

# HIPAA COMPLIANCE – WE'RE IN THE COUNTDOWN!

By Jeanine Freeman, JD

Some medical practices have made great strides with HIPAA compliance; others are just getting started. Congratulations wherever you are, but remember to keep moving. HIPAA is not going away! Hopefully this article mentions some resources that will assist you.

treatment, payment, and health care operation (TPO) purposes. Authorizations for non-TPO purposes are still required. Also, written notice of the health provider's privacy practices and the patient's privacy rights must be given to the patient and good faith effort must be made to obtain the patient's written acknowledgement

no later than the date of first service (except in emergency situations). Many other helpful clarifications were issued in the August 14 rule. Go to [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa) for a fact sheet and links to the August 14 rule; the OCR also is updating its July 6, 2001 guidance to reflect changes to the privacy rule.

**Since HIPAA's privacy rule is meant to be a uniform national standard for release of PHI, does my practice need to worry about state law?** Yes, and this is one of the trickier aspects of HIPAA. The privacy rule addresses instances in which HIPAA will "preempt" state law, in which event covered entities need only pay

attention to HIPAA; where state law is consistent with HIPAA, however, covered entities must comply with both HIPAA and state law. If HIPAA says state law prevails, you need only comply with state law. An attorneys' work group is preparing a preemption analysis on Iowa law; once released, the report will be available through IMS and the Iowa SNIP.

**Did the August 14 rule make any changes to HIPAA's requirements for business associates?** Yes, covered entities can continue to work with business associates under certain

## HIPAA's Transaction/Code Set Standard

Compliance date: October 16, 2002, unless compliance plan extension on file, then October 16, 2003. Enforcement agency: HHS, Centers for Medicare and Medicaid Services (CMS). Final regulations: Federal Register August 17, 2000 and May 31, 2002. Web site: <http://www.aspe.hhs.gov/admsimp>. For compliance form, go to <http://www.cms.hhs.gov/hipaa/hipaa2/ascaform.asp> or call CMS toll-free at 866-627-7748.

## HIPAA's Privacy Standard

Compliance date: April 14, 2003. Enforcement agency: HHS, Office of Civil Rights (OCR). Final regulations: Federal Register December 28, 2000 and August 14, 2002. Web site: <http://www.hhs.gov/ocr/hipaa> or call OCR toll-free at 410-786-4232.

## HIPAA's Security Standard

Compliance date: Not set; proposed rules provide a framework for compliance and substantial changes are not expected. Enforcement agency: HHS, Centers for Medicare and Medicaid Services (CMS). Final regulations: Not released, proposed regulations in Federal Register August 12, 1998. Web site: <http://www.aspe.hhs.gov/admsimp>.

## HIPAA's Identifier Standard

Compliance date: July 30, 2002 for use of national employer identifier standard (IRS' employer identification number (EIN)); not set for providers and other covered entities. Enforcement agency: HHS, Centers for Medicare and Medicaid Services (CMS). Final regulations: Federal Register, May 31, 2002 for employer identifier. Web site: <http://www.cms.gov/hipaa> or <http://www.aspe.hhs.gov/admsimp>.



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**I keep hearing about the controversial revisions to the HIPAA privacy rule. What is that about?** The August 14, 2002 final rule amends, but does not eliminate, the December 28, 2000 HIPAA privacy standard. The changes respond to claims of covered entities (health care providers, health plans, and clearinghouses subject to HIPAA) that the December rule was impractical and burdensome. Critics of the changes say patient privacy was compromised. HIPAA's privacy standard now no longer requires written patient consent to the release of personal health information (PHI) for

existing contracts until April 14, 2004 or until the contract is renewed or modified, whichever occurs first. This transition period applies only to contracts or written agreements with business associates in effect as of October 15, 2002 (the effective date of the August 14 rule) and not up for renewal or modification prior to the April 14, 2003 privacy compliance date; contracts that automatically renew during this time are included in the transition period.

**Do the HIPAA privacy rules cover personnel records that my practice keeps on our employees?** No, the August 14 rule clarifies that employment records maintained by a covered entity in its capacity as an employer are not PHI. If, however, the covered entity provides services to the employee in its health care capacity, HIPAA comes into play.

**My practice is being bombarded about HIPAA. Are there key resources we should consult first?** The AMA is working hard on HIPAA and is a particularly good, practical resource, including forms being revised to reflect the August 14 rule and HIPAA guidebooks for purchase. Check the Internet at [www.ama-assn.org/ama/pub/category/4234.htm](http://www.ama-assn.org/ama/pub/category/4234.htm). Another resource is WEDI (Workgroup for Electronic Data Interchange) and its HIPAA working papers, particularly the one for small practices. Go to <http://snip.wedi.org>. In addition, MMIC has an excellent HIPAA page at <http://www.mmimedportal.com>. Health information specialists should visit <http://www.ahima.org> (includes forms) and <http://www.himss.org/asp/hipaasource.asp>. Wellmark also just launched its HIPAA web site with information on transactions testing and codes; go to <http://www.wellmark.com/hipaa/hipaa.htm>.

**I keep hearing about the Iowa HIPAA SNIP. What is it and should I join?** The Iowa SNIP is one of 23 regional affiliates of the WEDI strategic national implementation process for cooperative implementation of HIPAA. A steering committee guides SNIP efforts, and the Iowa SNIP has three working committees (privacy, transaction/code sets and security). Anyone may join a SNIP working committee or keep abreast of SNIP developments and work products through its web site at [www.iowasnip.org](http://www.iowasnip.org).

#### Iowa HIPAA SNIP Work Products Underway:

- Transaction testing definition for use in Iowa
- Request to AMA to eliminate certain codes/modifiers
- Iowa law preemption analysis
- Authorization/revocation of authorization
- Notice of privacy practices
- Restriction request/response
- Amendment/correction request/response
- Accounting of disclosures/disclosure log
- Complaint intake/log/disposition report
- Patient request to inspect/copy information
- Objection to listing in patient directory
- Confidentiality form
- Business associates contract provisions
- Patient rights PowerPoint presentation
- Employee education PowerPoint presentations tailored to large providers, small providers, pharmacies, payers, self-funded employers, vendors, consumers
- Consumer advisory on individual rights
- Security gap analysis

**What about vendors?** IMS has not endorsed any of the numerous HIPAA vendors. Vendors with an established history of working with physician practices and who will adapt to your needs for a reasonable price likely are your best resources. Before investing in a vendor service, become familiar with the HIPAA basics and resources already available to you. The University of Iowa Hospitals and Clinics is finalizing its HIPAA Pathfinder project (<http://www.uibc.uiowa.edu/hipaa>), an electronic interactive HIPAA tool.

**My practice transacts business by paper only. Do I have to worry about HIPAA?** Today, you likely are not a covered entity for HIPAA privacy purposes. But, by October 16, 2003, physicians' offices must submit their Medicare claims electronically, unless the physician's practice has less than 10 FTEs (full-time equivalent personnel), at which time the physician becomes a covered entity subject to HIPAA's requirements.

**Attend IMS October HIPAA afternoon workshops in Davenport (Genesis Medical Center, Oct. 23), Dubuque (Mercy Medical Center, Oct. 24), Mason City (Mercy Medical Center North Iowa, October 30) and Des Moines (Iowa Medical Society, Oct. 31).**

**Attend December 9 HIPAA SNIP all-day statewide conference in Ames.**