Hot Topics Update: HIPAA Highlights

N.C. Local Health Directors' Legal Conference

April 2018

UNC SCHOOL OF GOVERNMENT

DEFINING YOUR ENTITY

Hybrid entity

- A HIPAA-covered entity that has both covered functions and non-covered functions
- In other words, the entity has some programs/services/activities/functions that have to comply with HIPAA and some that don't

UNC SCHOOL OF GOVERNMENT

Time for a reboot?

- LHDs are encouraged to revisit their hybrid entity designations, especially if:
  - New consolidated agency
  - Programs/services added or ended
  - Current designation more than a couple years old
- No templates or required forms, but there is a specific HIPAA provision that outlines what has to be in a hybrid entity designation
  - 45 CFR 164.105(a)

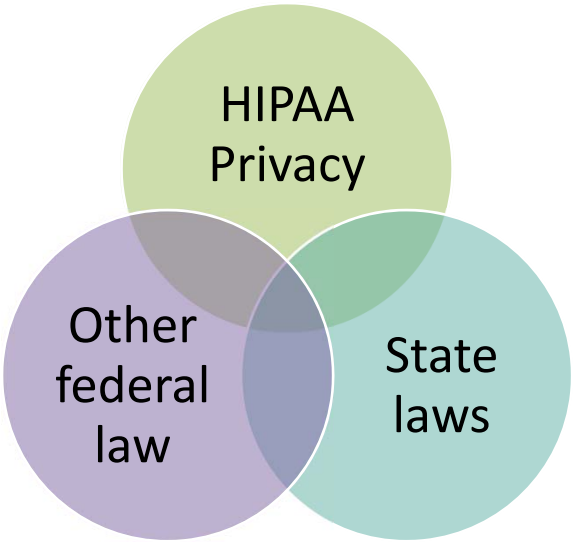
UNC SCHOOL OF GOVERNMENT

Why is it important?

- To know which programs and which workforce members must comply with HIPAA
- Recognize there are two separate but related questions:
  - Must a program/service/activity comply with HIPAA?
  - Is the information held by the program/service/activity confidential?
- First question is answered by hybrid entity designation; second question is answered by whether confidentiality laws apply

UNC SCHOOL OF GOVERNMENT

LHDs are subject to multiple confidentiality laws



FAQs with answers that depend in part on what the hybrid entity designation says

- What are the rules for disclosing particular information?
- Suppose information has been used or disclosed improperly. Is the incident subject to the HIPAA breach notification process?
- Which information in your entity does the HIPAA security rule apply to?
- Which vendors do you need business associate agreements with?
- Which workforce members have to take HIPAA training?

UNC SCHOOL OF GOVERNMENT

HIPAA RIGHT OF ACCESS

Individual right of access

- An individual has a right to inspect and obtain a copy of the individual's PHI that is in a *designated record set*, which includes:
  - Medical records
  - Financial records
  - Other records used to make decisions about the individual
- Limited exceptions:
  - Psychotherapy notes
  - Information compiled in anticipation of litigation (but individual still may access underlying records/info)

When can right of access be denied?

Unreviewable grounds

- PHI requested is under one of the exceptions
- PHI associated with research, if individual has agreed in advance to temporary denial as part of research consent
- PHI was obtained from someone other than a health care provider under promise of confidentiality
- Inmate of a correctional institution can be denied a copy (but not access) in some circumstances

Reviewable grounds

- Licensed HCP determines access requested is likely to endanger life or physical safety of individual or other person
- PHI makes reference to another person and licensed HCP determines access is likely to cause substantial harm to that person
- Access request is made by personal representative and licensed HCP determines provision of access is likely to cause harm to individual or another person

Who has the right of access?

Individual

- The person who is the subject of the PHI (aka patient or client)

Personal representative

- Person who makes health care decisions on behalf of an individual

UNC SCHOOL OF GOVERNMENT

Right of access & 3rd parties

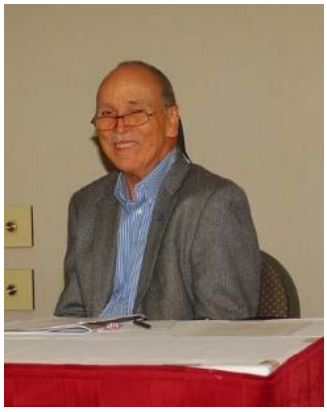
- Individual who wants to direct PHI to a third party can use the right of access to do so, rather than the HIPAA authorization process

UNC SCHOOL OF GOVERNMENT

Individual can choose …

"Give my information to me"

"Give my information to another person/entity that I specify"



UNC SCHOOL OF GOVERNMENT

Responsibilities of covered entity

- If information requested using right of access, must follow the requirements in the right of access rule:
  - Must provide (unless ground for denial)
  - No later than 30 calendar days (much sooner if possible)
  - In the form the individual requests (paper, electronic)
  - Via the transmission mode the individual requests
  - Any fees charged are subject to HIPAA limits (reasonable, cost-based but not including costs of search/retrieval)

UNC SCHOOL OF GOVERNMENT

Responsibilities of CE (cont.)

- May require requests for access to be in writing
- The CE must verify the person's identity
- However, procedures must not create a barrier to access or cause unreasonable delay
  - For example: HHS says you can't require a person to appear in person

UNC SCHOOL OF GOVERNMENT

Some of the questions this raises

- What form will agency use for written requests for access?
- How will you deal with requests in a way that doesn't create barriers or unreasonable delays but still satisfies duty to verify identity?
- Do you need any new policies or procedures to ensure compliance with timeliness, fee limits, other requirements?

UNC SCHOOL OF GOVERNMENT

HIPAA Resources

Hybrid Entity

- 45 C.F.R. 164.105(a)

HIPAA Right of Access

- HHS Guidance on Individual Right of Access: https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html
- 45 C.F.R. 164.524

Materials for HIPAA Critical Updates workshops

- Available through ncphlaw.unc.edu
- Click on SOG Public Health Law Training
- Scroll down to HIPAA Critical Updates Workshops

UNC SCHOOL OF GOVERNMENT

HIPAA Training

Online modules (forthcoming summer 2018)

- Introduction to HIPAA
- Using and Disclosing Protected Health Information
- Breach Notification

Workshops: HIPAA & NC Local Health Departments – 2018 Critical Updates and Tools for Compliance & Training

- May 16: Greenville
- May 21: Raleigh
- May 23: Boone

These trainings are a joint project of the NC Institute for Public Health and UNC School of Government, made possible by funding from the NC AHEC Program.

UNC SCHOOL OF GOVERNMENT