



## HIPAA Information for Social Work Students

### September 3, 2003

Social Work students need to be aware of regulatory changes in policies from both the state and federal government. One such recent change is commonly referred to as "HIPAA" (Health Insurance Portability and Accountability Act, 1996). While this legislation addressed many issues related to health insurance coverage, it additionally called for the establishment of privacy standards for the electronic transmission of patients' health information. The legislation and subsequent regulations have had far reaching effects and apply to oral, written and electronic information.

In August 1999 Congress was authorized to establish ***uniform privacy standards*** for health information that is electronically transferred. Congress failed to do this. The Department of Health and Human Services became responsible for this task. After two comment periods, in April 2001, the regulations were announced by the Bush administration.

There are web resources to learn more about HIPAA as well as to research additional questions about the regulations. The history of this legislation is quite interesting. More information on the entire act can be found at [www.cms.hhs.gov/hipaa/](http://www.cms.hhs.gov/hipaa/).

#### Primary resources for social workers include:

##### [www.socialworkers.org](http://www.socialworkers.org)

You need to be a member of NASW as you will be asked for user name and password to access this information. This resource provides basic information for social workers, a slideshow presentation from the NASW legal defense fund, recent legal rulings on specific regulations such as court orders, subpoenas, etc. as well as links to other resources. You may additionally register for an on line training (at a cost).

##### [www.hhs.gov/news/facts/privacy.html](http://www.hhs.gov/news/facts/privacy.html)

This resource provides a variety of information including updates on rulings, a FACT SHEET, HIPAA on-line (an interactive tool to ask questions) [www.cms.hhs.gov/hipaa/online](http://www.cms.hhs.gov/hipaa/online).

##### [www.hhs.gov/ocr/hipaa/](http://www.hhs.gov/ocr/hipaa/)

This is the Office of Civil Rights in the Department of Health and Human Services. From this site can be obtained a full text of the

Privacy Rule which is the primary part of the regulations that will impacts students and social workers as well as information regarding transactions and security rules.

[www.regreform.hhs.gov/HIPAAQUIZ\\_0204171/sld001.htm](http://www.regreform.hhs.gov/HIPAAQUIZ_0204171/sld001.htm)

This is the DHHS, Office of Civil Rights site to test your knowledge about privacy. It is “The Top Fifteen Privacy Concerns, True or False Quiz. After you read this information, visit the site and take the quiz.

<http://privacyruleandresearch.nih.gov/default.asp>

DHHS recognizes that the research community has legitimate needs to use, access, and disclose Protected Health Information (PHI) to carry out a wide range of research protocols.

<http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm>

This site discusses the HIPAA Privacy Rule and Public Health.

H IPAA compliance by “*covered entities*” (those identified in the legislation) was to have been implemented April 14, 2003.



### What is *the privacy rule*?

- Protected Health Information (PHI) may not be used or disclosed for reasons other than treatment, payment, or health care operations without specific authorization.
- These standards apply to written, oral, and electronic information.
- The standards apply to “protected health information,” that is, all individually identifiable health information in *any* form.

### What is *identifiable health information*?

- Any information that could identify a client (name, address, phone, social security, insurance number).

- Anything we say or do that might reveal a client's identity.

### **Who is a *covered entity* under HIPAA?**

- Health care providers who transmit health information in electronic form in connection with a transaction for which standards requirements have been adopted.
- Health Plans (HMO's, health insurers, group health plans)
- Health Care Clearinghouses (public or private entity such as a billing entities that facilitate administrative and financial transactions).

NASW does not consider social workers in most instances as "covered entities" because they do not submit health claims; however they should review their status as a "covered entity" and should be knowledgeable about the objectives and scope of the legislation. See

[www.socialworkers.org/practice/behavioral\\_health/mbh0101.asp](http://www.socialworkers.org/practice/behavioral_health/mbh0101.asp) for more information.

Social workers also need to know about state regulations concerning privacy. In some instances, state regulations may be more strict than HIPAA. In that case, the state law will take precedence over the federal law. The PA Health Department has oversight for HIPAA and to date has not yet published information how these federal regulations will effect PA statutes and regulations.

HHS does not have the right to regulate employers, life insurance companies, or public agencies that deliver social security or welfare benefits.



