

HIPAA COMPLIANCE AND THE EMPLOYMENT INDICATOR SYSTEM

January 26, 2010

Presented by:

Sandra K. Mann, Esquire
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester, NH 03101
603.695.8656
smann@devinemillimet.com

Overview of Presentation

- 1) Scope of HIPAA,
- 2) Relationship between HIPAA and State privacy laws, and
- 3) Address specific types of uses and disclosures of the individually identifiable data that will be included in the Employment Indicator System.

Scope of HIPAA

- 1) Definition of Covered Entities.
 - Health care providers
 - Health care clearing houses
 - Health care plans

- 2) Vocational Rehabilitation providers are not covered entities and not subject to HIPAA.

Relationship Between HIPAA and State Privacy Laws

- 1) HIPAA generally preempts state law except when State privacy law provides greater protection to the individual.
- 2) Both area agencies and community mental health centers must comply with State privacy laws (He-M 310.05 and He-M 309.05).
- 3) Protected Health Information (PHI) vs. Individually Identifiable Information.

What is the Interface Between HIPAA and State Privacy Laws

- HIPAA is more comprehensive than state law and, in most cases, provides greater protections to the individual.

Examples:

- Requirements for authorizations.
- Obligations imposed upon business associates.
- Security requirements for PHI.
- Distribution of Notice of Privacy Practices.

- There are more exceptions under HIPAA that allow covered entities to use or disclose protected health information without the prior authorization or consent of the individual than under State law.

Examples:

- Treatment.
- Operations.
- Family members.

What is the Interface Between HIPAA and State Privacy Laws

(Continued)

- Because there is no exception under State law for treatment or case coordination, pursuant to the HIPAA preemption rule, i.e., State law is more stringent and offers greater protection to the individual with respect to privacy of protected health information, area agencies and community mental health centers must obtain the written consent of the individual before disclosing such information to another area agency, community mental health center, or to vocational rehabilitation for purposes of case coordination.
- State law protects all individually identifiable information, not just protected health information.

What Does This Mean in Terms of Participation in the Employment Indicator System?

- Individually identifiable information may be entered into the System without the “written consent” of the individual but no other agency/provider may have access to that information.
- “Written consent” must be obtained to disclose individually identifiable information to other area agencies, community mental health centers, and vocational rehabilitation.
- “Written consent” under State law is not defined, but HIPAA specifically defines a valid authorization for the use or disclosure of protected health information not otherwise permitted pursuant to an exception.

Authorizations

- 1) Authorizations must be HIPAA compliant:
 - The date/event has not expired;
 - Filled out completely;
 - Has not been revoked;
 - Contains a description of the information to be used or disclosed that identifies the information in a specific or meaningful fashion;
 - Identifies the agencies which will receive the information;
 - A description of the purpose of the information, e.g., case coordination;
 - Signature and date;
 - Include all required statements.

- 2) An authorization specific for participation in this System is not necessary.

Disclosures to State and Local Administrative Agencies

State law and HIPAA permits the disclosure of individually identifiable/protected health information without the consent or authorization of the individual to State and local agencies for purposes of:

- Determining eligibility for funding;
- Assisting in accrediting or licensing decisions;
- Monitoring or evaluating service delivery;
- Assuring the delivery of appropriate services to clients;
- Planning future service delivery.

The Use of De-Identified Information

- Information that is not considered individually identifiable information falls outside the scope of HIPAA and the State privacy laws.
- Must meet the standards and implementation specifications set forth in HIPAA.
- Any entity creating de-identified information on behalf of the area agencies and community mental health centers must enter into a business associate agreement.

Withdrawal of Authorizations

May individuals opt to withdraw their authorization for either the use or disclosure of their individually identifiable information in the Employment Indicator System?

- 1) HIPAA permits individuals to withdraw their authorization for the use or disclosure of their protected health information in whole or in part;
- 2) Revocations must be in writing;
- 3) Covered entity need not honor the revocation if the covered entity has already taken action or relied upon the individual's authorization.

Use of Individually Identifiable Information After Closure of a Case

If an area agency / community mental health center closed its case with or terminated a particular individual, and subsequently that individual receives services from a different provider, may the new provider have access to the record created by the individual's previous provider?

- Only with valid authorization from the individual;
- Both State law and HIPAA require the agency to continue to maintain privacy protections regardless of whether the individual is currently receiving services from the covered entity.

Business Associate Agreements

- A business associate is a person (or legal entity) that (i) performs certain functions or activities on behalf of the covered entity that involve the use or disclosure of individually identifiable health information, including, for example, claims administration or processing, data analysis, utilization review, quality assurance, billing; or (ii) provides, other than in the capacity of a member of the workforce, legal, accounting, management, accreditation or financial services on behalf of the covered entity.

- BAAs will be required with:
 - Software vendors and contractors;
 - IT administrator; and
 - Any entity that creates de-identified information.

Questions

