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August/September/October 2002

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The *TxHIMA Journal* is the official publication of the Texas Health Information Management Association (TxHIMA), a professional association chartered under the State of Texas non-profit corporate law. Views expressed in the *TxHIMA Journal* are those of the author(s) and do not necessarily reflect the policies or opinion of the Texas Health Information Management Assoc., Editor, or Publication staff.

Fall Strategic Planning

For the TxHIMA board, Fall has traditionally signaled a time of planning for the organization. Perhaps the leaders in your organization plan a yearly retreat and spend one or two days focusing on what they identify as the most important issues facing the organization, taking into consideration external and internal forces. Due to time constraints, the TxHIMA board spends a few hours, a very productive and focused period of time undergoing a similar process. Typical of organizational strategic planning, the board reviews the previous year's plan to determine goals and objectives met; some goals will be carried to the current year and some will be dropped to a lower priority due to new goals rising to the top of the list. The board reviews the key issues identified by AHIMA to ensure that our strategic planning efforts dovetail with theirs. The board spends at least half of the allotted time brainstorming ideas for the organization, without concern of budget, time, or people constraints. The board then discusses the ideas in a global context in which the most critical and achievable objectives quickly surface. During this part of the process, budget, time, and people issues are discussed to ensure the plan's feasibility. Throughout the process, foremost in the board's consideration is the question, "What does the membership want and need?"

First, I'd like to give you high-

lights from last year's plan accomplishments. Under the heading of Education, we wanted to address the advent of HIPAA. The board did not want to exclude the ongoing need for release of information seminars, and therefore combined HIPAA and ROI seminars throughout the state to address these critical issues. The board extends a special "thank you" to Donna Bowers and Larry Dunham for conducting the majority of these seminars. To address the approaching PPS for rehabilitation, we conducted an inservice highlighting the aspects of PPS and rehabilitation. Another highlight of this year's educational calendar was the initiation of audio seminars, which has been well received and has offered an option for professionals with travel or financial restraints.

Under Professional Resources, we set and achieved the goals of updating the soon to be released HIM Manual and expanding the Website to include laws affecting the HIM profession. Under Communications, we expanded vendors' ability to advertise via the website. Under Professional Development, we offered a session at the annual meeting highlighting the roles and responsibilities of each board position to educate members on the aspects of organizational service at the state level and to encourage future participation.

The above highlights give a brief

overview of a very productive year. Although we did not achieve all the goals and objectives set, we were able to expand membership benefits in several ways, while maintaining expenses and exceeding anticipated revenue. If you are interested in reviewing the 2001-2002 Strategic Plan in its entirety, please contact the TxHIMA office, and Madeline Perrett will email it to you. The financial report will be available via the TxHIMA website if you would like to review the detail of the budget.



Beverly Rhodes,
MSHP, RHIA

If you would like to view AHIMA's key objectives, go the Community of Practice for State Leaders and look in the Community Resources section for 2002 initiatives. If you would like a summary of the plan for 2002, please contact Madeline Perrett at the Executive Office, and she will send you a copy.

On the following pages is the 2002-2003 Strategic Plan for TxHIMA. The board is committed to seeing the membership through another very productive and successful year. Thanks to each of you for your support of your organization and of your board. ☺

Texas Health Information Management Association 2002-2003 Strategic Plan

Topic	Discussion	Goal	Objectives	Action Plan	Time Frame
Specialty Groups	The board believes that there may be a need for subspecialty groups. The board identified several potential areas to develop specialty groups, including privacy officers, quality, medical staff/physician specialties, coding, long-term care, physical rehabilitation, and psychiatry.	Develop a pilot specialty subgroup.*	<ol style="list-style-type: none"> 1. Start with one group as a pilot to test issues such as structure and objectives. 2. At this time the board designated coding as the pilot group. 3. The designated members of the pilot group will design a plan. 4. The board will use their plan as a template for future subgroups that may be established. 	Dana Choate will function as the board representative and provide board oversight to this project. The board identified potential subgroup members.	Initial plan by January 2003. Kick-off June 2003 at convention.
Products	TxHIMA has seen a demand for TxHIMA products, such as the HIM Manual (which will be released soon). It is believed that there is a demand for additional products.	Expand the library of TxHIMA products.	<ol style="list-style-type: none"> 1. Complete process of contract negotiation for Privacy (HIPAA) Manual. 2. Consider publishing a Request for Proposal (RFP) for a Release of Information (ROI) Manual for Texas. 3. Expand TxHIMA products, such as shirts, pens, and caps, with proceeds to go into existing scholarship fund. 4. Develop a resource library to include a speakers' bureau, a list of experts in various specialty areas (resource contacts), Policies & Procedures, etc. 	Gwen Duffie and Jackie Moczygomba to oversee these objectives.	<ol style="list-style-type: none"> 1. Contract process in final stages, expect publication of Privacy Manual by early 2003. 2. To be determined in January 2003. 3. Plan to see partial completion prior to HIM Week, others early 2003. 4. Board to discuss.
Meeting Members' Needs	The TxHIMA website has proven to be a valuable resource to members; however, we believe that it is underutilized both by members and by leadership.	Expand the website to better meet members' needs.	<ol style="list-style-type: none"> 1. Initiate on-line voting.* 2. Expand use of email messages to members. 3. Work with Website vendors for ideas and actions. 	Beverly Rhodes and Dana Choate to oversee this project.	To be determined.

