

Protected Health Information





What Is Covered?

- ◆ Protected health information (PHI)
 - Individually identifiable health information
 - Transmitted or maintained in any form or medium by a Covered Entity or its Business Associate



Individually Identifiable Health Information

- ◆ Health information, including demographic information
- ◆ Relates to an individual's physical or mental health or the provision of or payment for health care
- ◆ Identifies the individual



What is NOT Covered?

Not PHI:

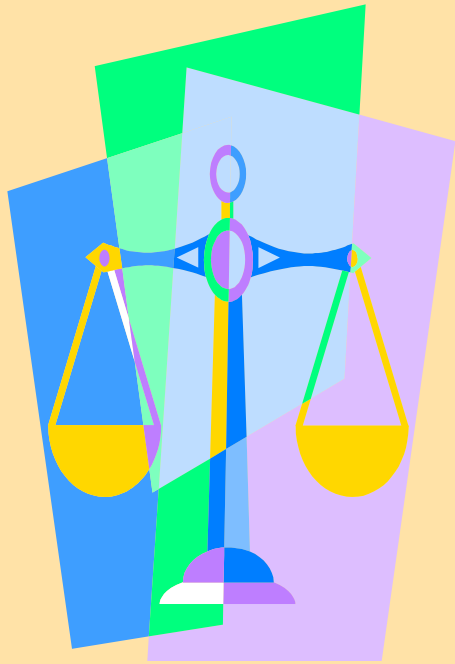
- Employment records of Covered Entity
- Family Educational Rights and Privacy Act (FERPA) records



De-identification of PHI

- ◆ Removal of certain identifiers so that the individual who is subject of the PHI may no longer be identified
- ◆ Application of statistical method or
- ◆ Stripping of listed identifiers such as:
 - Names
 - Geographic subdivisions < state
 - All elements of dates
 - SSNs

Uses & Disclosures of PHI





General Rule

Covered Entity may not use or disclose PHI, except as permitted or required by Privacy Rule



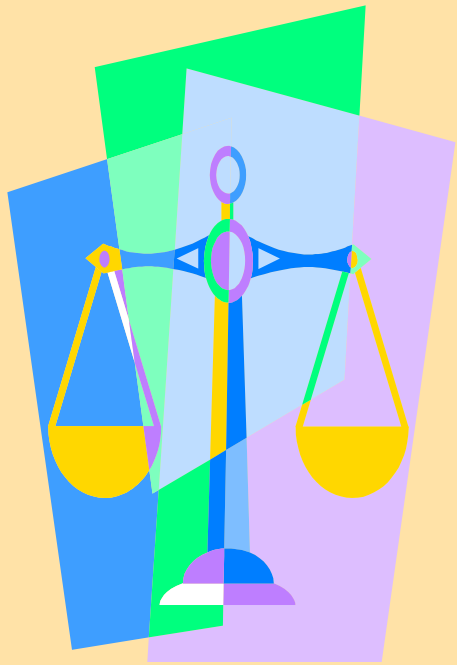
Required Disclosures

- ◆ To individual when requested & required by Section 164.524 (Access) & Section 164.528 (Accounting)
- ◆ To HHS, to investigate or determine compliance with Privacy Rule



Permitted Uses and Disclosures

- ◆ Individual
- ◆ Treatment, Payment and Health Care Operations (TPO)
- ◆ Opportunity to Agree or Object
- ◆ Public policy
- ◆ “Incident to”
- ◆ Limited data set
- ◆ Authorized



