



Conducting HIPAA Investigations: Other Challenges

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Genetic Information

- Genetic Information Non-Discrimination Act
 - Signed into law May 21, 2008
 - To protect individuals from discrimination in health insurance and employment on the basis of genetic information
 - Mandates modification of the Privacy Rule to incorporate provisions specific to genetic information
 - Genetic information is protected health information;
 - Prohibit the use or disclosure of genetic information for underwriting
- Privacy Rule NPRM published October 7, 2009 (comments taken until December 7, 2009)



Patient Safety and Quality Improvement Act

Establishes voluntary reporting system to enhance the data available to assess & resolve patient safety & quality issues.

- New Patient Safety Organizations (PSOs), private entities recognized by the Secretary, to collect & analyze patient safety events reported by health care providers
- Provides Federal privilege & confidentiality protections for "patient safety work product"
- HHS' Agency for Healthcare Research and Quality to administer rules for listing qualified PSOs
- OCR to enforce confidentiality provision



Health Information Technology

- **HIPAA Privacy and Security Rules Apply to Covered Entities' Use/Disclosure of PHI**
 - Privacy Rule: individual rights, limited uses/disclosures, administrative requirements
 - Security Rule: administrative, physical and technical safeguards
 - OCR HIT Guidance – December 2008
 - *The HIPAA Privacy Rule and Electronic Health Information Exchange in a Networked Environment*
 - *The HIPAA Privacy Rule's Right of Access and Health Information Technology*
 - *Personal Health records (PHRs) and the HIPAA Privacy Rule*
- **The HITECH Act Further Defines the Legal Landscape – February 2009**
 - Entities that provide data transmission to covered entities and routinely require access to PHI (HIE Organizations, RHIOs, E-prescribing Gateways, PHR Vendors)
 - Breach notification of “unsecured protected health information”
 - Patient rights with respect to Electronic Health Records (EHRs)



Emergency Preparedness

- Emergency preparedness and recovery planners are interested in the availability of PHI:
 - Disasters and emergencies;
 - National Disaster Medical System;
 - Pandemic and All-Hazards Preparedness Act implementation.
- The HIPAA Privacy Rule permits covered entities to disclose PHI for a variety of public health and other purposes:
 - OCR provides technical assistance;
 - OCR web tool addresses avenues of information flow that could apply to emergency preparedness activities.



OCR Web Site

- <http://www.hhs.gov/ocr/hipaa/>
- The full text of the Privacy and Security Rules
- HIPAA Privacy Rule summary
- Covered entity "decision tool" to assist individuals and entities in making these determinations
- Over 200 frequently asked questions
- Fact sheets
- Information about the OCR enforcement program