

So, what does all of that really mean?



The Department of Social Services

- The Department has declared itself to be a single covered entity.
- Thus, each and every one of our divisions is a covered entity and must comply with HIPAA..



The Relationship Between DSS & In-Home Service Providers

- In-Home Service Providers are Business Associates of the Department.



Remember.....

- Business Associates are entities that work on behalf of the covered entity, but are not members of the covered entity's workforce.
- In their work, BAs have access to or work with PHI.

How Does HIPAA impact the way DSS works with Providers?

- Accounting for disclosures of information;
- Authorization forms; Notice of Privacy Practices; Acknowledgement forms;
- Compliance with HIPAA (BA provisions);
- Call before faxing; and
- Referrals to the Privacy Officer.

Accounting for Disclosures

- Individuals have the right to an accounting, which details the disclosures a covered entity has made in the prior 6 years.
- A CE must account for the information its BAs have disclosed as well.
 - 45 CFR sec. 164.528

Penalties for Noncompliance

- Penalties can be levied against the Department as the CE.
- The Department can also terminate a contract with the BA.
- Under ARRA, HHS can sanction the BA directly.
 - 45 CFR sec. 164.504

HIPAA's Relationship with MO Law

- HIPAA is designed to allow an individual the greatest access to their personal information.
- HIPAA is also designed to limit the amount of personal information others receive regarding a client or patient to the "minimum necessary" to perform their task.

Question:

- I am a mandated reporter. Do I have to provide the hotline only the minimum necessary information regarding a client?

Answer:

NO!

HHS Says:

- “Minimum Necessary does not apply to required by law” disclosures under 45 CFR sec. 164.512(a).
- Entities can rely on the Adult Protective Services request under 45 CFR sec. 164.512(c).
- Entities may continue to disclose information as needed throughout the investigation.

ARRA HITECH

- Effective 2/17/09
- Imposes direct responsibilities and liability on BAs for compliance with the Security Rule.
 - BAs must have Administrative, Physical, and Technical Safeguards in place
 - Policies, training, sanctions
 - Control access to buildings & systems; staff ID's
 - Control access to computers & files; 1 user/1 password; security safeguards even if offsite

Breach Notification

- CEs must notify individuals whose information was breached if:
 - The information is PHI;
 - The PHI was disclosed in an Unauthorized Use/Disclosure
 - The PHI was unsecured (e-PHI that is not encrypted)
 - The PHI was compromised
 - Watch out for portable electronic devices (Blackberries, laptops, notebook computers, etc.)

BA Breach Duties

- NOTIFY DSS IMMEDIATELY!
 - See the Immediate reporting required as per the Business Associate provisions of your contract.
 - See the five (5) day “report” required as per the Business Associate provisions of your contract.

BA report to DSS

- BA must report **immediately** (as soon as aware) to DSS any Security Incident/Improper Use or Disclosure/Breach.
- BA must take action to discontinue the incident.
- BA must submit a “report” with **five (5) days** to DSS.

BA Report to DSS

- Must contain a description of the remedial action taken or to be taken;
- Proposed plan to prevent future incidents;
- Names & contact information of individuals involved;
- Description of the incident;
- Dates of incident & discovery;
- Description of type(s) of PHI involved, including whether or not it was secured;
- Recommendations for the protection of those individuals involved.

Absolute Ban on Remuneration

- HITECH Act prohibits remuneration for PHI
 - BA shall not directly or indirectly receive remuneration in exchange for any PHI without a valid authorization!

Available Resources

- Centers for Medicare and Medicaid HIPPA link:
 - www.cms.hhs.gov/Security/Standard/
- Department of Health and Human Services, Office of Civil Rights HIPPA link:
 - www.hhs.gov/ocr/privacy/
- MO DSS HIPAA Privacy Notice:
 - <http://www.dss.mo.gov/hipaa/hipracy.pdf>
