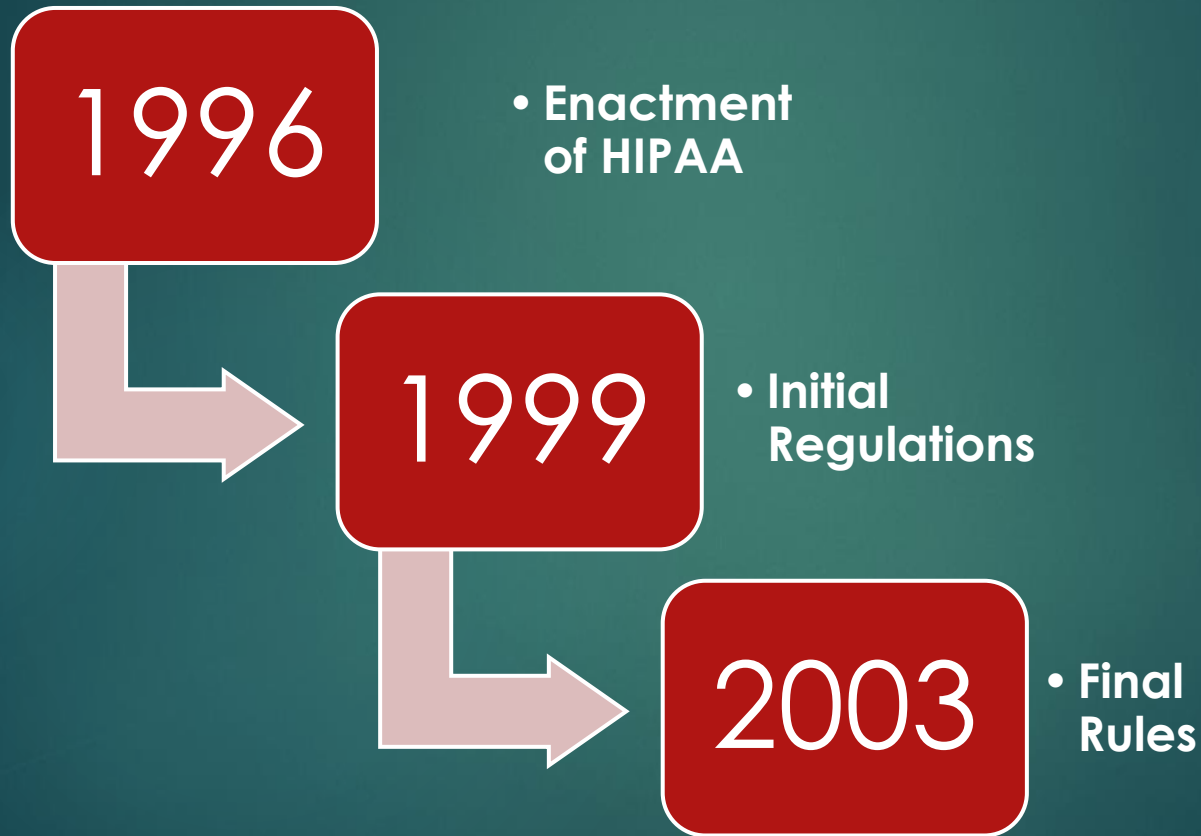
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# Educational Objectives



- ▶ Review changes in HIPAA legislation as it relates to corrections
- ▶ Discuss the need to obtain a HIPAA-compliant signed authorization before releasing patient information
- ▶ Express how to handle requests for protected health information, either from a patient or from an outside party such as an attorney

# History



# Is Your Facility a “Covered Entity”

## Health Plan

Entity that provides or pays costs of HC

Examples: HMO; Medicaid; Medicare; BCBS/United

HHS rules corrections are not health plans

## HC Clearing

Entity that processes nonstandard information received from another entity into standard information

HHS rules corrections are not healthcare clearinghouses

## HC Provider

Entity that provides direct healthcare to patients and may electronically transmit PHI for regulated activities

Corrections are likely healthcare providers

# Role of Business Associates



## Functions

- Claims Processing
- Subcontracting

## Activities

- UM
- Analytics

## Services

- Billing
- Collection

# Are You Required to Comply with the Security Rule?



## Report HC

CQI

UM



## Secure Authorization

Non-formulary meds

Outside consults



## Pay Claims

Inpatient Stays

Expansion States

# WHAT ARE YOUR HIPAA OBLIGATIONS?



- ▶ Notify patients of their privacy rights
- ▶ Adopt and implement privacy policies
- ▶ Train employees
- ▶ Designate an individual to be responsible
- ▶ Secure patient records containing PHI
- ▶ Use BAAs as Required



# Permitted Uses: General Exceptions to Privacy Rule



## Disclosure to Patient

When its optional  
When its required



## Treatment or Payment

Also for general  
healthcare operations



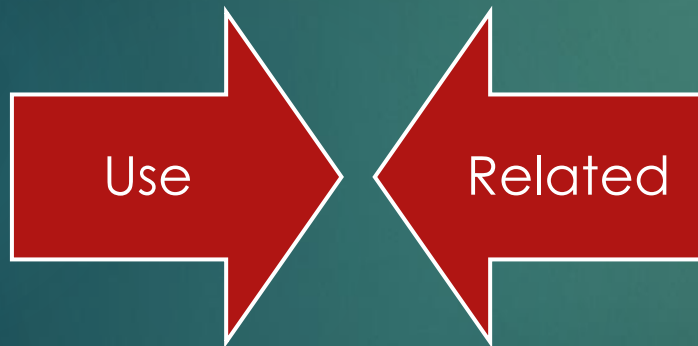
## Opportunity to Agree

Or to object to  
disclosure of PHI

# Permitted Uses: General Exceptions (cont.)

## Incidental to Use

## Public Interest



- ▶ Required by Law
- ▶ Public Health Activities
- ▶ Victims of Abuse
- ▶ Health Oversight
- ▶ Judicial Proceedings
- ▶ Law Enforcement
- ▶ Function re: Deceased
- ▶ Organ Donations
- ▶ Research
- ▶ Health/Safety
- ▶ Essential Gov Functions
- ▶ WC