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Topic	Discussion	Goal	Objectives	Action Plan	Time Frame
Membership: Recruitment & Retention	The board is aware that this is a focus area for AHIMA and would like TxHIMA to address it as well.	Work in conjunction with AHIMA to expand membership.	Wade Harless has been chosen to serve on AHIMA's Advisory Committee to address member recruitment via the development of new member tool kits, etc.	Wade Harless will be TxHIMA's liaison to AHIMA.	As needed.
Membership: Recognition	The board would like to see a greater effort to promote our members' special achievements and accomplishments.	Promote members' for special recognition, contribution to the profession, and for best practices.	<ol style="list-style-type: none"> 1. Solicit journal articles from the membership highlighting Texans in the HIM field. 2. Work with District Presidents to assist in identifying these individuals. 	Jackie Moczygamba will oversee this project. Donna Bowers will assist as journal editor.	Initial report in January 2003.
Membership: House of Delegates (HOD)*	The board recognizes that with AHIMA's changes in procedures, such as online voting, and with other external changes, the current method of conducting a formal state HOD may not be meeting the objectives as originally designed.	Develop a state House of Delegates format or process that will better represent our state membership.	<ol style="list-style-type: none"> 1. Research how other large states procure member input and participation on AHIMA and state issues. 2. Develop a task force to address. 	Beverly Rhodes to oversee this project with Wade Harless and Gwen Duffie to assist.	Initial report in January 2003. Plan to finalize new structure prior to 2003 national meeting.
Education: Members	The board is pleased with the education plan over the past year and would like to see the success continue.	Support education as TxHIMA's primary objective.	<ol style="list-style-type: none"> 1. Support the new Education Director in her efforts. 2. Continue to reach out to outlying parts of the state with educational programs. 3. Continue to offer audio programs. 4. Improve and expand RHIT/RHIA exam review classes. 5. Participate in co-sponsorship of educational programs as opportunities arise. 	Dana Choate to oversee the educational program with assistance from Gwen Duffie and Jackie Moczygamba and all of the board as needed.	
Education: Potential members.	In conjunction with AHIMA's key focus areas, TxHIMA recognizes the need for recruitment and education of new students in the HIM field.	Support AHIMA's initiatives to attract and retain HIM professionals.	<ol style="list-style-type: none"> 1. Strengthen our relationship with HOSA. 2. Expand our relationship and partnership with area AHECs. 3. Promote AHIMA's CD highlighting HIM as a career. 	Jackie Moczygamba to oversee with Wade Harless to assist with AHEC relationships. All board members to promote the CD.	

*These items were taken to the House of Delegates on August 23, 2002 and were given approval from the delegates.

Call for **N O M I N A T I O N S**

for the
TxHIMA Board of Directors

President-Elect Legislative Director Convention Director

Please note: Self nomination is encouraged.
Each nominee will be contacted and asked to submit a curriculum vitae/resumé.

Nominee: _____

Nominated for President-Elect Legislative Director Convention Director
(please circle choice)

Current place of employment: _____

Nominee's Address: _____

Nominee's City, State, Zip _____

Nominee's Phone: _____ **Fax:** _____

Nominee's E-mail address: _____

Nominated by: _____

Your Phone: _____ **Your Fax/E-mail:** _____

Please Return by **December 1, 2002** to:

TxHIMA
P.O. Box 14423
Austin, Texas 78761-4423

Call for **PRESENTATIONS**

for the
TxHIMA 2003 Annual Convention
Sunday, May 31 through Wednesday, June 4, 2003
Fort Worth, Texas

Do you have ideas/suggestions for next year's educational program? Please list them below.

Topic: _____

Presenter: _____

Job Position: _____

Organization: _____

Address: _____

City, State, Zip _____

Phone: _____

Fax: _____

E-mail address: _____

Please provide the following attachments:

Program outline

Objectives

Resume/Biography of the presenter

**Return to the Executive Office:
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Something Old, Something New Privacy

Patricia Johnston, FHIMSS, Director, HIPAA PMO, Texas Health Resources

The long-awaited Final Amendments to the HIPAA Privacy Rule have arrived. Covered entities are now scrambling to evaluate the resulting changes and its impact on their HIPAA compliance efforts. By now, most of us have had the dubious pleasure of reviewing these regulations no less than four times – the draft Privacy Rule, the “Final” Privacy Rule, proposed amendments to the Final Privacy Rule and now the Final Amendments to the Privacy Rule. DHHS, professional associations, legal firms and consultants are all publishing their assessment of these final amendments. What is the impact on the healthcare provider?