To the Individual



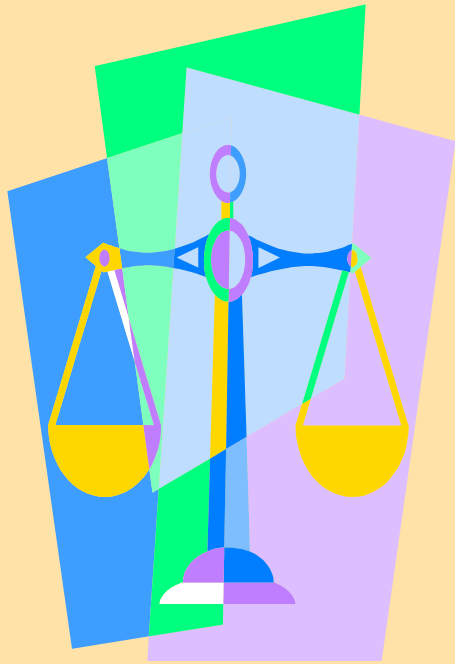


To Individuals

Besides required disclosures, Covered Entities also may disclose PHI to their patients/health plan enrollees
Examples:

- Health plans can contact their enrollees
- Providers can talk to their patients

Treatment, Payment and Health Care Operations





Treatment, Payment and Health Care Operations (TPO)

Covered Entity may use/disclose PHI to carry out essential health care functions

- Treatment
- Payment
- Health care operations



Treatment

Treatment means the provision, coordination, or management of health care by one or more health care providers, including:

- consultation between health care providers; or
- patient referrals



Payment

- ◆ Payment means activities of:
- ◆ Health care providers to obtain payment or be reimbursed for their services
- ◆ Health plans to obtain premiums, fulfill coverage responsibilities, or provide reimbursement for the provision of health care



Health Care Operations (1)

- ◆ Health Care Operations are administrative, financial, legal and quality improvement activities
- ◆ Necessary to run business and to support core functions of treatment and payment



Health Care Operations (2)

- ◆ Quality assessment and improvement activities
- ◆ Training, accreditation, certification, credentialing, licensing, reviewing competence, evaluating performance
- ◆ Fraud and abuse detection



Health Care Operations (3)

- ◆ Underwriting, rating, other activities relating to the creation, renewal or replacement of a contract of health insurance or benefits
- ◆ Conducting or arranging for medical review, legal services, or auditing
- ◆ Business planning and development
- ◆ Business management and general administrative activities



Sharing for TPO (1)

- ◆ Use/disclose PHI for own TPO
- ◆ Disclose for treatment activities of a provider
- ◆ Disclose to another Covered Entity or provider for recipient's payment activities



Sharing for TPO (2)

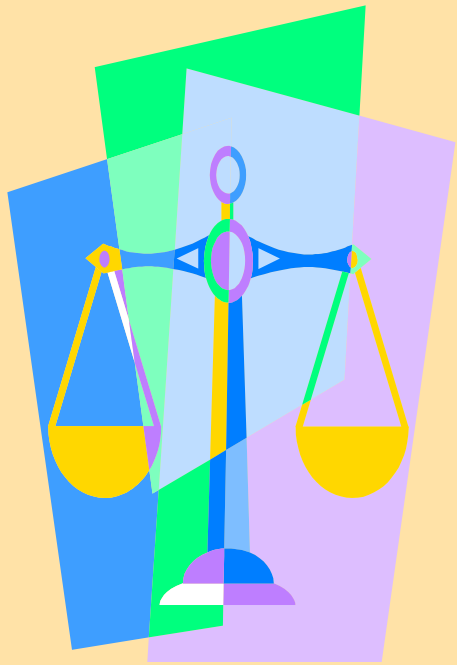
- ◆ Disclose to another Covered Entity, if mutual relationship with individual, for other Covered Entity's
 - quality, training/credentialing
 - fraud and abuse detection activities
- ◆ Disclose to another OHCA member for their joint health care activities



