

## Large and Prompt Response Makes Survey a Big Success

MEDICAL MUTUAL and Professionals Advocate recently conducted a survey of our Insureds to help us determine the best ways to continue to meet your professional liability insurance needs. Your response was tremendous and we would like to offer our very sincere thanks for your cooperation and support. To encourage a prompt reply, we announced that all surveys received by 10/5/01 and accompanied by a Prize Entry Card would be entered into a random drawing. We are pleased to announce the winners of a deluxe, personally embroidered doctor's coat:

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## A Letter from the Chair of the Board

## HIPAA's Privacy Regulations: What Every Physician Needs to Know!

Dear Colleague:

*The Health Insurance Portability and Accountability Act (HIPAA) and the accompanying regulations present opportunities and concerns for physician practices. This issue of Doctors RX will get you acquainted with the key aspects of the privacy rule and provide you with information to prepare you and your practice for compliance.*

D. Ted Lewers, M.D.  
Chair of the Board

MEDICAL MUTUAL Liability Insurance Society of Maryland

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a huge and far reaching piece of legislation. It provides for portability of health insurance and adds some significant preventative health-related fraud and abuse statutes. HIPAA also contains a section entitled "administrative simplification" which was enacted for the purpose of improving the efficiency of health care delivery through the establishment of standards and requirements for the electronic transmission of certain health information.<sup>1</sup> These standards include standards for electronic transactions; and standards to protect the privacy and security of health information. The electronic transaction and privacy standards are final. The security standards have been published in proposed form and the final rules are expected to be out before the end of the year or early in 2002. Eventually, electronic transmission of claims will benefit health care providers as electronic claims submission has the potential to increase cash flow because payments should be processed faster. The delays and costs associated with mailing will also be eliminated.

The rules apply to "covered entities" which are defined as health plans, health care clearinghouses and health care providers who transmit any health information in electronic form in connection with a standard electronic transaction. Physicians and physician groups are providers and must comply with the privacy regulations if they engage in any of the following standard electronic transactions:

- health claims or equivalent encounter information
- eligibility for a plan

Continued on next page

- referral certification and authorization
- health care claim status
- enrollment and disenrollment in a health plan
- health care payment and remittance advice
- health plan premium payments
- coordination of benefits

Physicians are not required to submit electronic claims; and those who do not engage in any of the above listed electronic transactions are not required to comply with the regulations.<sup>2</sup> However, if a billing service or health care clearinghouse submits electronic transactions on a physician's behalf, the physician is a covered entity. The executive branch of the government is trying to encourage the use of electronic claims. Interestingly, although the measure did not pass, the Department of Health and Human Services proposed assessing a \$1.50 fee on any claim not submitted to Medicare electronically in the fiscal year 2002 budget. A similar measure was unsuccessful last year. However, it is more likely that such a user fee proposal will be successful next year as all health plans must be in compliance with the electronic standards by October 16, 2002. Unlike health care providers, who do have a choice as to whether they will engage in electronic transactions, health plans *must* comply with the transaction standards by the compliance date.

As previously noted, the use of electronic claims submission should result in faster payment of claims by health plans and insurers. Claims status and eligibility information can also be obtained much more quickly. Additionally, standardized formats reduce costs as one format will meet the billing requirements of all health plans.

## GETTING READY

Covered entities must be in compliance with the privacy regulations by April 14, 2003. The Department of Health and Human Services has stated that there will be further changes to the regulations to correct unintended and negative consequences on access to, or quality of health care. For example, the current rules do not permit physicians to schedule appointments or procedures before obtaining the patient's consent to use and disclose health information. Amendments to the rule will most certainly fix this unanticipated problem. The government has maintained that compliance with the regulations is "scalable;" that is – the larger and more complex an organization is – the more sophisticated its privacy regulation compliance program

<sup>1</sup>42 U.S.C. § 1320d.

<sup>2</sup>Although physicians who do not engage in electronic transactions will not be subject to penalties for failure to comply with the privacy regulations, the regulations themselves will most likely create a national standard of care. A breach of this duty of care could be the basis for a civil suit.



should be. Nevertheless, no matter what size your organization is, from a solo practitioner to a large group practice, there are a number of steps that need to be taken to get ready for compliance.

### Appoint a Privacy Officer

- Someone has to take charge and be responsible for ensuring compliance with the privacy regulations. The rules require the covered entity to designate a "privacy official" who will be responsible for the development and implementation of the entity's privacy policies and procedures. The office manager may be the most likely candidate but is not the only choice. Remember, this position certainly is not a full time job – it can be just one of the broader responsibilities of the office manager's job. The office manager likely already works with policies and procedures, coordinates staff training and develops forms.

### Analyze Your Current Privacy and Security Measures

- Review all of your existing policies and procedures concerning use or disclosure of confidential patient information. Do not be discouraged if you do not have written policies and procedures. Many practices do not. If you do have policies, however, analyze them to see if

they fit the description of required policies and procedures discussed below, or if they can be amended to comply with the regulations.

- The privacy regulations and the forthcoming security regulations both state that providers have responsibilities to keep protected health information secure. In order to determine how secure information is, practitioners and groups need to identify the location of all protected health information and "map" the flow of information both inside and outside the organization in order to identify potential gaps in security. Determine where you obtain health information and what you do with it. For example: patients provide doctors, nurses, and office personnel with health information. Physicians may need to disclose this information to other providers outside the group in a referral situation. Office personnel may need access to the information so they can disclose it to a billing service, an HMO, or an insurer in order for the physician to obtain payment for services.
- Based on the information flow as determined by the "map," ascertain whether protected health information is available and/or accessible to employees or other individuals who may not need to access particular information, or should not have access to health information at all.
- The assessment of what policies and procedures you have, and what will be required in order to be in compliance with the HIPAA regulations is often referred to as a "gap analysis."