What’s old?

Well, if you were prescient enough to base your HIPAA privacy remediation efforts on the premise that the proposed amendments published in March of this year would be finalized, you are in luck. With a few additional modifications thrown in to keep things interesting (or confusing), by and large, the final amendments adopt the proposed changes with few major differences.

The requirement for a written patient consent to allow use of protected health information (PHI) for treatment, payment and health care operations is gone. In its place is the requirement that providers make a good faith effort to obtain written acknowledgement of receipt of the notice of privacy practices. Also approved in final form were the changes that give payers and providers greater latitude in sharing health information for payment and

operations.

Additionally, the extension period for covered entities to amend existing written agreements with business associates is intact, as is the requirement to obtain patient authorization for use of PHI for marketing purposes.

Criteria for IRB waivers of authorization for research are refined to be more in line with the Common Rule.

Disclosures pursuant to an authorization are eliminated from the accounting requirement. The authorization content and format requirements remain streamlined as proposed. And the proposed amendments allowing some incidental uses or disclosures of PHI remain unchanged.

What’s new?

So what’s new? Well, among other things, the preamble encourages use of a “layered notice of privacy practices” – a short, summary notice that is placed on top of a longer notice containing all the required elements.

A new class of information called a “limited data set” has been added. This data set is not completely de-identified – dates and geographic identifiers are allowed - but can nevertheless be used for research, public health or health care operations. Better yet, disclosures of this data set for health care operations, research, or public health need no longer be included in any accounting for disclosures provided to the individual.

However, there is a requirement to enter into a data use agreement with the recipient of the limited data set.

So the list of potential HIPAA

contracts or agreements now includes four different documents: Trading Partner, Chain of Trust, Business associate, and the new Data Use Agreement.

The marketing definition continues to be refined. As in the proposed modifications, exclusions from marketing include communications regarding participating providers, offered services, covered benefits, case management and recommendations for alternative treatments. However, the definition is broadened to explicitly include arrangements made between a covered entity and any other entity for the use of PHI for marketing purposes.

Other changes between March and August in the final modifications to the Privacy Rule include refinements to the hybrid entity concept, clarifications regarding unemancipated minors, and some general word-smithing.

By and large, covered entities are pleased that the proposed changes to the Privacy Rule intended to improve workability of its implementation remain in the Final “Final” Rule. If you have already completed policy development, you will need to review them to make sure they reflect any of the new items added to these finalized amendments. Once more, if policies and processes were based on the proposed amendments, required changes should be minimal. If you have not yet developed your policies or processes, awaiting these final amendments, well - no more excuses, no more hope for extensions. Here we go, and good luck to us all. ☺

Let's Talk Security

Dan Meacham, CISSP, Security Information Officer, Baylor Health Care System

Patient safety and well being is, and always should be, what healthcare is about. The privacy and security components of HIPAA are a means to align current technological business enablers with appropriate controls to ensure patient safety and well being. However, in an industry with limited resources and a passion for quality customer care, security may seem a daunting task. So, where are you with your security program today?

Without going into a detailed project plan, this text will discuss a general security program's current state and future state. Or in plain English, what your program should have accomplished by now and what your next steps may include.