Optional Consent

Rule permits consent on voluntary basis for TPO

- Optional consent may not be used where an authorization is required



Opportunity for Individual to Agree or Object





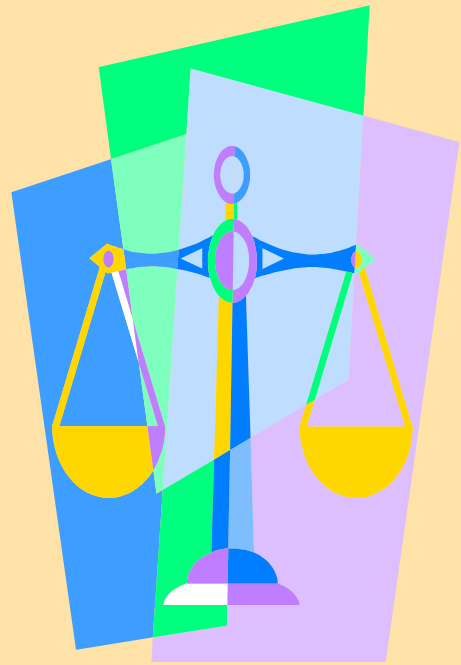
Facility Directories

- ◆ Must give individual opportunity to restrict or prohibit (can be oral) the use or disclosure of name, location, general condition, and religious affiliation for:
 - Disclosure to persons who request the individual by name (except religion)
 - Disclosure to clergy
- ◆ Emergency exception



Family, Friends, and Advocates

- ◆ Must give individual opportunity to agree or object:
 - **May disclose PHI relevant to person's involvement in care or payment** to family, friends, or others identified by individual
 - **May notify of individual's location, condition, or death** to family, personal representatives, or another responsible for care
 - Applies to disaster relief efforts
- ◆ When individual is not present or incapacitated:
 - Above uses and disclosures are permissible using professional judgment to determine if in best interest of individual



Public Policy Uses and Disclosures





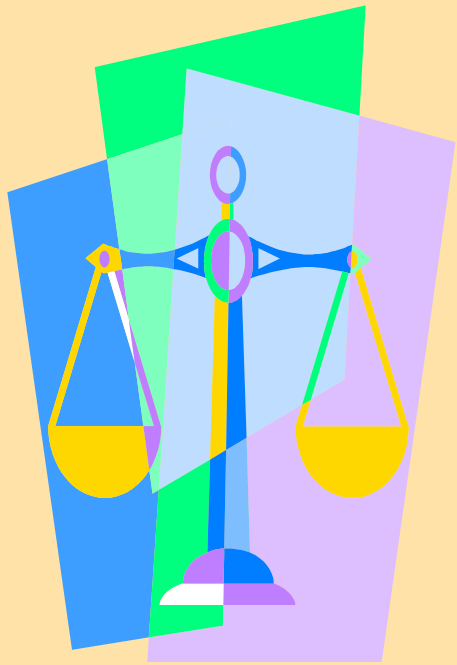
Public Policy Purposes

- (a) As required by law**
- (b) For public health**
- (c) About victims of abuse, neglect or domestic violence**
- (d) For health oversight activities**
- (e) For judicial & administrative proceedings**
- (f) For law enforcement purposes**



Public Policy Purposes (2)

- (g) About decedents (to coroners, medical examiners, funeral directors)**
- (h) For cadaveric organ, eye or tissue donations**
- (i) For research purposes**
- (j) To avert a serious threat to health or safety**
- (k) For specialized government functions (military, veterans, national security, protective services, State Dept., correctional**
- (l) For workers' compensation**



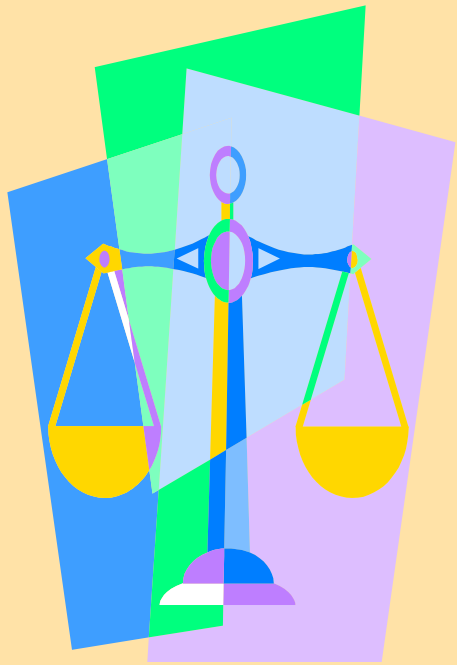
Overheard, Seen in Passing...





