

# HIPAA Privacy and Security for Employers

April 25, 2013



# HIPAA Privacy and Security for Employers

- Welcome! We will begin at 2 p.m. Eastern
- There will be no sound until we begin the webinar. You can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your invitation email.
- You will be able to submit questions during the webinar by using the “questions” box located on your webinar control panel.



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# HIPAA Privacy and Security for Employers

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- The Crichton Group
- Engle-Hambright & Davies
- Frenkel Benefits
- The Horton Group
- INSURICA
- Kinney Pike Insurance
- LMC Insurance & Risk Management
- Lipscomb & Pitts Insurance
- Lyons Companies
- The McCart Group
- MJ Insurance
- Parker, Smith & Feek
- Payne West Insurance
- R&R/The Knowledge Brokers
- RCM&D
- The Rowley Agency
- Senn Dunn Insurance
- Smith Brothers Insurance
- Starkweather & Shepley Insurance Brokerage
- Van Gilder Insurance
- Woodruff-Sawyer & Co.
- John L. Wortham & Son



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# Agenda

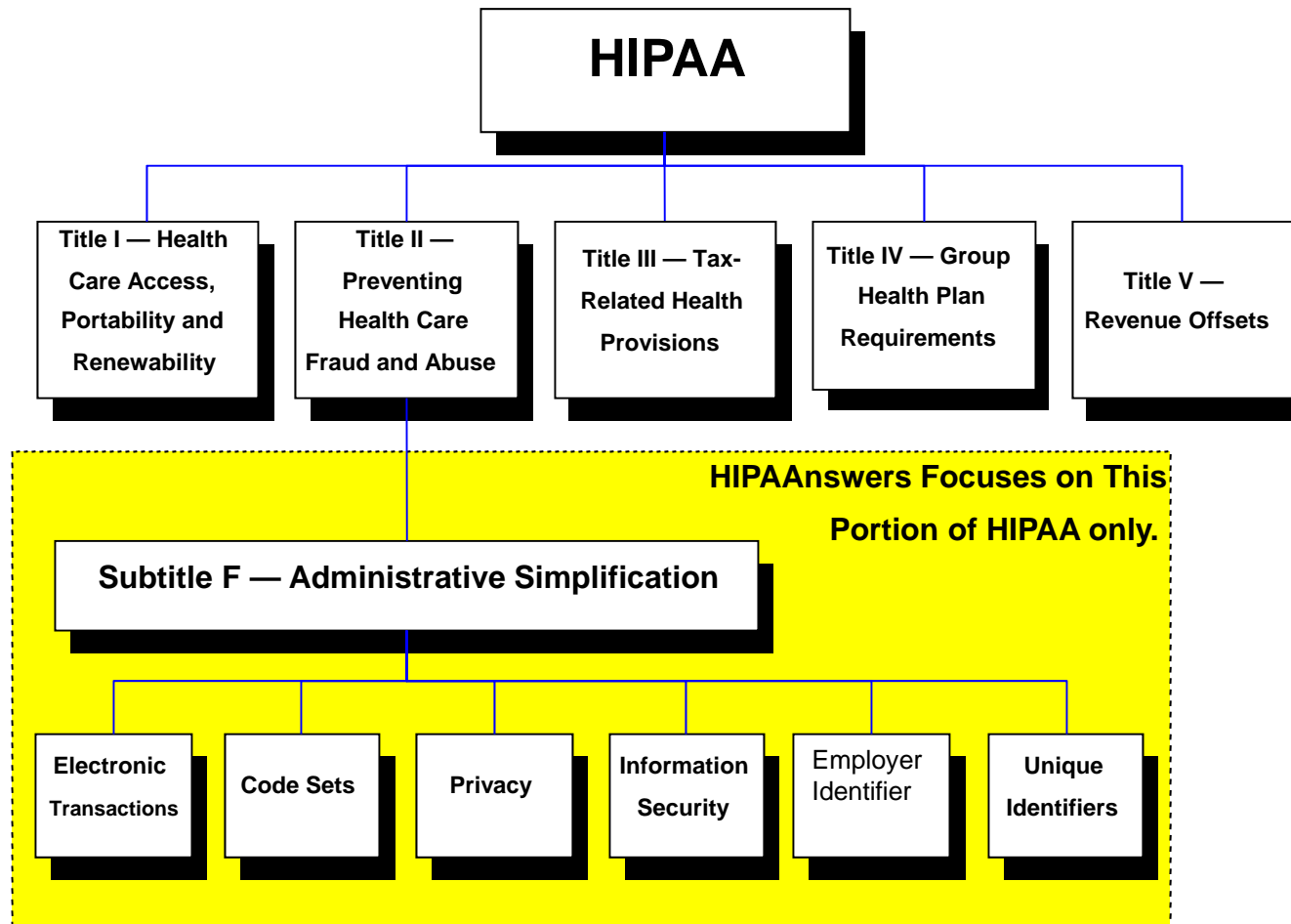
- What is a HIPAA?
  - Transactions and code sets
  - Privacy
  - Security
- Who must comply and why
- Privacy requirements
- Security requirements
- HITECH update 2009/2010/2013
- Security incidents, business associates and breaches
- Enforcement



