



# Who is Covered by HIPAA?

By Deborah Kohn

The second portion (Title II) of Public Law 104-191, the Health Insurance Portability and Accountability Act (HIPAA), was passed in 1996 in an attempt to reduce the over \$200 billion a year in medical administration costs in the United States. Called "Administrative Simplification" and originally targeted at the administration costs of Medicare, HIPAA's Title II has become the national standard for all medical administration costs. That is because one part of one set of HIPAA's Title II regulations (the Transactions and Code Sets) attempts to standardize information exchange, with the potential for reducing health insurance companies' and healthcare providers' costs for processing all medical claims.

However, HIPAA's legislative goals were not only aimed at administrative simplification. They were also aimed at ensuring health insurance portability (Title I, ensuring that individuals between jobs are able to carry their health coverage forward or obtain similar coverage), reducing healthcare fraud and abuse, and guaranteeing the security and confidentiality of personal health information. As such, HIPAA has also become the national standard for the privacy of all patients and the security of all individually-identifiable health information. So, who or what kind of organization must comply with HIPAA's four sets of Title II regulations (unique identifiers, transactions and code sets, privacy, and security)?

HIPAA's Title II gives the Department of Health and Human Services (DHHS) the authority to regulate "covered entities," organizations that conduct certain electronic—and, only in the case of the privacy regulations, paper-based—financial and administrative transactions in the form of standard data elements of health information, even if the organizations contract with others ("business associates") to perform some of these

transactions. HIPAA provides the following, very legalistic descriptions of what are covered entities:

- **Healthcare clearinghouses**—public or private entities that process or facilitate the processing of nonstandard, health information data elements into standard data elements
- **Healthcare providers**—providers of medical or other health services and persons furnishing healthcare services or supplies
- **Health plans**—individual or group plans that provide or pay the cost of medical care, with the exception of liability and worker's compensation plans.

Under Title II of HIPAA, the DHHS does NOT have the authority to regulate other types of private businesses or public agencies. For example, DHHS does NOT have the authority to regulate employers, life insurance companies, or public agencies that deliver social security or welfare benefits.

However, employers can be indirectly covered under, for example, the privacy set of regulations in their role as the final payer or "sponsor." The privacy set of regulations requires health plans, through their contracts with sponsors (employers), to keep protected health information private AND separate from other personnel data. It is strongly recommended that employers consult with their attorneys regarding what can be construed as "fuzzy" areas.

Banks are other organizations that should consult with their attorneys. Currently, the issue being worked out between the banking and healthcare industries is whether banks that perform automated clearinghouse functions, such as the electronic processing of claims payments and remittance advice information, should be considered "covered entities." The two sides have vastly different views. The healthcare industry's position is if a bank receives standard claims payment transactions containing protected health information, and then converts the data into a format that the provider can use to update its accounts receivable system, the bank is acting as a clearinghouse and is a covered entity. The banking industry's position is that a financial institution engaged in automated clearinghouse payment functions should not be considered a clearinghouse because



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HIPAA's Section 1179 expressly exempts entities engaged in the processing of payments for a financial institution.

A few other thoughts about coverage under HIPAA:

- While HIPAA's Title II exempts some entities from the unique identifiers, transactions and code sets, privacy, and security regulations, there is nothing to prevent such entities from adopting these standards.
- While HIPAA's Title II exempts some entities from the regulations, public opinion might not. Entities must consider the public/customer's understanding of HIPAA and practice good, common business sense. For example, regardless of HIPAA requirements, it is strongly recommended that organizations develop policies and procedures for protecting the confidentiality of the information and the privacy of the individual.

To read the text of HIPAA's Title II final and proposed rules, visit the DHHS' Administrative Simplification website at <http://aspe.os.dhhs.gov/admsimpl/>.

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