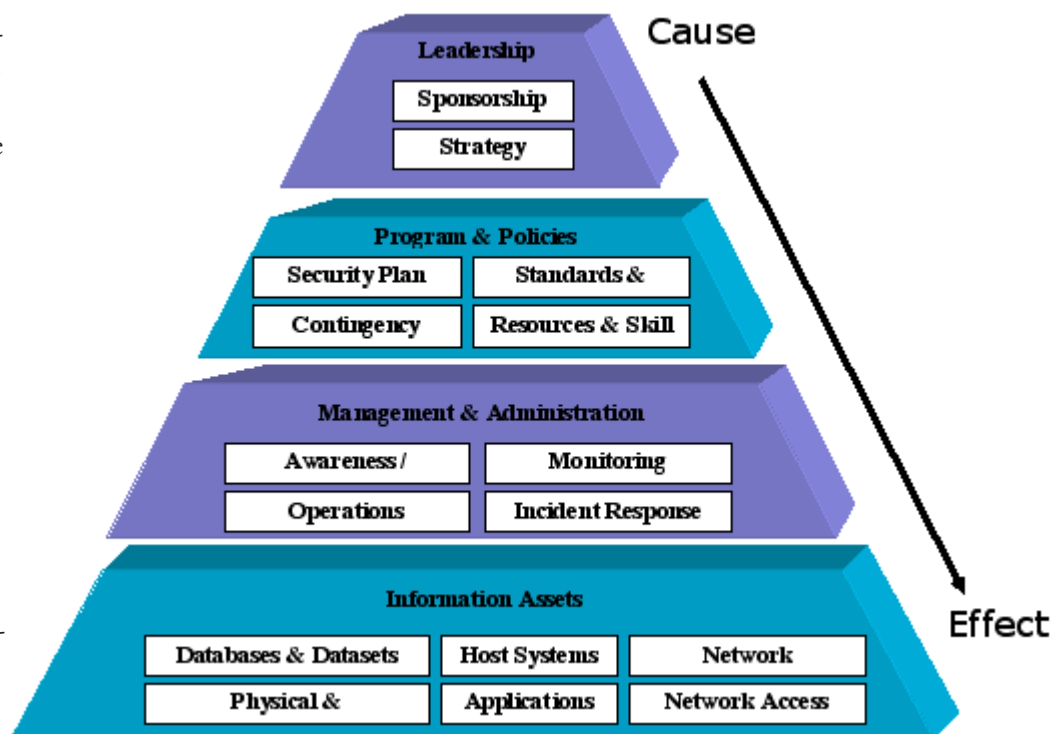
Manageable security is achievable in the healthcare setting by establishing architecture. If you look closely at the proposed security rule, you should notice that the defined elements of the regulation are in alphabetical order. Therefore, this is not a plan but a guideline for developing an on-going information security program. Thus, if an organization develops a security program based on a solid architecture, the compliance to the proposed rule for security becomes standard business practice. For the purpose of this text, we will call this architecture,

"Information Security Architecture" or "ISA" for short. The ISA has a focus on automated information systems and services, and must 1) align security capabilities with business, 2) enable the reasonable assurance of information confidentiality, integrity, and availability, and 3) provide reasonable security assurance without impeding the quality of care to the patient.

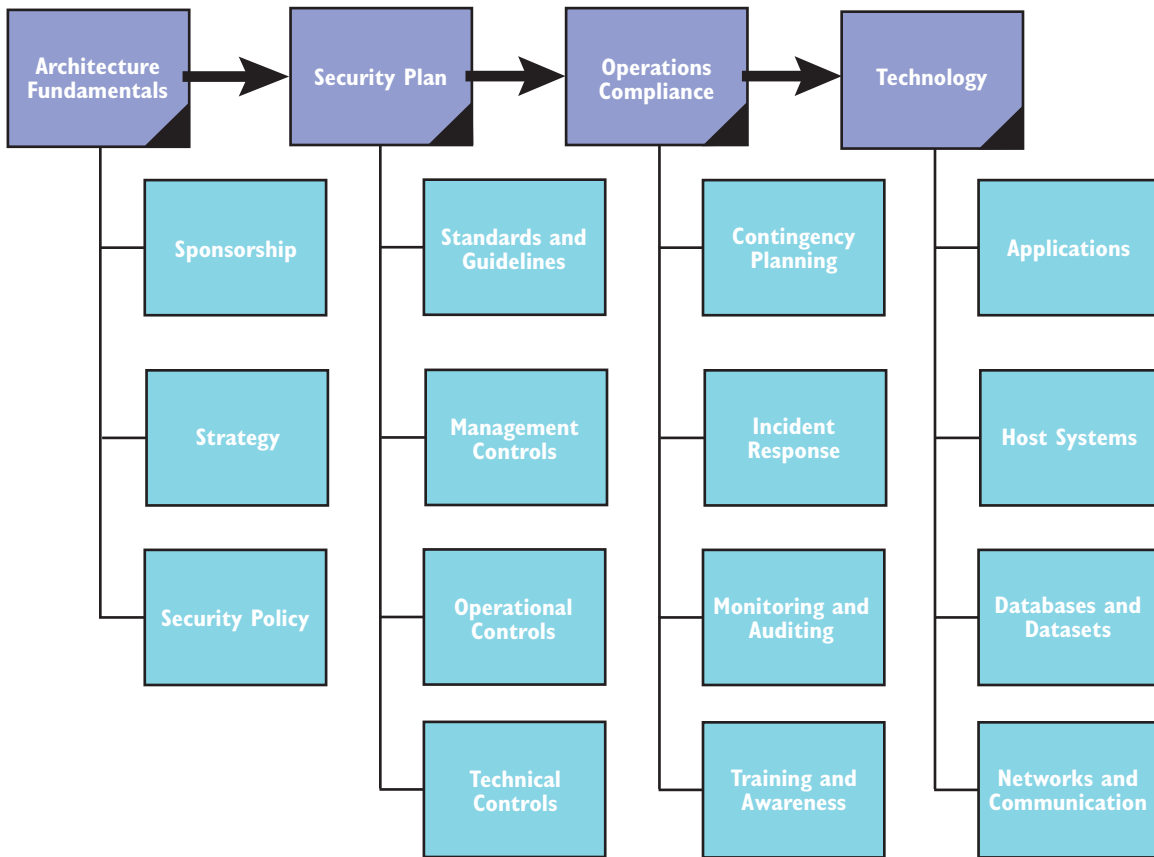
There are 16 capabilities measured in an ISA: Security Sponsorship, Strategy, Security Plan, Contingency Plan, Policies and Guidelines, Resources and Skill Sets, Awareness and Training, Monitoring and Auditing, Incident Response, Database and Datasets, Host Systems, Applications, Network Infrastructure, Network Access