“Incident to” Uses and Disclosures

- ◆ Rule permits uses/disclosures incident to an otherwise permitted use or disclosure, provided minimum necessary & safeguards standards are met
- ◆ Allows for common practices if reasonably performed



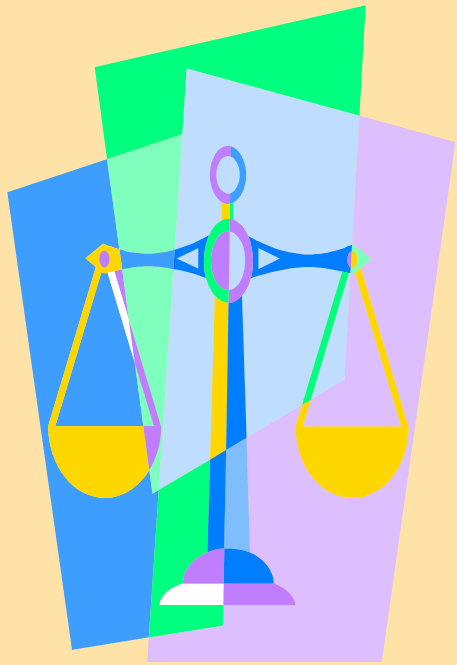
Limited Data Set





Limited Data Set

- For research, public health, health care operations purposes
- Direct identifiers must be removed
- Allows zip codes, dates
- Requires Data Use Agreement: recipient cannot use for other purposes or identify or contact individuals



Authorized Uses and Disclosures





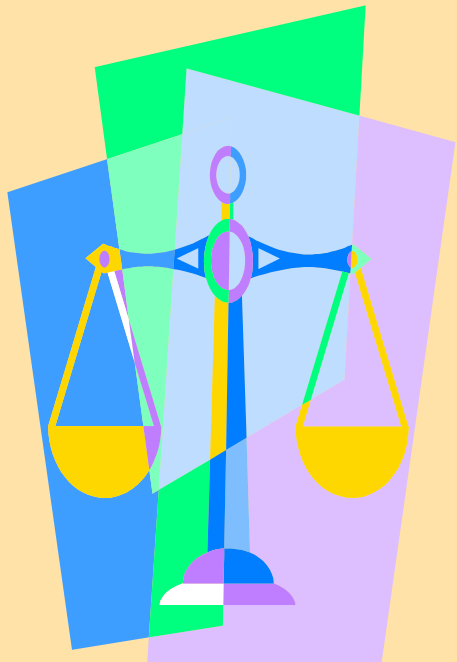
Uses/Disclosures Requiring Authorization

Authorizations are required for uses and disclosures not otherwise permitted or required by the Rule



Authorization

- ◆ Generally, cannot condition treatment, payment, eligibility, or enrollment on an authorization
- ◆ Special rules:
 - psychotherapy notes
 - marketing
- ◆ Authorization must contain core elements & required statements, including:
 - Expiration Date or event
 - Statement that authorization is revocable



Minimum Necessary





Minimum Necessary

Covered entities must make reasonable efforts to limit the use or disclosure of, and requests for, PHI to minimum amount necessary to accomplish intended purpose



Policies & Procedures for Uses, Disclosures, Requests

◆ Uses

- Role-based access

◆ Disclosures & Requests

- Standard protocols for routine/recurring
- Case-by-case review for non-routine



Reasonable Reliance

Covered entities may reasonably rely upon requester's determination as to minimum amount necessary if:

- Public official
- Another covered entity
- Business associate for provision of professional service
- Researcher with IRB/Privacy Board documentation or other appropriate representations



Minimum Necessary Exceptions

- ◆ Disclosures to or requests by providers for treatment
- ◆ Disclosures to individual
- ◆ Uses/disclosures with an authorization
- ◆ Uses/disclosures required for HIPAA standard transaction
- ◆ Disclosures to HHS/OCR for enforcement
- ◆ Uses/disclosures required by law



Summary

- ◆ What information is covered under the Privacy Rule
- ◆ What Covered Entities can do with that information
- ◆ How much information can flow, and to whom in the organization