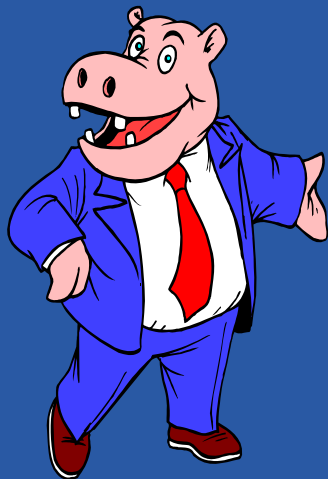
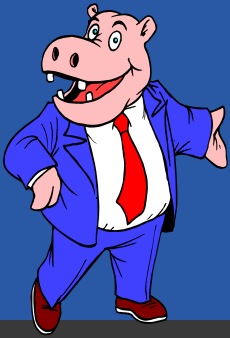


# Entities Covered by the HIPAA Privacy Rule





# Who Is A Covered Entity?

HIPAA standards apply only to:

- ◆ Health care providers who transmit any health information electronically in connection with certain transactions
- ◆ Health plans
- ◆ Health care clearinghouses

45 CFR §§ 160.102, 164.500



# What is a Health Care Provider?

A health care provider is –

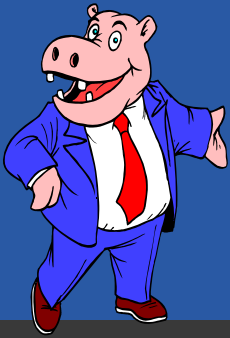
- ◆ Any person or organization who furnishes, bills, or is paid for health care in the normal course of business



# Are All Health Care Providers Covered?

Health care providers are covered only if they transmit health information electronically in connection with a transaction covered by the HIPAA Transaction Rule

❖ Directly or through a business associate



# HIPAA Transactions Rule Standards

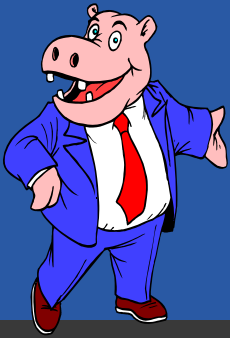
1. Health care claims or equivalent encounter information
2. Health care payment and remittance advice
3. Coordination of benefits
4. Health care claim status
5. Enrollment or disenrollment in a health plan
6. Eligibility for a health plan
7. Health plan premium payments
8. Referral certification and authorization



# What Is A Health Plan?

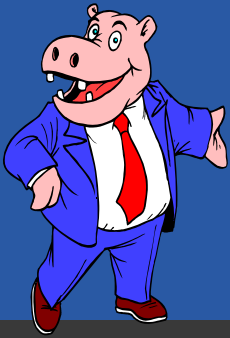
Any individual or group plan (or combination) that provides, or pays for the cost, of medical care. Examples include:

- ◆ Health insurance issuers
- ◆ HMOs
- ◆ Group Health Plans
- ◆ Medicare, Parts A and B
- ◆ Medicare + Choice
- ◆ Medicaid



# What Health Plans Are Covered?

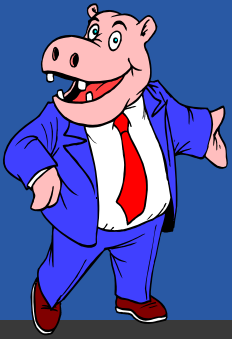
- ◆ All health plans are covered
- ◆ Entities that are not considered health plans include:
  - Employer plans with fewer than 50 participants and which are self-administered
  - Excepted Benefit Plans
  - Certain government funded programs



# Group Health Plans as Covered Entities

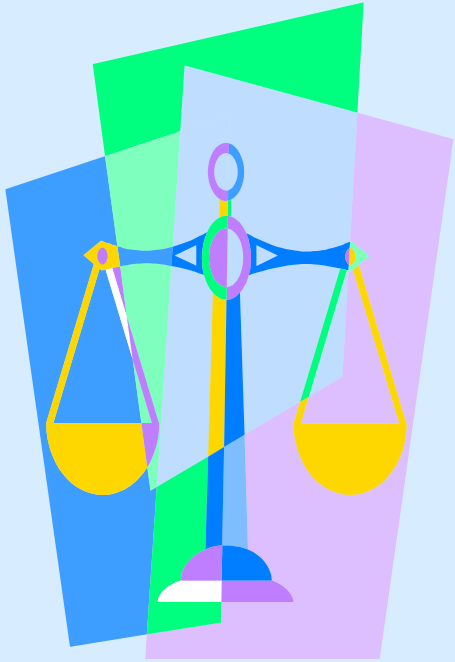
- ◆ Under ERISA, a group health plan is a separate legal entity from the employer/plan sponsor
- ◆ The Privacy Rule does not cover employers or plan sponsors



