



NIFLA Legal Tips

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HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

HIPAA is the acronym for the **Health Insurance Portability and Accountability Act of 1996**. The Center for Medicare & Medicaid Services (CMS), formerly known as the Health Care Financing Administration (HCFA), is responsible for implementing the various provisions of **HIPAA**.

The Administrative Simplification provisions (Title II) of **HIPAA** require the Department of Health and Human Services to establish national standards for electronic health care transactions and national identifiers for providers, health plans, and employers. It also addresses the security and privacy of health data. These standards are supposed to improve the efficiency and effectiveness of the nation's healthcare system by encouraging the widespread use of electronic data interchange in healthcare.

For those of you interested in reading **HIPAA** firsthand, it can be found at the following website: <http://aspe.hhs.gov/admsimp>.

A portion of **HIPAA** addresses the Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule) that took effect on April 4, 2001. The Privacy Rule creates national standards to protect individuals' personal health information and gives patients increased access to their medical records. This rule makes sure that private health information does not fall victim to the progress of the information and technology age, where an array of data is readily available in computer systems and too often just a keystroke way from being accessed.

As required by **HIPAA**, the Privacy Rule covers health plans, healthcare clearinghouses, and those healthcare providers who conduct certain financial

and administrative transactions electronically. Most covered entities must comply with the Privacy Rule by April 14, 2003. Small health plans have until April 14, 2004 to comply with the rule.

HIPAA MOST LIKELY DOES NOT APPLY TO YOUR CENTER/CLINIC

The most important fact for pregnancy help centers and clinics to know is that **HIPAA's** privacy and simplification standards only apply to healthcare providers who electronically transmit health information for insurance-related purposes. Unless a clinic is billing insurance electronically, **HIPAA** does not apply. **Transmitting ultrasound reports electronically for review by a physician is not regulated by HIPAA.**

VOLUNTARY COMPLIANCE SUGGESTED

Despite the fact that **HIPAA** does not apply to most pregnancy help centers/medical clinics, **NIFLA** suggests that pregnancy help centers/clinics consider moving in the direction of voluntary compliance with **HIPAA**. Doing this means that centers/clinics provide the same type of privacy notices and procedures that are offered in other medical settings. By doing this centers/clinics will be enhancing their professional image and meeting the general expectations of patients. In addition, there is the strong probability that **HIPAA** will be amended in the future to include the work of pregnancy help centers/clinics. If this occurs, voluntary compliance will already have occurred and little work would be required to maintain mandatory compliance.

Below is a sample Policy and Notice prepared by Kurt Entsminger of Care Net, to use for voluntary compliance with **HIPAA**.

PRIVACY OF PATIENT HEALTH INFORMATION
[Sample Policy]

The Nurse Manager of the Pregnancy Help Medical Clinic is designated as and assigned to be the Privacy Officer of the Clinic. In such role, the Nurse Manager will implement the procedures described below together with such other procedures as may be necessary to protect the privacy of patient health information.

1. Patient health information will be kept secure. Electronic records will be password protected. Other records will be maintained in secure files and kept under lock and key. Internal access to individual health information will be limited to such personnel who have a reasonable need to use such patient health information.
2. Use or disclosure of health information will be allowed to occur without the patient's prior authorization when undertaken for purposes of treatment or for purposes related to the clinic's health care operations. For other uses or disclosures, the Pregnancy Help Clinic will seek prior authorization from the patient, except when such use or disclosure may be required by law, required for public health reasons, required to avert a threat of harm to the patient or a third person, or when other circumstances may reasonably warrant such use or disclosure without prior authorization.
3. Each patient will be given a written notice about the way in which health information may be used or disclosed by the Pregnancy Help Clinic including a description of the instances in which advance authorization for use or disclosure may or may not be sought and a description of the steps that the patient may exercise with respect to her own health information.
4. Written authorization will be obtained from each patient for any use or disclosure of health information for which such prior authorization is warranted as described above.
5. Any outside disclosure of health information will be limited only to that minimum amount of information that is reasonably necessary to accomplish the specific purpose(s) of the disclosure.
6. For each patient, an accounting will be made of each outside disclosure of health information and those records will be kept for at least 6 years after the last such disclosure.
7. Each patient will be notified that she may inspect and copy her health information, that she may request restrictions on the use or disclosure of their health information, that she may request amendments to their health information and that she may find out what disclosures have been made to outside persons. Requests for inspection and copying shall be responded to within 30 days. Requests for restrictions on use and disclosure or requests for amendments of health information shall be responded to within 60 days. In the event of denial of any requests to restrict the usage or disclosure of health information or the denial of any requests to amend health information, the patient will be given a written notice of such denial and an explanation of the reasons.
8. All center employees and volunteers will be trained concerning these procedures.

