

How Will HIPAA Affect Your Practice?

By James A. Purvis, PhD & Charles L. Cooper, PhD

All psychologists delivering health care must consider themselves subject to the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA), regardless of the nature of their practice. Too many of the common technological methods we use to transmit, transport, store, and maintain patients' records require us to comply with the new Federal regulations.

So what is HIPAA and what are you going to have to do to be compliant with the regulations?

History

HIPAA was introduced by Senators Kassebaum and Kennedy and passed in 1996. Its purpose was to incrementally reform the U.S. health system following congressional rejection of the comprehensive Clinton plan. The legislation was designed to reduce the probability that people would lose their health coverage by making insurance "portable" from job to job. The bill also attempted to make the healthcare system more efficient by creating one common informational language, so that administrative and information systems could better "talk" to each other. However, making information transmission more efficient could lead to misuses of records and invasions of privacy. Thus, it was determined that there was a need for the "transaction," "security," and "privacy" rules now promulgated by the Secretary of Health and Human Services (HHS) under HIPAA.

The transaction rule governs the software and data protocols for transmitting health information electronically. The security rule (yet to be released in final form) addresses record storage and maintenance (e.g., access to offices, chart storage, computer security). The privacy rule establishes policies, procedures, and business service agreements to control access to, and use of, patient information. Privacy rule compliance is required on April 14, 2003.

The government has established stern consequences for failure to comply. There are civil penalties of up to \$100 for each violation, not to exceed \$25,000 in a calendar year, or criminal penalties of up to \$250,000 and/or imprisonment in a federal penitentiary for up to 10 years. HIPAA regulations specify, however, that HHS is to achieve compliance through "cooperation and assistance" rather than immediate enforcement.

Education and assistance is available. GPA has already offered two HIPAA workshops and another is planned for the Division E Midwinter Conference in January 2003. More workshop dates may be added if needed by our members. The APA Practice Organization is about to release detailed model documents and forms that we can customize for our own practices. Be sure to continue your APA membership so that you will receive all of these important documents.

HIPAA Definitions

- **Protected Health Information (PHI):** Health information that is identified with a specific person and therefore protected by the privacy rule.
- **The Designated Record Set:** The set of medical and billing records retained by a provider in order to make decisions about a patient. It is what we generally call the "medical record" and is separable from Psychotherapy Notes.
- **Psychotherapy Notes:** The process notes of a therapist which, when kept separate from the medical record (the designated record set), are accorded a higher level of protection under HIPAA.
- **Authorization:** The written permission by the patient for specific information to be used or released for purposes other than treatment, payment, or healthcare operations. (For example, authorization is required for release of psychotherapy notes.)

So, What Must We Do?

The following table provided the primary requirement and action steps necessary for compliance:

TOPIC	HIPAA REQUIREMENT	ACTION STEPS
1. Transaction Rule	Practices that transmit claims electronically need practice management software or a healthcare clearinghouse that meets HIPAA requirements	HSS required providers to submit an extension form by 10-16-2002 describing their plan for complying with the transaction rule by the requested extension deadline
2. "Privacy Officer"	A practice must have a privacy officer who is responsible for development and implementation of policies and procedures consistent with the HIPAA privacy rule	Appoint and train a privacy officer (You, if in solo practice, or partner, if in group practice)
3. Formalize processes and procedures	Practice must create a set of policies and procedures to comply with HIPAA	Wait for release of model policies and procedures and modify them for your practice
4. Inform Patients	Patients must be informed of their privacy rights under HIPAA	Modify model APA forms for use in your practice
5. Secure Patient Records	Security rule not yet finalized. Records must be retained for 6 years.	Wait for security rule specifications and APA Practice Organization guidance
6. State Law Awareness	Psychologists are expected to know their own state laws governing privacy to determine whether state law or HIPAA govern a specific situation	Wait for APA analysis of HIPAA/state law preemption issues
7. Train Employees	Employees of the psychologist must know how HIPAA applies to their job function	Conduct training after policies, procedures, and security measures are established
8. Use of PHI	Patients must be informed of the use of their PHI for treatment, payment or healthcare operations	Customize the APA model patient informed use form for your practice
9. Release of Information	Release of PHI for purposes OTHER than treatment, payment or healthcare operation requires specific patient "authorization"	Customize the APA model patient authorization form for your practice
10. Psychotherapy Notes	<u>Separate</u> therapy notes from the medical record section to qualify for higher privacy status	Segregate psychotherapy notes from the rest of the medical record

It is extremely important to note that the HIPAA privacy rule provides a "floor" of protection. When state law provides the patient with a *higher* level of protection, state law will prevail. Thus, psychologists will need a clear understanding of their state privacy law (under which we have already been operating). APA is currently researching the statutes of each state and will provide members with guidelines regarding preemption issues specific to their individual state. These guidelines will be sent to APA members when completed.

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