### Create or Adapt Consents for Use and Disclosure of Health Information

- Physicians must obtain consents from patients to use and disclose health information to treat the patient and obtain payment for services. Note that consents for use and disclosure of health information are entirely separate from the concept of obtaining informed consents for treatment purposes.
- The consent also allows physicians to use and disclose health information for practice administrative purposes (referred to as "health care operations" in the regulations). For example, such a consent allows physicians to provide information to auditors and consultants.
- You may condition providing treatment on obtaining the patient's written consent.
- The regulations provide very specific requirements for consents:

- The consent must be in plain language and inform the patient that protected health information may be used and disclosed to carry out treatment, payment, or health care operations.
- The consent must refer the patient to the physician's 'Notice of Privacy Practices' (discussed below) for a more complete description and state that the patient has the right to review the notice before signing the consent.
- If you reserve the right to change the privacy practices described in your notice, the consent must state that the terms of its notice may change and describe how the patient may obtain a revised notice.
- The consent must state that the patient has the right to request that you restrict how protected health information is used or disclosed to carry out treatment, payment, or health care operations; that you are not required to agree to the restrictions; but that if you do agree, the restriction is binding on you.
- The consent must state that the individual has the right to revoke the consent in writing, except to the extent that you have taken any action in reliance on the consent.
- The consent must be signed by the patient and dated.

45 C.F.R. § 164.506(c).

### Authorizations

- Authorization forms to use or disclose protected health information for reasons other than treatment, payment or health care operations, are different from the consent form described above.
- You will need a separate authorization form for use or disclosure of protected health information that is not related to treatment, payment or health care operations.

### Business Associate Agreements

- Business associates are those persons or entities that perform functions on your behalf. Business associates include such people and entities as third party administrators, clearinghouses, data processing firms, billing firms, lawyers, auditors and consultants.
- You may need to provide health information to an entity



## CME Test Questions

### Instructions for CME Participation

*CME Accreditation Statement*--MEDICAL MUTUAL Liability Insurance Society, which is affiliated with Professionals Advocate, is accredited by the Accreditation Council for Continuing Medical Education to sponsor continuing medical education for physicians. MEDICAL MUTUAL designates this educational activity for a maximum of one hour in category 1 credit towards the AMA Physician's Recognition Award. Each physician should claim only those hours of credit that he/she actually spent in the educational activity.

Instructions--to receive credit, please follow these instructions:

1. Read the articles contained in the newsletter and then answer the test questions.
2. Mail or fax your completed answers for grading to the address or fax number provided below:  
Med-Lantic Management Services, Inc.  
P.O. Box 64100  
Baltimore, MD 21298-9134  
FAX 410-785-2631
3. One of our goals is to assess the continuing educational needs of our readers so we may enhance the educational effectiveness of the Doctors RX. To achieve this goal, we need your help. You must complete the CME evaluation form to receive credit.
4. Completion Deadline: March 1, 2002
5. Upon completion of the test and evaluation form, a certificate of credit will be mailed to you. Please allow three weeks to receive your certificate.

- |  |  |
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| <p>1. Physicians must start issuing patients a "Notice of Privacy Practices" on their next visit.<br/>A. True B. False</p> <p>2. Most health plans and health care providers covered by the privacy rule must be in compliance with the new rules by October 16, 2002.<br/>A. True B. False</p> <p>3. The current rules do not permit physicians to schedule appointments or procedures before obtaining the patient's consent to use and disclose health information.<br/>A. True B. False</p> <p>4. Physicians may not condition the provision of treatment on obtaining the patient's written consent.<br/>A. True B. False</p> <p>5. A gap analysis is essential for a physician practice to determine where it stands, re compliance with the privacy rules.<br/>A. True B. False</p> | <p>6. Covered entities do not have to comply with the privacy rules if they contract with another entity to perform some of their essential functions.<br/>A. True B. False</p> <p>7. Physician practices will be required to provide a separate authorization form for use or disclosure of protected health information that is not related to treatment, payment or health care operations.<br/>A. True B. False</p> <p>8. The new privacy rules give patients the right to examine and obtain a copy of their records and request corrections.<br/>A. True B. False</p> <p>9. The new privacy rules prohibit physicians from providing health information to auditors and consultants.<br/>A. True B. False</p> <p>10. The privacy regulations apply to patient information in all forms: electronic, written, oral, and any other.<br/>A. True B. False</p> |
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## CME Evaluation Form

### Statement of Educational Purpose

"Doctors RX" is a newsletter sent bi-annually to the insured physicians of MEDICAL MUTUAL/Professionals Advocate. Its mission and educational purpose is to identify current health care related risk management issues and provide physicians with educational information that will enable them to reduce their malpractice liability risk.

Readers of the newsletter should be able to obtain the following educational objectives:

- 1) gain information on topics of particular importance to them as physicians,
- 2) assess the newsletter's value to them as practicing physicians, and
- 3) assess how this information may influence their own practices.

### CME Objectives for HIPAA's Privacy Regulations

Educational Objective: To gain an understanding of HIPAA's new privacy rules and what physicians need to know to get their practices into compliance.

	Strongly Agree				Strongly Disagree
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### Part I. Educational Value:

5 4 3 2 1

I learned something new that was important.

I verified some important information.

I plan to seek more information on this topic.

This information is likely to have an impact on my practice.

**Part 2. Commitment to Change:** What change(s) (if any) do you plan to make in your practice as a result of reading this newsletter?

\_\_\_\_\_  
\_\_\_\_\_

**Part 3. Statement of Completion:** I attest to having completed the CME activity.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Part 4. Identifying Information:** Please PRINT legibly or type the following:

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_