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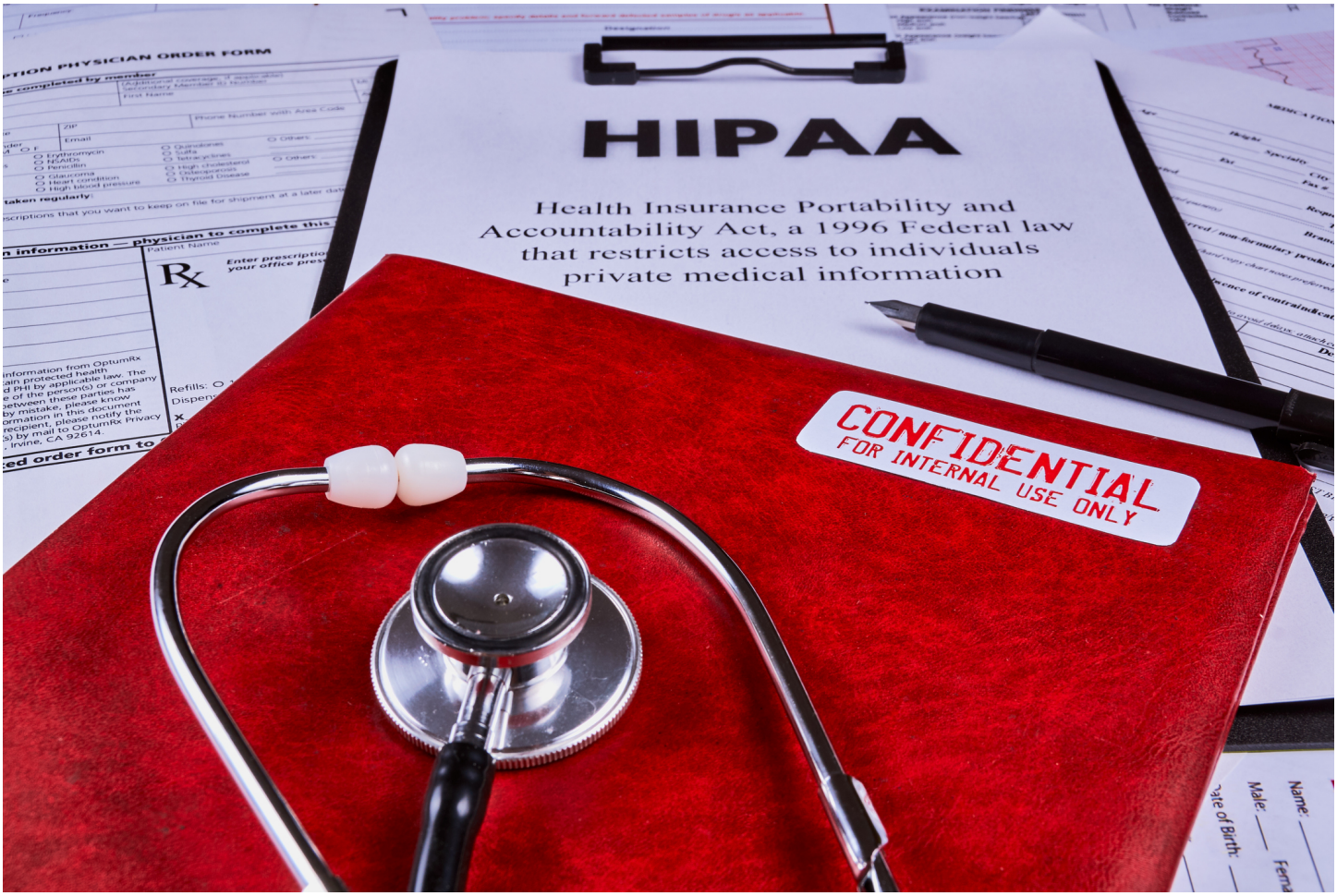
HIPAA Basics for Providers: Privacy, Security, & Breach Notification Rules



What's Changed?

No substantive content updates

Health Insurance Portability & Accountability Act

The Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security, and Breach Notification Rules protect the privacy and security of health information and give patients rights to their health information. HIPAA establishes standards to safeguard the protected health information (PHI) that you hold if you're one of these covered entities or their business associate:

- Health plan
- Health care clearinghouse
- Health care provider that conducts certain health care transactions electronically

Privacy Rule

The Privacy Rule protects your patients' PHI while letting you securely exchange information to coordinate your patients' care. The Privacy Rule also gives patients the right to:

- Examine and get a copy of their medical records, including an electronic copy of their medical records
- Request corrections
- Restrict their health plan's access to information about treatments they paid for in cash

Under the Privacy Rule, most health plans can't use or disclose genetic information for underwriting purposes. You're allowed to report child abuse or neglect to the authorities.

