

Overview of HIPAA:

Counties Must Begin to Prepare

By Elaine Menzel

NACO Assistant Legal Counsel

In 1996, the Health Insurance Portability and Accountability Act (HIPAA), also known as the Kennedy-Kassebaum Act (Public Law 104-191), was signed into law. The purpose of the law is to improve the efficiency and effectiveness of the health care system by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health information. Although health reform provisions of HIPAA took effect several years ago, regulations pertaining to “administrative simplification,” privacy and security of patient and health information were finalized more recently and will be taking effect in October 2002 and April 2003. Still other sections are in the process of being finalized.

Who Is Covered?

Counties are covered to the extent that the regulations affect public or private (1) health plans, (2) health care clearinghouses, (3) health care providers, and (4) organizations that handle health care information (also known as hybrid entities).

Health Plans

A health plan is an individual or group plan that provides or pays the cost of medical care. 45 C.F.R. § 160.103. Examples of exceptions not included within a health plan are:

1. Workers' compensation program;
2. Disability insurance program;
3. Automobile insurance carriers;
4. Issuer of a long-term nursing home fixed indemnity policy, and;
5. Property and insurance carriers.

42 U.S.C. § 300gg-91(c)(1).

Compliance Dates

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| • Oct. 16, 2002 | Transactions and Code Sets (Possible to Apply for One Year Extension 45 C.F.R. § 162) |
| • Oct. 16, 2003 | Transactions and Code Sets – Small Health Plans and Those That Applied for One Year Extension (45 C.F.R. § 162) |
| • April 13, 2003 | Privacy (45 C.F.R. §§ 160 through 164) |
| • To Be Determined | Security (Expected out late 2003 or early 2004) |
| • July 30, 2002 | Identifiers – employers (45 F.R. § 142) |
| • To Be Determined | Identifiers – providers, plans and potentially individuals |

Health Care Clearinghouses

Health care clearinghouse means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches that process or facilitate the processing of health information received from another entity into HIPAA standard data elements and vice versa. 45 C.F.R. § 160.103.

Health Care Providers

A health care provider is a provider of medical or health services and any other person or organization who furnishes, bills or is paid for health care in the normal course of business. 45 C.F.R. § 160.103.

If the entity of the county meets any of the definitions listed above, then the entity is likely a “covered entity” under HIPAA and subject to its provisions. Even if the entity does not meet any of the definitions listed above and is not a covered entity, it may still be covered if it performs a “covered entity” function.

To determine if the function or

program performs a “covered entity” function, review the definitions of health plan, health care clearinghouse and health care provider to evaluate whether or not any of the functions or programs are performed within the department with respect to HIPAA information. If the answer is yes, then a “hybrid entity” must apply the HIPAA regulations to at least the programs/ functions which are functioning as a “covered entity.”

Regulations

The regulations that have or will be adopted as a result of HIPAA pertain to (1) electronic transactions and code sets, (2) privacy, (3) security and (4) identifiers. 45 C.F.R. §§ 160 through 164.

Electronic Transactions and Code Sets

The first provision of the law for administrative simplification, issued in October 2000, adopts and requires the use of specific standards for electronic transactions and code sets used in the electronic transmittal of health care information. The deadline for compliance with this rule is **Oct. 16, 2002**. However,

the deadline is Oct. 16, 2003 for small health plans and for entities who submit a compliance extension plan by Oct. 16, 2002. 45 C.F.R § 162. The extension plan can be electronically submitted to the Centers for Medicare and Medicaid Services at (<http://www.cms.gov/hipaa/>).

Privacy

The effective date for the privacy regulations is April 14, 2003 for most covered entities. 45 C.F.R §§ 160 through 164. These rules are intended to address growing public concerns that advances in electronic technology have created. The standards define what is appropriate and inappropriate disclosure of protected health information (PHI) and how patient rights are to be protected. The Office of Civil Rights within the U.S. Department of Health and Human Services Web site contains additional information about the regulations and frequently asked questions. (<http://www.hhs.gov/ocr/hipaa/>)

Security

The security standards have not been developed yet. The security regulations will address administrative procedures, physical safeguards, technical security data issues and technical security mechanisms. The regulations are expected to be released soon, with a compliance date of late 2003 or early 2004.

Identifiers

Identifiers are the numbers used in the administration of health care for identification purposes. They are intended to simplify administrative processes, such as referrals and billing, improve data accuracy and reduce costs over time. The rules for employer identifiers will take effect July 30, 2002 (45 F.R. § 142); however, the rules for providers, plans and potentially individuals have not yet been established.

Civil and Criminal Penalties

The general penalty for violating HIPAA is \$100 for each violation with a maximum of \$25,000 during a calendar year. A defensible

position is possible for civil non-compliance and occurs when a HIPAA compliance program has been implemented. Wrongful disclosure fines range up to \$250,000, not more than 10 years in prison, or both.

Steps to Take to Prepare for HIPAA

1. Become familiar with the provisions of HIPAA (various links and additional information will be provided on NACO's HIPAA Web page (<http://www.nacone.org/hippa.htm>).
2. Comprehensive assessment of the county's information security systems, policies and procedures throughout their various departments and business contractors that are involved in gathering, maintaining and billing for various health care services and information.
3. Develop an action plan with deadlines and timetables:
 - a. Appoint a person to coordinate HIPAA within the county;
 - b. Consider establishing a HIPAA committee;
 - c. Involve your county attorney.
4. Make an inventory of the individually identifiable health information your organization your organization maintains in electronic and paper formats.
5. Implement HIPAA Plan.

A number of individuals that discuss the impact of HIPAA say that it pales in comparison to the magnitude of the Y2K information technology transition because HIPAA is a system-wide issue that will potentially require modifications to not only information technology but also to various policies and procedures related to privacy and security of health information.

Additional articles detailing HIPAA will appear in future issues of the **County-line** and the subject is being considered as a topic for the December convention.

Additional Resources:

- <http://www.nacone.org/hipaa.htm>
- HIPAA (Public Law 104-191) – <http://aspe.os.dhhs.gov/admsimp/p1104191.htm>
- Centers for Medicare and Medicaid – HIPAA <http://cms.hhs.gov/hipaa/>
- Administrative Simplification – <http://aspe.os.dhhs.gov/admsimp/>
- Medicaid HIPAA Compliant Concept Model – <http://www.mhccm.org/>
- U.S. Department of Health and Human Services - Office for Civil Rights – <http://www.hhs.gov/ocr/hipaa/>
- National Association of Counties – http://www.naco.org/programs/special/hot_info.cfm