



The Vita Viewpoint Important Information for Decision Makers

HIPAA Privacy Ruling

The History

- In the last few years, health privacy has emerged as a prominent health care policy issue at the federal level. Although Congress has recognized the importance of protecting the confidentiality of health information, it has been unable to pass any comprehensive health privacy legislation.
- Understanding the genesis of the Federal Health Privacy Rule is important for understanding the scope of the federal rule and how it operates.
- HIPAA includes a major initiative, known as “administrative simplification provisions,” intended to cut administrative health care costs by standardizing electronic health care transactions. Prior to HIPAA’s passage, this move toward standardization raised serious privacy concerns.
- To reconcile these competing priorities of safeguarding privacy and easing the flow of health data, Congress included in HIPAA a requirement that if it failed to pass comprehensive health privacy legislation by August 1999, the Secretary of the U.S. Department of Health and Human Services (HHS) would issue regulations. Despite the introduction of numerous proposals, Congress failed to meet its deadline, and the duty passed to HHS to promulgate health privacy regulations.
- As required under HIPAA, HHS issued final health privacy regulations in December 2000. The final regulation, known as the “Privacy Rule” became effective April 14, 2001. The Privacy Rule has the force of law. Compliance with the Privacy Rule is generally required by April 2003.

Who Does The Privacy Rule Affect?

- The Privacy Rule does not apply to everyone who receives or maintains health information. Congress authorized HHS to issue regulations only with respect to three specified types of entities that transfer or maintain health information: Health Plans, Health Care Clearinghouses, and Health Care Providers who transmit health information in electronic form in connection with specified financial and administration transactions (such as claims for payment).

Implementing the Federal Health Privacy Rule in California

- The Federal Health Privacy Rule is similar in structure to California patient privacy laws. In general, the Federal Health Privacy Rule prohibits the sharing of individually identifiable health information without the patient’s permission unless the purpose of the disclosure is permitted by the rule. The federal rule differs from California law, a number of important areas as outlined below.
- A patient’s written consent generally must be obtained before a provider can use or disclose health information for purposes like treatment, payment, and health care operations.
- Providers will be required to have contracts with those whom they share information for administrative functions.
- In many circumstances providers will be required to limit the health information they disclose.



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Implementing the Federal Health Privacy Rule in California (Continued)

- Providers will be required to furnish a patient with a notice of privacy practices.
- Providers will be required to train employees, designate a privacy official, and maintain documentation of compliance with the regulation.

Change in the Privacy Rule is Expected

- Although the Privacy Rule is "final" that does not mean it will not be changed. HHS has made it clear that it intends to substantially change the rule in the near future.

Estimated Costs of Privacy Rule Implementation

- HHS has indicated that they are unable to make cost estimates on several important elements of the requirements. They estimate costs for implementation are likely to be in the range of \$1.8 to \$6.3 billion over five years (for those elements that are included).