Points, Physical and Environmental Security. There are multiple levels of an ISA. The initial level of the architecture assesses the baseline of the current state. The goal is to be a "trusted" system by current standards. Using the ISA, an organization may measure their progress to compliance and their future state goals.

By now, your organization should have identified what their architecture, program structure, and strategy look like. Moreover, these should be documented. The executive value of the architecture helps define the organization's security posture, recognize acceptable business risks, and identify the most critical resources. Employing the ISA sets the organizational standards and



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expectations for system security. Furthermore, the ISA framework provides guidance for new implementations and service offerings despite what new technologies are introduced into the organization.

To summarize the ISA model, 1) the architecture defines the security framework, standards, and expectations, 2) Policies and guidelines may then be derived and / or aligned to that architecture, 3) the architecture provides a means for auditability and compliance measurement to policies, and 4) the architecture may be directly applied to technology, procedures, and users. In plain English, the business defines the security needs and capabilities necessary to ensure reasonably secure environment. Technology is a business enabler and not the policy maker.

Therefore, today, your organiza-

tion should have security sponsorship, security policies, security program structure, and architecture to bring it all together. Next steps for your organization should include developing guidelines for system security plans of new and existing automated information systems based on the defined expectations of the ISA. Additionally, the refinement of current capabilities should be targeted as ongoing efforts.

Security implementation should follow a phased approach. Smart decision must be made based on the architecture; otherwise, an organization may end up implementing multiple solutions that serve the same purpose. Or worse, an organization may have to re-implement a multi-million dollar project because the wrong platform or security capability was selected. A standard security

program may be represented as the chart above.

Development of the system security plan guidelines (second module) enables the organization to assess current capabilities in existing automated information systems and services. Additionally, the guidelines may be included in contracts as a pre-certification of a systems security capability. This phase of the security program documents corporate policies such as an Acceptable Use Policy, Access Controls Policy, and Business Resumption Policy. These tools set the expectations for all system security without reference to specific technologies; thus enabling the architecture to establish a corporate security posture. An excellent resource for establishing a system

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security plan guideline is the NIST Special Publication 800-18, which may be found on the NIST web site at www.nist.gov.

Security is a process that may involve multiple initiatives across the organization. There are several existing functions available today to assist in the successful implementation. For example, to establish security awareness in the organization, leverage existing business offerings. Most health care systems have new hire orientation, compliance, and continuing education programs. These are excellent resources to incorporate information security awareness into without having to reinvent established processes.

Implementing the security architecture as the organizations security program is a matter of convergence. Think of the architecture as a needle sewing a thread across multiple eyelets in a seam. Each eyelet is a security capability, and the seam is the gaps. At some point, the thread will be pulled and the gaps will close. Security is a collective model that converges to establish a more stable and stronger posture to help ensure the confidentiality, integrity, and availability of information assets and service. ☺

In The News

The Texas Department of Health has published the maximum copy fees for providing a patient's health care information. The effective date for this amendment to §241.154(e) of the Health and Safety code is August 30, 2002. To view the complete amendment to this section, please visit www.txhima.org/copyfees.htm for the details of the new fee structure.

The TxHIMA board wants to help meet its members needs. If there are any topics that you would like addressed, please contact the TxHIMA Executive Office at txhima@aol.com.

What's coming up?....

2003 Convention
Ft. Worth
Radisson Plaza Hotel
May 31 - June 4

2003 Fall Meeting
Galveston
San Luis Resort
September 10-14

...See You There!

Remember, every time you place an ad in FOR THE RECORD, you not only reach the largest readership of HIM professionals, but you also support our state's health information management association.