NOTICE OF PRIVACY PRACTICES

(Sample Notice)

I. THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

BECAUSE WE ARE A MEDICAL CARE PROVIDER THAT DOES NOT ENGAGE IN ANY TRANSACTIONS THAT INVOKE COVERAGE OF THE HIPAA PRIVACY ACT, THE PRIVACY PRACTICES AND TERMS DESCRIBED IN THIS NOTICE ARE VOLUNTARILY UNDERTAKEN. THEREFORE, NOTHING IN THIS NOTICE SHOULD BE CONSTRUED AS CREATING ANY CONTRACTUAL OR LEGAL RIGHTS ON BEHALF OF PATIENTS. WE RESERVE THE RIGHT TO MODIFY OUR PRIVACY PRACTICES AND THIS NOTICE AT ANY TIME.

II. Safeguarding Your Protected Health Information

Individually identifiable information about your past, present, or future health or condition, the provision of health care to you, or payment for health care is considered "Protected Health Information" (PHI). We will extend certain protections to your PHI. This Notice explains how, when and why we may use or disclose your PHI. Except in specified circumstances, we will only use or disclose the minimum necessary PHI to accomplish the intended purpose of the use or disclosure.

III. How We May Use and Disclose Your Protected Health Information

We use and disclose PHI for a variety of reasons. We may use and/or disclose your PHI for purposes of treatment or our health care operations. For uses beyond that, we will ordinarily obtain your written authorization. The following offers more description and some examples of the potential uses and disclosures of your PHI:

Uses and Disclosures Relating to Treatment or Health Care Operations. We may disclose your PHI to doctors, nurses and other health care personnel who are involved in providing your health care. Your PHI may be shared with outside entities performing ancillary services to your treatment. Also, we may use and/or, disclose your PHI as may be reasonably necessary in the course of operating our medical help clinic. We may also send or communicate appointment reminders but subject to our normal confidentiality policies and any special instructions that you have given.

Uses and Disclosures for Which Special Authorization Will be Sought. For uses beyond treatment and operations purposes, we will ordinarily seek to obtain your authorization before disclosing your PHI. However, disclosure of your PHI may be made without your consent or authorization when required by law, when required for public health reasons, when necessary to avert a threat of harm to you or a third person, or when other circumstances may require or reasonably warrant such disclosure.

IV. How You May Have Access to or Control of Your Protected Health Information. The

following is a description of the steps you may take to access or to otherwise control the disposition of your PHI:

To request restrictions on uses/disclosures: You may ask that we limit how we use or disclose your PHI. We will consider your request, but we are not legally bound to agree to the restriction. To the extent that we do agree to such restrictions, we will abide by such restrictions except in emergency situations. We cannot agree to limit uses/disclosures that are required by law.

To choose how we contact you: You may ask that we send you information at an alternative address or by alternative means. We will agree to your request so long as it is reasonably easy for us to do so.

To inspect and copy your PHI: Unless your access is restricted for clear and documented treatment reasons, you will be permitted to inspect your protected health information upon written request. We will respond to your request within 30 days. If we deny your request for access, we will give you written reasons for the denial. If you want copies of your PHI, we will make reasonable efforts to accommodate any such request. You may designate selected portions of your PHI for copying.

To request amendment of your PHI: If you believe that there is a mistake or missing information in our record of your PHI, you may request in writing that we correct or add to the record. We will respond within 60 days of receiving your request. Any denial will state the reasons for the denial. If we approve the request for amendment, we will change the PHI and so inform you. We will also inform any others who have a need to know about such changes.

To find out what disclosures have been made: You may request for us to provide you with a list of all disclosures of your PHI which we have made except for such disclosures as have been made in connection with your treatment, our health care operations, or as specifically required by law. We will respond to your request within 60 days of receiving it.

To receive this notice: You may receive a paper or electronic copy of this notice upon request.

V. Contact Person: If you have any questions or concerns about our privacy practices, please contact:

VI. Acknowledgement: I have received a copy of this Notice:

Printed Name

Signature

Date _____

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