### **What information is *protected* by the privacy regulations?**

- Information that identifies a person.
- Information related to a person's health, health care, or payment of health care (includes mental health).
- Information that is created or received by a covered health care plan or provider.

### **How is this information *protected*?**

- It may not be disclosed by a covered entity without the informed and voluntary consent by the individual for purposes of health care treatment, payment, and administrative operations.
- Disclosure must be minimal.
- Clients must receive a clear written explanation of how their health and payment information is protected. “Covered entities” are required to establish security practices to meet these regulations, including training all personnel.

### **What are client’s *rights* under the “protected privacy regulations”?**

- Clients can gain access to their medical records and have a copy of the record. They can request corrections if they identify errors or mistakes. Access should be provided within 30 days. Patients may be charged for the cost of copying and sending records. (Psychotherapy notes are excluded from this provision except for medication prescription and monitoring, diagnosis, functional status, treatment plan, symptoms, prognosis and progress to date.)

Clients should also expect health providers and insurers to take reasonable accommodations to keep communication such as phone calls and messages confidential.
- Clients can request restrictions on the use and disclosure of their protected health information. “Covered entities” do not have to agree on these restrictions.
- Clients are entitled to have a clear and understandable written explanation of how their protected information is safeguarded. The patient will be asked to read and review how the “covered entity” may use personal medical information and what their rights are under the new privacy regulation. They will be asked to sign or initial and date that they have received this notice. This written explanation limits the use of protected information. Patients would have to sign a release of information for their protected information to be released to other entities such as a life insurance company, mortgage holder, employer, etc.

Clients can make complaints regarding privacy practices directly to the “covered entity” or to the Health and Human Service Office for Civil Rights (OCR) at 866 627-7748 or [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa) .



**Are there *circumstances* in which *protected health information* may be disclosed without a consent?**

The **Privacy Regulation** specifically states that a covered entity “is permitted to use or disclose protected health information” for “treatment, payment, or health care operations,” without patient consent in the following circumstances:

- When disclosure is required by law.
- When the disclosure is about victims of abuse, neglect, or domestic violence.
- Disclosure for judicial and administrative proceedings.
- Disclosures for law enforcement purposes.
- Use and disclosure for research purposes.
- Disclosures to avert a serious threat to health or safety.
- For public health, such as reporting of STD’s (sexually transmitted diseases)
- For health oversight activities

**Are there ever *circumstances* in which psychotherapy notes may be disclosed under HIPPA without consent?**

- To avert a serious and imminent threat to health or safety.
- To HHS when required for enforcement of the privacy rule
- To a coroner or medical examiner
- To the provider who created the notes for administrative purposes
- To defend a lawsuit against the therapist by the individual who is subject of the notes
- When disclosure is required by law.



### **What are the implications for social workers and social work students?**

Everyone is still learning about HIPAA even though the implementation date for the privacy rules was April 14, 2003. The regulations continue to be interpreted as situations that are not explicitly covered in the regulations come to light. Some suggestions to minimize your risk against penalties and to assure competent professional practice with regard to privacy are:

- Develop a file on information and information privacy.
- Get and keep a copy of the HIPAA regulations and read them.
- Check appropriate websites such as NASW, HHS and OCR regularly for updates.
- Keep and regularly review a copy of the NASW Code of Ethics, especially the standards relating to client consent and confidentiality.
- Don't discuss clients or client information in hallways, elevators, dining areas. Discussion should be only on a *need to know* basis (as defined by a person's position responsibilities) and in a secure area. Information revealed should be kept to minimum, that which is essential to treatment or payment.
- Know how the organization in which you are learning or practicing is implementing HIPAA. Get a copy of relevant organizational policies to keep in your information privacy folder. Discuss your responsibilities with your supervisor. Attend training if offered.
- Be able to explain accurately the organization's use of "protected information" to clients, how and when to use a release form, and where to refer clients who want more information or to make a complaint.

This information has been gathered in the Office of Field Education, School of Social Work, University of Pittsburgh from the resource links identified in this handout, references provided by a faculty member from the University Law School, and phone discussion with counsel in the PA Health Department. It will be updated as new information becomes available that is pertinent to social work students.