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# Introduction - Overview



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# Introduction

- Covered entities – HIPAA
  - Health care providers and clearinghouses
  - Health plans
    - HMOs, insurance companies
    - Employer sponsored health plans
- Business associates, agents and subcontractors



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# Covered Plans

- Medical
- Dental
- Prescription
- Vision
- EAP
- FSA
- HRA
- Long-term care



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# Myths

- Fully insured plans
  - Exceptions
  - Any health information
- Under 50 participants and employer self-funded and self-administered
- Self-funded or self-insured plans
  - Medical
  - Dental
  - Etc.
  - Don't forget an FSA is a self-funded plan



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# Definitions

- Protected Health Information (PHI)
  - Any individually identifiable information, electronic, written or oral
  - Related to the past, present or future physical or mental health or condition of an individual, or the provision or payment for health care for an individual
  - Created, received or maintained by a covered entity (i.e., the health plan)



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# Examples of PHI

- Health insurance enrollment application
- Report that shows who enrolled in what plan
- An HR staff person mentioning to another staff that the plan paid a claim.
- A claim report from a dental insurance carrier that contains I.D. numbers
- An email from an employee to their boss that contains details about a health plan claim payment



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# Examples of What is Not PHI

- FMLA Medical Certification
- Results from employee drug testing
- Workers' Compensation information
- Life insurance application
- LTD or STD claim
- Doctor's note for absence



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# Privacy Requirements

- Appoint a Privacy Official
- Create and maintain policies and procedures
- Business associate contracts
  - Agents or brokers
  - Third party administrators



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# Privacy Requirements

- Non-retaliation
- Waiver of rights
- Minimum necessary
- Training
- Mitigation



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# Privacy Requirements

- Uses and disclosures
- Authorizations
- Personal representatives and minors



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# Privacy – Individual Rights

- Access and amendment
- Accounting
- Confidential communications
- Restrictions



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# Privacy – Individual Rights

- Notice of uses and disclosures
- Right to notification in the event of a breach (2013)
- Complain



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# Security Requirements

- Risk analysis
- Policies & procedures
- Designate a Security Official
- Administrative safeguards
  - Passwords
  - Contingency plans
- Physical safeguards
  - Access and control
  - Workstation Use
- Technical safeguards
  - Encryption
  - Unique userids



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# HITECH Changes

- 2009 – Breach notification
- 2010
  - New BA agreements
  - Access
  - Restrictions
- 2013 – September 23, 2013
  - Re-issue notice of privacy practices
  - Extension of security requirements to agents or subcontractors of a business associate
  - Re-definition of breach of unsecured PHI



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# Security Incidents

- What are they?
- What you need to do
- Documentation
- Reporting by a business associate
- Is it a breach?



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# Breach Notification

- If PHI has been accessed, acquired, used or disclosed in a manner not permitted, a breach is assumed.
- Exclusions:
  - Inadvertent
  - Unintentional
  - Unable to retain or
- Able to prove “low probability”
  - Risk assessment
    - Nature and extent
    - Unauthorized individual
    - Mitigation



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# Notifications

- To the individual
  - Within 60 days
  - First class mail
- To the media
- To the secretary (HHS)
  - Over 500
  - Under 500
- Law enforcement delay
- Burden of proof



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# Enforcement

- Annual guidance regards technology
- Random audits
- Reports to congress
- Increased fines



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# Why Comply?

- Dozens of covered entities have been fined
- Mostly healthcare providers
- Investigations conducted whenever a breach is reported
- Covered entities and business associates subject to same fine schedules



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# Price of Non-Compliance

Problem	General Penalty
Civil Violation	\$100/offense; up to 1.5M/ year
Wrongful Action	\$50,000/offense; 1 year in prison
False Pretense	\$100,000/offense; 5 years in prison
Intent to Sell	\$250,000/offense; 10 years in prison



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# Resources

- HHS website targeted for Covered Entities
  - <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/index.html>
- CMS HIPAA Security Whitepapers
  - <http://www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/securityruleguidance.html>
- HHS HIPAA Frequently Asked Questions
  - <http://www.hhs.gov/ocr/privacy/hipaa/faq/index.html>



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Thank you.



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