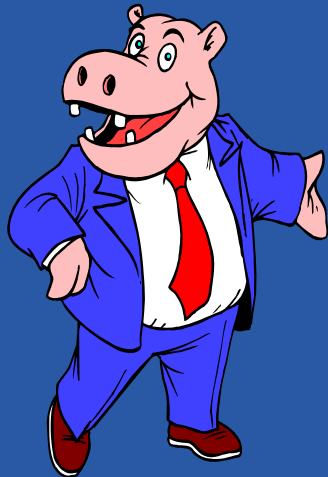


# What Is A Health Care Clearinghouse? How does Rule Apply?

- ◆ Translates data content or format for another entity from non-standard to standard or vice versa
- ◆ Limitation on Applicability of Privacy Rule



# Business Associates





# Who Is A Business Associate?

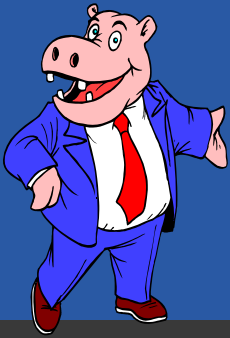
A person who performs a function or activity on behalf of, or provides services to, a Covered Entity that involves Individually Identifiable Health Information

- Is not a workforce member
- Covered Entity can be a Business Associate



# Examples Outside BA Definition

- ◆ Two Covered Entities – each performing functions on its own behalf
  - Provider gives PHI to payer for payment
  - Hospital and physician treating patients at hospital
- ◆ Persons or organizations where access to protected health information is not necessary to do their job
  - Janitors, electricians, copy machine repair persons



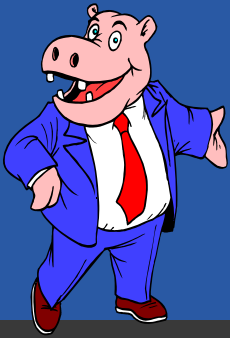
# Requirements on Covered Entity

- ◆ Obtain “satisfactory assurance” that Business Associate will appropriately safeguard Protected Health Information
  - Written contract or other written arrangement or agreement
- ◆ No monitoring
- ◆ Cure or terminate contract if known violation



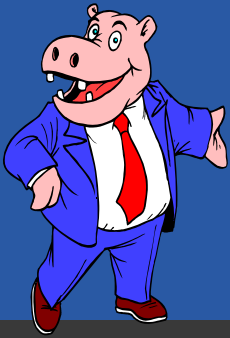
# Contracts Must Include:

- ◆ Permitted uses and disclosures
- ◆ Requirement to use appropriate safeguards
- ◆ Requirement to report of non-permitted uses and disclosures to Covered Entity
- ◆ Requirement to extend same terms to subcontractors/agents



# Business Associate Exceptions

- ◆ Disclosures to a provider for treatment to an individual
- ◆ Disclosures by a group health plan to plan sponsor if for plan administration
- ◆ Uses or disclosures by a government health plan (e.g., Medicare) to another agency (e.g., SSA) for eligibility or enrollment determinations if authorized by law

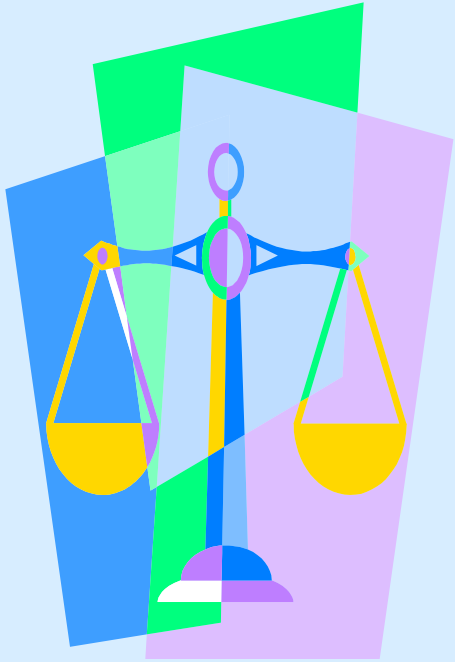


# Transition Provisions

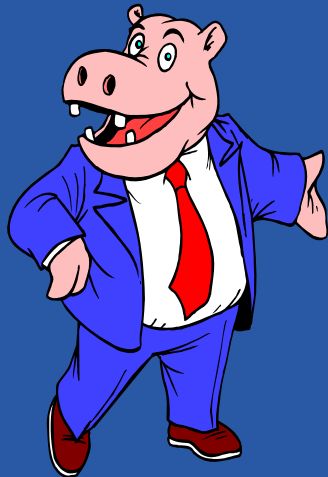
For a written contract existing as of 10/15/02 and not renewed or modified by 4/14/03:

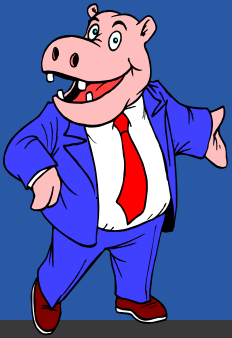
- Covered Entities are allowed until 4/14/04 to have contract comply with Privacy Rule requirements





# Group Health Plan Disclosures to Plan Sponsors





# Types of Disclosures to Plan Sponsors

- ◆ Summary health information; Enrollment and disenrollment information
- ◆ Amend plan documents
- ◆ With individual authorization