PHI

The Privacy Rule protects PHI that you hold or transmit in any form, including electronic, paper, or verbal. PHI includes information about:

- Common identifiers, such as name, address, birth date, and SSN
- The patient's past, present, or future physical or mental health condition
- Health care you provide to the patient
- The past, present, or future payment for health care you provide to the patient

Requirements

The Privacy Rule requires you to:

- Notify patients about their privacy rights and how you use their information
- Adopt privacy procedures and train employees to follow them
- Assign an individual to make sure you're adopting and following privacy procedures
- Secure patient records containing PHI so they aren't readily available to those who don't need to see them

Sharing Information with Other Health Care Professionals

To coordinate your patient's care with other providers, the Privacy Rule lets you:

- Share information with doctors, hospitals, and ambulances for treatment, payment, and health care operations, even without a signed consent form from the patient
- Share information about an incapacitated patient if you believe it's in your patient's best interest
- Use health information for research purposes
- Use email, phone, or fax machines to communicate with other health care professionals and with patients, as long as you use safeguards

Sharing Patient Information with Family Members & Others

Unless a patient objects, the Privacy Rule lets you:

- Give information to a patient's family, friends, or anyone else the patient identifies as involved in their care
- Give information about the patient's general condition or location to a patient's family member or anyone responsible for the patient's care
- Include basic information in a hospital directory, such as the patient's phone and room number
- Give information about a patient's religious affiliation to clergy members

Incidental Disclosures

The HIPAA Privacy Rule requires you to have policies that protect and limit how you use and disclose PHI, but you aren't expected to guarantee the privacy of PHI against all risks. Sometimes, you can't reasonably prevent limited disclosures, even when you're following HIPAA requirements.

For example, a hospital visitor may overhear a doctor's confidential conversation with a nurse or glimpse a patient's information on a sign-in sheet. These incidental disclosures aren't a HIPAA violation as long as you're following the required reasonable safeguards.

The Office for Civil Rights (OCR) offers guidance about how this applies to health care practices, including incidental uses and disclosures FAQs.

Visit HHS HIPAA Guidance Materials for information about:

- De-identifying PHI to meet HIPAA Privacy Rule requirements
- Patients' right to access health information
- Permitted uses and disclosures of PHI

Security Rule

The Security Rule includes security requirements to protect patients' electronic PHI (ePHI) confidentiality, integrity, and availability. The Security Rule requires you to:

- Develop reasonable and appropriate security policies
- Ensure the confidentiality, integrity, and availability of all ePHI you create, get, maintain, or transmit
- Identify and protect against threats to ePHI security or integrity
- Protect against impermissible uses or disclosures
- Analyze security risks in your environment and create appropriate solutions
- Review and modify security measures to continue protecting ePHI in a changing environment
- Ensure employee compliance

When developing compliant safety measures, consider:

- Size, complexity, and capabilities
- Technical, hardware, and software infrastructure
- The costs of security measures
- The likelihood and possible impact of risks to ePHI

Visit HHS Cyber Security Guidance Material for information about:

- Administrative, physical, and technical PHI safety measures
- Cybersecurity
- Remote and mobile use of ePHI

Breach Notification Rule

When you experience a PHI breach, the Breach Notification Rule requires you to notify affected patients, HHS, and, in some cases, the media. Generally, a breach is an unpermitted use or disclosure under the Privacy Rule that compromises the security or privacy of PHI. The unpermitted use or disclosure of PHI is a breach unless there's a low probability the PHI has been compromised, based on a risk assessment of:

- The nature and extent of the PHI involved, including types of identifiers and the likelihood of re-identification
- The unauthorized person who used the PHI or got the disclosed PHI
- Whether an individual acquired or viewed the PHI
- The extent to which you reduced the PHI risk

You must notify authorities of most breaches without reasonable delay and no later than 60 days after discovering the breach. Submit notifications of smaller breaches affecting fewer than 500 patients to HHS annually. The Breach Notification Rule also requires your business associates to notify you of breaches at or by the business associate.

Visit the HHS Breach Notification Rule for information about:

- Administrative requirements and burden of proof
- How to make unsecured PHI unusable, unreadable, or indecipherable to unauthorized individuals
- Reporting requirements

Who Must Comply with HIPAA Rules?

Covered entities and business associates must follow HIPAA rules. If you don't meet the definition of a covered entity or business associate, you don't have to comply with the HIPAA rules.

Learn more about covered entities and business associates, including fast facts for covered entities.

For definitions of covered entities and business associates, see 45 CFR 160.103.

Who Enforces HIPAA Rules?

The HHS OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules. Violations may result in civil monetary penalties. In some cases, U.S. Department of Justice enforced criminal penalties may apply. Common violations include:

- Unpermitted PHI use and disclosure
- Use or disclosure of more than the minimum necessary PHI
- Lack of PHI safeguards
- Lack of administrative, technical, or physical ePHI safeguards
- Lack of patients' access to their PHI

Learn more about the HHS HIPAA Enforcement, including actual case examples.

Resources

- HIPAA FAQs for Professionals
- Model Notices of Privacy Practices
- Privacy, Security, and HIPAA
- Special Topics in Health Information Privacy
- Training Materials