HIPAA and Its Effect on Subpoenas in Texas

By Jerry Hopgood, Director, Office of HIPAA Compliance, Baylor Health Care System

April 14, 2003. The date is just around the corner, and will be here before you know it. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rules are in place, and compliance with these rules is required by April 14, 2003. HIPAA's Privacy Rule affects many of the processes currently in place in Health Information Management (HIM) departments, and the topic of responding to subpoenas is no different. The purpose of this article is to give you a foundation for responding to subpoenas in the post-HIPAA Privacy Rule environment, and what needs to be done to prepare you and your organization for this. Of course, as you probably know, HIPAA yields to more stringent state law, and so we'll need to look at subpoenas in Texas as well.

First of all, let's set the stage, and define the term subpoena. A subpoena is a written legal document directing a person to appear in court or place at a stated date and time, usually for the purpose of giving testimony. Though frequently written by an attorney, court reporting service, or record service, the subpoena is an official request on behalf of the attorney or court usually used during the discover phase of a lawsuit. There are two basic types of subpoena, one to produce documentation or records, and another to give evidence. HIM Departments routinely receive subpoenas, and so understanding what is

Summary: HIPAA's Privacy Rule is not pre-empted by Texas law. Therefore, refer to 164.512(e) for information regarding responding to subpoenas under HIPAA regulations.

required when responding to a subpoena is very important

What Does HIPAA Say About Subpoenas?

Now that we know what a subpoena is, we will need to figure out what to do once one is received. To determine this from a HIPAA perspective, let's first look to what the HIPAA Privacy Rule states. First, HIPAA makes a distinction between subpoenas that are issued pursuant to a judicial or administrative order e.g. court order, and those that are not. The HIPAA Privacy rule in section 164.512(e) states, "A covered entity **may** disclose protected health information in the course of any judicial or administrative proceeding provided that the covered entity discloses

only the protected health information expressly authorized by such order"¹. What's important in this particular statement is the word "may". Note that it does not state that the covered entity "must" disclose the information, even in response to a judicial or administrative order. This is an allowed disclosure, not a required disclosure. Additionally, this is a disclosure that does not require an authorization from the individual.

Often times, a subpoena is received that is not through or pursuant to a court order. Again, HIPAA has addressed these situations in the Privacy Rule. In section 164.512(e), the regulations state "In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if the covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or the covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the

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requirements of paragraph (e)(1)(v) of this section.”² Again, note that this is an allowed disclosure, not a required disclosure. Once again, the disclosure does not require an authorization from the individual, but look at the regulation again and you’ll see two requirements.

One requirement is if the covered entity receives “satisfactory assurance” that the requesting party has provided notice of the request to the individual who is the subject of the request. To have received satisfactory assurance, the regulations state that “the party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual’s location is unknown, to mail a notice to the individual’s last known address); the notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and the time for the individual to raise objections to the court or administrative tribunal has elapsed”³, provided that “no objections were filed; or all objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.” Therefore, if you are presented with documentation from the party requesting the information that they have made a good faith effort to inform the individual of the request (and that the time for objections has elapsed or objections have been resolved), then you may disclose the protected health information to the requestor. Again, note

that this is an allowed disclosure, still not a required one.

The other requirement is that the covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order. Paragraph (e)(1)(iv) states that documentation that is provided to the covered entity that “the parties to the dispute giving

Checklist:

- **Review both state and federal laws regarding HIPAA**
- **Review your existing policies for handling subpoenas (may be in your release of information policy)**
- **Compare your policies and procedures to those required by HIPAA**
- **Modify your policies to become compliant with HIPAA**
- **Educate all staff who would be releasing protected health information pursuant to a subpoena**

rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute, or the party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal”⁴ meets the requirements of a qualified protective

order. This situation arises when agreements have been made by the disputing parties that they would rely on a qualified protective order. If the qualified protective order is received by the covered entity, then the allowed disclosure may be made. Of course, HIPAA also defines a qualified protective order.

A qualified protective order as set forth in HIPAA is “an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.”⁵ The provisions prohibiting use or disclosure outside the scope of the request, and the requirement to return or destroy the information at the end of the proceeding, have been deemed sufficient to allow the disclosure.

Now, the final statement that the HIPAA Privacy Rule makes is in paragraph (e)(1)(vi), where it allows the covered entity to make the disclosure if the covered entity “makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.”⁶ This puts the burden on the covered

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entity to obtain the assurances required by HIPAA. Covered entities may seldom perform this function, but the regulations allow it, as it may happen.

It is also important to note that it also matters, under HIPAA's Privacy Rule, who is making the request; that is, who is the requestor providing the subpoena. There's an outlier in the Privacy Rule for subpoenas requested by a health oversight agency. In this case, if the health oversight agency is requesting the protected health information via a subpoena, then the authorization requirement does not apply, nor do the reasonable assurances that we've reviewed up to this point. Uses and disclosures to a health oversight agency are covered in 164.512(d). Again, remember that the requirements for reasonable assurances do not apply to disclosures to a health oversight agency.