45 CFR § § 164.504 (f), (a), 164.508



# Summary Health Information, Enrollment & Disenrollment

- ◆ May disclose summary health information for:
  - Obtaining premium bids from health plans
  - Modifying, amending or terminating health plans
- ◆ Enrollment or disenrollment in a health plan



# Adequate Assurances from Plan Sponsor

Group health plan may disclose PHI to plan sponsor for plan administrative functions if:

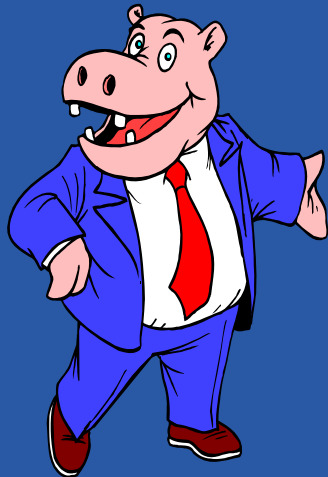
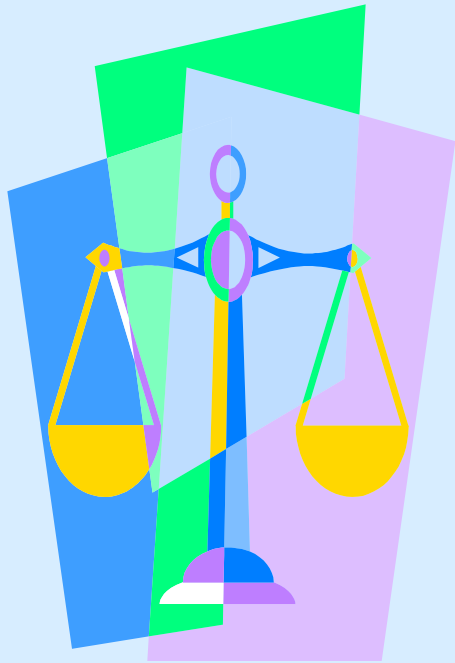
- plan documents are amended to provide permitted and required uses/disclosures by plan sponsor
- Certification by plan sponsor
- Adequate separation (“erect firewalls”)

# ORGANIZATIONAL ISSUES

Hybrid Entities

Affiliated Covered Entities

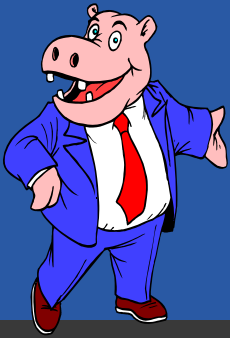
Organized Health Care  
Arrangements





# Choosing Hybrid Entity Status

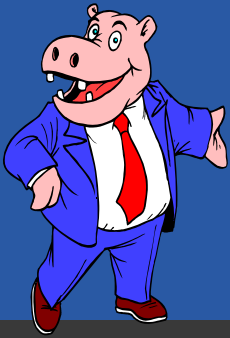
- ◆ Covered Entity that does both covered and non-covered functions
- ◆ Option to restrict the application of the Privacy Rule to certain parts of its organization
- ◆ By designating health care components (HCC)
- ◆ This designation will make the Covered Entity a “Hybrid Entity” under the Rule



# Effects of Hybrid Status

Covered Entity retains administrative and legal responsibilities

- Must ensure that –
  - The Health Care Component complies with Privacy Rule (“erect firewalls”)
  - Workforce members who perform tasks for both the HCC and non-HCC do not inappropriately use or disclose PHI
- Has legal responsibility for complying with Privacy Rule



# Affiliated Covered Entity

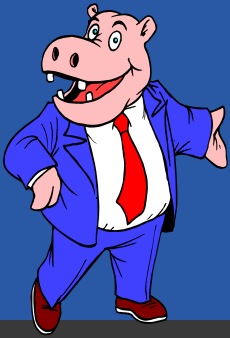
- ◆ Legally separate Covered Entities
- ◆ Under common ownership or control
- ◆ Option to be treated as a single legal entity
- ◆ By choosing to designate
- ◆ This designation will make the Covered Entity an “Affiliated Covered Entity” under the Rule





# Effects of Affiliated Covered Entity Status

- ◆ May be able to share information in a way that would otherwise be impermissible (sharing becomes a “use” not a “disclosure”).
- ◆ May minimize administrative burdens
- ◆ BUT, each is separately subject to liability for enforcement actions, and could be cumbersome to devise and comply with uniform set of policies, and/or one notice



# Organized Health Care Arrangement (OHCA)

Several defined arrangements are OHCA's:

- Clinically integrated care settings (e.g., hospital and doctors on medical staff)
- Covered entities that hold themselves out to the public as participating in joint arrangements and engage in certain joint activities (e.g., IPA)
- Certain group health plan arrangements



# OHCA:

## Application of the Rule

- ◆ OHCA or its members can choose whether or not:
  - To contract as one entity with a business associate
  - To disclose PHI to another covered entity that participates in the OHCA for joint health care activities of the OHCA
  - To have joint notices – only need be provided once
- ◆ BUT, each is separately subject to liability for enforcement actions



# Summary

Rule applies to:

- ◆ Providers that conduct certain transactions electronically
- ◆ Health plans
- ◆ Clearinghouses