



# **HIPAA Considerations for Small Non-Profits**

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- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
  - ✓ Be a 501(c)(3) nonprofit organization.
  - ✓ Be located in or serve the greater Atlanta area.
  - ✓ Serve low-income or disadvantaged individuals.
  - ✓ Be unable to afford legal services.
- *Visit us on the web at [www.pbpatl.org](http://www.pbpatl.org)*
- Host free monthly webinars on legal topics for nonprofits
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## Introduction to HIPAA

- HIPAA is the federal Health Insurance Portability and Accountability Act of 1996 and the implementing regulations issued by the U.S. Department of Health and Human Services (HHS)
- HIPAA is a federal law, but entities that are required to comply with HIPAA still have to comply with state law

## Who must comply with HIPAA?

- HIPAA originally applied to three types of entities (called Covered Entities):
  - ✓ Health plans (for example, Medicare or a health insurance issuer);
  - ✓ Health care clearinghouses (entities that process and reformat certain health information); and
  - ✓ Health care providers who transmit certain transactions electronically

Are you a health care provider subject to HIPAA?

- Only health care providers who transmit individually identifiable health information electronically in connection with certain transactions must comply with HIPAA
- These transactions include claims, benefit eligibility inquiries, referral authorization requests, and other transactions with health plans and insurers for which HHS has adopted standards

Are you a health care provider subject to HIPAA?

- Using technology, such as email, does not mean that a health care provider is subject to HIPAA
- Electronic transmission of information must be in connection with certain transactions
- If a health care provider has another entity, like a billing service, submit claim information electronically on its behalf, that health care provider is subject to HIPAA

Are you a health care provider subject to HIPAA?

- As a general rule, if a health care provider transmits individually identifiable health information electronically to Medicare, Medicaid, or an insurance company to get paid for health care it provides to patients, the health care provider is subject to HIPAA



## Examples of Covered Entities

- Entities that must comply with HIPAA are called Covered Entities
- Generally, hospitals and physicians are Covered Entities
- Free clinics are not Covered Entities because they do not transmit any information electronically to health plans or insurers

## Business Associates

- HIPAA states that a person or entity that provides services to a Covered Entity and needs individually identifiable health information to provide those services is a Business Associate
- However, a member of the Covered Entity's workforce is not a Business Associate
- As of 2010, Business Associates must also comply with most provisions of HIPAA

## Business Associates

- Examples of Business Associates include billing companies, consultants, lawyers, software providers, accrediting agencies, etc. but only if they need individually identifiable health information from the Covered Entity to provide the services
- Covered Entities and Business Associates must enter into specific types of agreements called Business Associate Agreements

## Specific Examples

- An organization that provides interpreters to physicians and hospitals is not a Covered Entity
- The physicians or hospitals could treat the interpreters as part of the Covered Entity's workforce (and in that case, the organization would not be a Business Associate)
- Alternatively, the physicians or hospitals may choose to treat the organization as a Business Associate

## Specific Examples

- An organization that gathers medical information from individuals and then has doctors review that information to provide free advice is not a Covered Entity
- The organization is not a Business Associate because it is not providing services to a Covered Entity

## Remember!

- Just because you aren't subject to HIPAA does not mean that other laws about the confidentiality of medical information do not apply to you!

## Now What?

- If you are a Covered Entity or a Business Associate, what do you have to do to comply with HIPAA?
- Generally, HIPAA governs the use and disclosure of individually identifiable health information
- So, you have to develop policies that reflect all the HIPAA rules about the use and disclosure of that information

## HIPAA Privacy Rule

- For example, Covered Entities and Business Associates must have policies about disclosing individually identifiable health information
  - ✓ To the patient when requested;
  - ✓ To the patient's family;
  - ✓ If requested by a court;
  - ✓ To a government agency; and
  - ✓ To report child abuse



## HIPAA Privacy Rule

- Covered Entities must also have policies about individuals' rights to access their own individually identifiable health information
- Covered Entities must provide to patients a Notice of Privacy Practices that describes how the Covered Entities use and disclose an individual's health information
- These are just a few examples of what the HIPAA Privacy Rule requires

## HIPAA Security

- If a Covered Entity or Business Associate maintains individually identifiable health information in electronic form, it must take certain security precautions
- For example, Covered Entities and Business Associates must develop policies about access to the information, termination of that access, passwords, audit trails, etc.

## Breach Notification Rule

- Covered Entities and Business Associates must also have policies about what to do in the case of a breach of individually identifiable health information
- HHS recently issued a new breach notification law. Covered Entities must notify HHS and the individuals involved of a breach. In some cases, the media must be notified

## Changes to HIPAA

- HIPAA has changed a great deal recently
- In 2009, Congress passed the HITECH Act, and we are waiting on HHS to issue regulations implementing the HITECH Act
- We do not expect the new regulations to change the definition of Covered Entity, although the rules about Business Associates may change

## How do you learn more?

- Review information about HIPAA provided by HHS at <http://www.hhs.gov/ocr/privacy/index.html>
- Sign up for HIPAA listservs provided by HHS and health care consultants
- Check law firm websites and sign up to receive legal alerts from those law firms

## For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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