

Questions and Answers
about the HIPAA Privacy Rule and CKF Participants
Covering Kids & Families
January 31, 2005 Conference Call

Introduction

On January 31, 2005, the *Covering Kids & Families* (CKF) National Program Office held a conference call for CKF state and local project staff with Joy Pritts, author of *An Introduction to the HIPAA Privacy Rule*, to answer questions about how the HIPAA Privacy Rule may affect the ability of CKF project staff to perform grant activities. These questions and answers are summarized below. Many of the questions were based on participants' real-life experiences with attempting to get data now that the HIPAA regulations are in effect. These experiences raised general as well as specific questions. We have included the facts on which the questions were based in order to put the issues into context.

Questions and Answers

1. Our local SCHIP agency requires an applicant to sign a HIPAA authorization form that permits the agency to disclose client information to us so that we can assist in the application process. The authorization form is only effective for 90 days. We would like authorizations to be valid for longer periods of time so we can assist with re-enrollment.

Q. Does HIPAA impose a 90-day limit on authorizations?

- A. **No.** To be valid under HIPAA, an authorization form must contain either an expiration date *or* an expiration event that relates to the individual or the purpose of the use or disclosure. HIPAA does not impose any specific time limit on authorizations. For example, an authorization could state that it is good for 30 days, 90 days or even for 2 years. An authorization could also provide that it expires when the client reaches a certain age.

In this case, the 90-day expiration date is set by the agency. If the 90-day expiration date interferes with your ability to assist clients well, perhaps you could discuss establishing a later expiration date with the agency.

Q. If the expiration date on an authorization has passed, is a new authorization form required?

- A. **Yes.** An authorization is no longer valid once the expiration date has passed. For example, if your client signs an authorization that is effective for 90 days so that you can assist in enrollment, it is no longer valid at the end of that 90-day period. To obtain information in the future (such as for assuring re-enrollment) you need to obtain a new signed authorization form.

2. Our consumer advocacy organization asks the business offices of health care providers for client financial information in order to assist families in applying for public benefits and to ensure that medical procedures are scheduled in facilities where the cost of care is covered by public benefits. Is this covered by HIPAA?

Q. Is a health care provider's business office covered by HIPAA?

A. It depends. Generally, if a health care provider is covered by HIPAA, then their business office is also covered by HIPAA. If the health care provider is not covered by HIPAA, neither is their business office.

Q. Is client financial information covered by HIPAA?

A. Yes. HIPAA protects information that was received or created by a health care provider (or health plan) that relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. Here, the provider apparently collects patient financial information to aid in obtaining reimbursement for treatment. Because this financial information relates to the payment for the provision of health care it is protected by HIPAA.

Q. Does a covered provider need an authorization form to disclose client financial information to an advocacy organization that is assisting the client with enrollment?

A. It depends. Some providers view this activity as being done on behalf of the client. When this is the case, the provider needs an authorization form to disclose client information to the advocacy organization. Other providers may view this activity as assisting them in receiving payment. If this is the case, the provider will require the advocacy organization to enter into a business associate contract.

Q. How do I figure out how HIPAA applies to my particular situation?

A. The rules under HIPAA change depending on the on the specific facts of the situation. Changing just one fact can mean a different rule applies. A good general framework to use in analyzing how HIPAA applies to your particular situation is to first answer the following questions:

- What type of information is to be used or disclosed?
- Is it related to past, present or future health care, the provision of health care or the payment of health care?
- Is it identifiable information?
- Who is going to use or disclose the information?

- Who is the intended recipient of the information?
- What is the purpose of the use or disclosure?

Once you have answered these questions you can see which rule appears to apply to your particular facts.

3. I understand that the Process Improvement Collaborative works with states to improve the eligibility determination process. Does the Collaborative have difficulty getting data for this project?

Q. Is data aggregated at the state level covered by HIPAA?

A. No. Data aggregated at the state level is not protected by HIPAA. The Process Improvement Collaborative has not had any problem getting data since the data it uses is aggregated at the state level and, therefore, is not subject to the HIPAA Privacy Rule.

4. Our state used to disclose state, county and zip code aggregate data to our enrollment center so that we could analyze enrollment and re-enrollment trends. We have a business associate agreement with the state to assist in client enrollment, but they no longer release this kind of aggregate data to us. Could they release this information to us under a business associate agreement?

Q. Can a Medicaid/SCHIP program use a business associate agreement to disclose identifiable information to an enrollment center to perform analysis of enrollment and re-enrollment trends?

A. Yes. If it wanted to, a Medicaid/SCHIP program could enter into a business associate agreement under which an enrollment center would analyze enrollment and re-enrollment trends on behalf of the program. If such an agreement were in place, the program could disclose to the center data aggregated at the county and zip code level (which is considered to be identifiable data). However, the terms of a business associate agreement are up to the agency. If a program does not want to disclose aggregate enrollment data to you for analysis, it does not have to do so.

Here, it appears that the state no longer wants the organization to conduct this sort of analysis. The state has entered into a limited business associate agreement where it has authorized the enrollment center just to perform client services. There is no way to force the state to agree to allow the center to perform enrollment analysis with aggregate data.

5. **Q. Do outstation workers have to sign business associate contracts?**

A. It depends. Outstation workers in some states are employees of the agency that operates the state Medicaid/SCHIP program. These workers do not have to sign business associate contracts. In other states, outstation workers are not employed

by the state program. In these states, the outstation workers generally must sign business associate contracts because they are acting on behalf of the state program.

6. Q. What should I do if I am having a hard time getting data, but I think I should be able to get it under HIPAA?

A. You should first try to find out why the program is refusing to give you the data. HIPAA has made many people much more aware of other privacy laws, such as Medicaid regulations. Sometimes a program will refuse to provide data not because of HIPAA but because of restrictions in another law or regulation.

Once you have identified the grounds for the refusal, you should talk to either the agency's privacy officer or the person they have designated as their contact person for HIPAA issues. This information should be available in the program's notice of privacy practices.