# Corrections' Specific Exceptions 45 CFR 164.512(k)

## Provision of Care



## What Isn't Included



# Corrections' Specific Exceptions (cont.)

- ▶ Disclosure needed for health and safety of:
  - ▶ The patient themselves
  - ▶ Other inmates
  - ▶ Security Staff
  - ▶ Transportation Staff



# Corrections' Specific Exceptions (cont.)



# Corrections' Specific Exceptions (cont.)



- ▶ Needed for Administration and Maintenance of:
  - ▶ Safety
  - ▶ Security
  - ▶ Good Order



# ADDITIONAL EXEMPTIONS

- ▶ Can deny an inmate's request for PHI if access would create a risk to inmate, other inmates, correctional or medical personnel
- ▶ If inmate has escaped, can disclose PHI



# OTHER IMPORTANT POINTS

## Federal Law

HIPAA is the federal law governing PHI

States can grant more protections

HIPAA is the “floor”

## State Law

State statutes

Common law

Releases should cite to both

## MH Info

Mental Health and HIV information always afforded more protection

Release must specify if this information is to be included



# TO WHOM CAN YOU DISCLOSE PHI?

- ▶ Those having custody
- ▶ Other medical personnel responsible for care



“Somehow your medical records got faxed to a complete stranger. He has no idea what’s wrong with you either.”

# HIPAA-COMPLIANT RELEASE

- Specifies what PHI can be released
- States who is authorized to release and receive PHI
- Ideally, states reason for release
- Voluntary
- Gives patient the right to revoke
- Signed by patient or person with authority

[illegible]

# FURTHER TIPS



- ▶ Requests to orally discuss care/diagnosis
- ▶ Demands to testify in Court
- ▶ Claims from those with “Power of Attorney”
- ▶ Federal/State agencies with authority

# Oral Discussions Regarding Care and Treatment

Not required by signed  
release

No obligation to discuss  
patient's care

Risks

Safest course is to get  
subpoena



# Requests for Court Testimony

Require a subpoena

Careful preparation

Role of the Judge



# Requests from Those with Healthcare POA

Terribly misunderstood term

Review the actual form

Confirm it is in effect

If valid, understand the  
implications for the patient

**General Power of Attorney**

I, \_\_\_\_\_, of (address) \_\_\_\_\_, hereby appoint  
\_\_\_\_\_, of (address) \_\_\_\_\_, to be my agent and attorney  
in fact. I grant my agent full authority and power to act on my behalf to do anything I could do  
if I were personally present.

Signed \_\_\_\_\_; date \_\_\_\_\_.

In witness:

\_\_\_\_\_

\_\_\_\_\_

{Acknowledgement by notary}



# Statutory Agencies with Authority to Obtain PHI

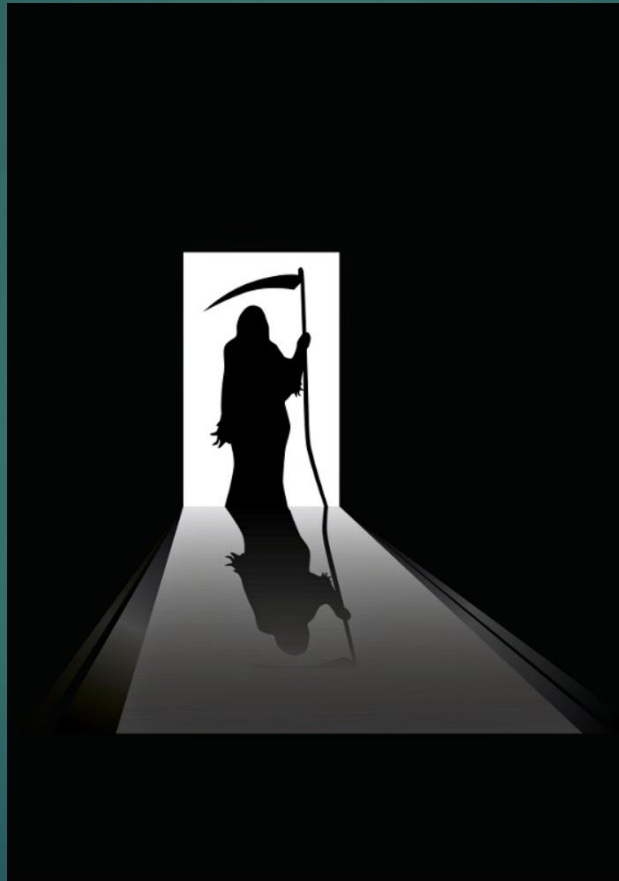
Can be federal, state or  
both

Check statute for agency's  
powers

If power to obtain records,  
no release required



# HIPAA Rights Post Death





# References

- ▶ 45 CFR (code of federal regulations) 160
- ▶ 45 CFR 162
- ▶ 45 CFR 164
- ▶ 45 CFR 164.512(k)
- ▶ 42 USC 13725(b)(1)

# Understanding the Application of HIPAA in Corrections and Proper Handling of Requests for Patient Information

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