One final note regarding HIPAA's requirements for subpoenas is in the area of minimum necessary. The minimum necessary provision of the HIPAA Privacy Rule does not apply to subpoenas. However, the disclosure must be made in accordance with the scope of the subpoena;

additional protected health information outside the scope of the subpoena cannot be disclosed.

What About Responding to Subpoenas in Texas?

Using HIPAA's Privacy Rule as our baseline, we must now look to Texas state laws to determine if the Texas laws are more stringent, less stringent, or just different. To do this, we must look to several places in Texas law where subpoenas are addressed. One such law is the Texas Rules of Civil Procedure, Rule 176. This is the state law that determines how subpoenas are handled in the state of Texas. Sections 176.1 through 176.5 discuss requirements for obtaining and servicing a subpoena. Section 176.6 of the Rules set for the guidelines for responding to subpoenas in general.

For health information specifically, we look to subchapter G of the Texas Health & Safety Code, § 241.153, paragraph (20), where the disclosure of health information is allowed pursuant to a "judicial proceeding in which the patient is a party and the disclosure is requested

under a subpoena issued under the Texas Rules of Civil Procedure or Code of Criminal Procedure, or Chapter 121, Civil Practice and Remedies Code."⁷ As you can see here, as long as the requirements for obtaining and servicing the subpoena have been met as required under Rule 176.6 of Texas Rules for Civil Procedure, or Chapter 121, Civil Practice and Remedies Code, the disclosure would be allowed. However, as you can see, this rule (Texas Health & Safety Code Subchapter G, Ch. 241.153(20)) is not as stringent as is the HIPAA Privacy Rule requirements for responding to subpoenas. As such, the HIPAA regulations set forth in 164.512(e) override those of subchapter G, chapter 241.154(20). This means that you must follow the HIPAA guidelines.

So, what is the end result of the analysis between HIPAA's disclosure requirements for subpoenas versus those allowed in Texas law? Simple, for disclosures that involved protected health information, you will need to follow the provisions set forth in HIPAA's Privacy Rule. ☺

Footnotes

- 1 Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, § 164.512(e)(1)(i)
- 2 Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, § 164.512(e)(1)(ii)
- 3 Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, § 164.512(e)(1)(iii)
- 4 Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, § 164.512(e)(1)(iv)
- 5 Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, § 164.512(e)(1)(v)
- 6 Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, § 164.512(e)(1)(vi)
- 7 Texas Health & Safety Code Subchapter G, Disclosure of Health Care Information, Chapter 241.153(20)

X12N Transactions Project Essentials

Terry Montgomery, Project Manager, Baylor Healthcare System

You have just over one year to implement the mandated HIPAA transactions. No healthcare provider can expect to make a successful transition to X12N transactions without a formal strategy. Attempting to shift your compliance responsibilities to your software vendors and or clearinghouse is not a strategy. While HIPAA transactions are technology centric there is no technology silver bullet. If there was, your organization would have purchased it by now.

Your organization should have a strategy. No matter where you are in the process, here are some essential steps that should not be overlooked:

- Transitioning to HIPAA compliance is a classic example of a project. Find someone inside or outside your organization that understands project management. Controlling resources and project constraints can increase the probability of project success.
- Make sure your software vendors have a strategy. Do not assume the compliant upgrade CD will arrive in the mail just in time and the new version will run without a hitch. Make your vendors explain their strategy. Don't buy off the brochure.
- Inventory all applications and interfaces to gain a clear understanding of what systems will be impacted by converting to X12N transactions. This element can help ensure a realistic projection of your project timeline.
- Education is critical. From the

top down, everyone must understand how X12N transactions differ from current billing processes. Failing to understand the impact of these differences will cause the organization to undershoot the project.

- If your organization utilizes a clearinghouse for transactions, get a clear explanation of the clearinghouse's X12N implementation strategy, just like your software vendors. Clearinghouses act as translators and routers. They support compliance but do not make an organization compliant through its functions. Gartner Research and most consulting firms are in agreement that clearinghouses offer a short-term fix but not a compliance solution.
- Your organization will likely look at implementing an electronic data interchange (EDI) module or tool. Research this area carefully. Develop your internal criteria before soliciting vendors. Similar vendor solutions are not alike, nor are all EDI vendors experienced in healthcare, much less HIPAA. It is critical to get as much detail as possible on how the vendor intends to support the application and your organization through the implementation process.
- HIPAA implementations are not short-term projects. Your project will last well past the October 2003 deadline. Make sure to utilize earned value methodologies

within your project to control resources and project constraints.

- Complete a gap analysis and process analysis. Once you have a firm grasp on what systems and interfaces will be impacted by X12N transactions you must get down to the data content level. A gap analysis should provide your organization with a roadmap of where all the 837 & 835 data elements reside and what if anything is missing. Vendor input is essential in this process. Combining the gap analysis with the software strategy should enable you to perform a process analysis to see how workflows will change. Workflow is the people part of the compliance process. Changes in workflow must be accounted for in the project plan.
- Testing may be one of the biggest components in the project plan. Develop technical and workflow test plans. This is part of the quality control for the project plan. Test plan execution and feedback can impact your project timeline.

Your deadline is firm. A rational, well orchestrated project plan including educated resources within your organization can give you the confidence to complete a major scope of work in a short period of time. ☺

Terry Montgomery may be contacted at terrymo@bhcs.com.



**STATE OF TEXAS
OFFICE OF THE GOVERNOR**

A key component of excellence in the delivery of health care services is the ability to accurately maintain and provide quality information. With advancements in health care, patient data has become more complex. The usefulness of this data, which aids patient care, helps identify public health trends and assists billing and insurance reimbursements, will ultimately depend on how effectively it is organized, managed and recorded.

The Texas Health Information Management Association, formed in 1936, has more than 2,600 members committed to advancing the profession of Health Information Management. Collectively, they demonstrate excellence in their commitment to ensure accuracy and efficiency in information management.

Each November, professionals across the country sponsor an awareness campaign to highlight the vital role of health information management professionals in the delivery of medical services.

At this time, therefore, I urge all Texans to recognize the invaluable contributions of health information managers. They play an essential role in providing quality health care for the people of the Lone Star State.

Therefore, I, Rick Perry, Governor of Texas, do hereby proclaim
November 3-9, 2002,

Health Information and Technology Week



in Texas, and urge the appropriate recognition whereof.

In official recognition whereof,
I hereby affix my signature this the
10th day of September, 2002.

Rick Perry
Governor of Texas



You are cordially invited to participate in the
2002 HEALTH INFORMATION & TECHNOLOGY WEEK
November 3-9, 2002

Health Information and Technology (HI&T) Week is just around the corner and it is time to begin planning for the event. As always, AHIMA is providing an informative kit filled with fun filled ideas and material to assist you in getting started with your plans. The kit serves as an excellent educational tool for health information management (HIM) professionals to inform and educate, not only the healthcare community, but also the general public, about the health information management (HIM) profession and its' purpose in healthcare. This year's theme, "Unlocking the Power of

Professionalism," conveys the message of expertise and efficiency of a profession that plays a vital role in the quality of patient care.

The following is a list of the kit's contents. More detailed information regarding the kit can be found at AHIMA's website, <http://www.ahima.org/> under the Professional Development section. As stated before, the kit is packed full of material that will inspire you to celebrate the profession's accomplishments and plan fun, informative activities for your department and community.

- A ready-made PowerPoint program you can present to your colleagues entitled, "Building a Privacy Foundation." The 2001 PowerPoint presentation, "Protecting Patient Privacy – It's Everyone's Responsibility," is also available.
- Fact Sheet with essential HI&T Week information.
- Idea Sheet, to spark some thought and jump start your planning.
- List of "Top 10 Ways to Improve Your Career."
- Press release, an effective way to promote HI&T week to the media.
- A Commemorative brochure - displaying products to enhance your activities, including a very exciting and NEW line of custom-crafted ornaments you'll want to collect.
- HI&T Week logos to use in your promotions.

Here's to a successful and fun filled week of celebrating our profession!
Submitted by: Lillian Valdez, RHIA

Thank You to the Texas Members!

I would like to take the time to thank each and every one of you who voted in our AHIMA Elections this summer! Your vote is truly a voice that has made a difference in this and every election for our professional association. I can remember when we only had 11% of our Texas members taking the time to cast their vote. Over the years, with much success being given to the Texas Health Information Management Association Board and the District Presidents for making voting a priority for representation on the AHIMA front. This attention has paid off.....with both myself and our AHIMA President Barbara Odom-Wesley being named to the AHIMA Board.

I know I would not be here without the support of so many people. Both Diann Brown and the TxHIMA Board who campaigned on my behalf. I also extend the thanks for all the support from the TxHIMA members as I began my journey into the Association leadership so many years ago.

It seems like just yesterday when Lenore Whalen joked with me at my first Dallas Medical Record Association meeting about how she was going to get me involved. Her friendship and mentoring has meant so much to me. A little piece of her will be with me through my years in office. Additionally, it was other members who also welcomed a shy guy from Louisiana (yes, me!) to get involved and more importantly have fun with the "group". This was exactly what I was looking

for....a sense of belonging and an opportunity to get involved.

I can not tell you how my roles as a volunteer at the local, state, and national level has helped me both personally and professionally. It has given me a network to rally around and to support me in all facets of my work and abilities to serve as a member of the AHIMA Board of Directors. ∞



Larry Dunham, RHIA