

HIPAA PRIVACY

From Rules to Tools

Introduction to

ADMINISTRATIVE REQUIREMENTS



HIPAA PRIVACY: Applying the Administrative Requirements of 45 CFR 164.530

- Where are we on April 1, 2002?
- What do we do?
- How do we get ready for April 2003?
- **One uses the KHA HIPAA Privacy User Guide.**

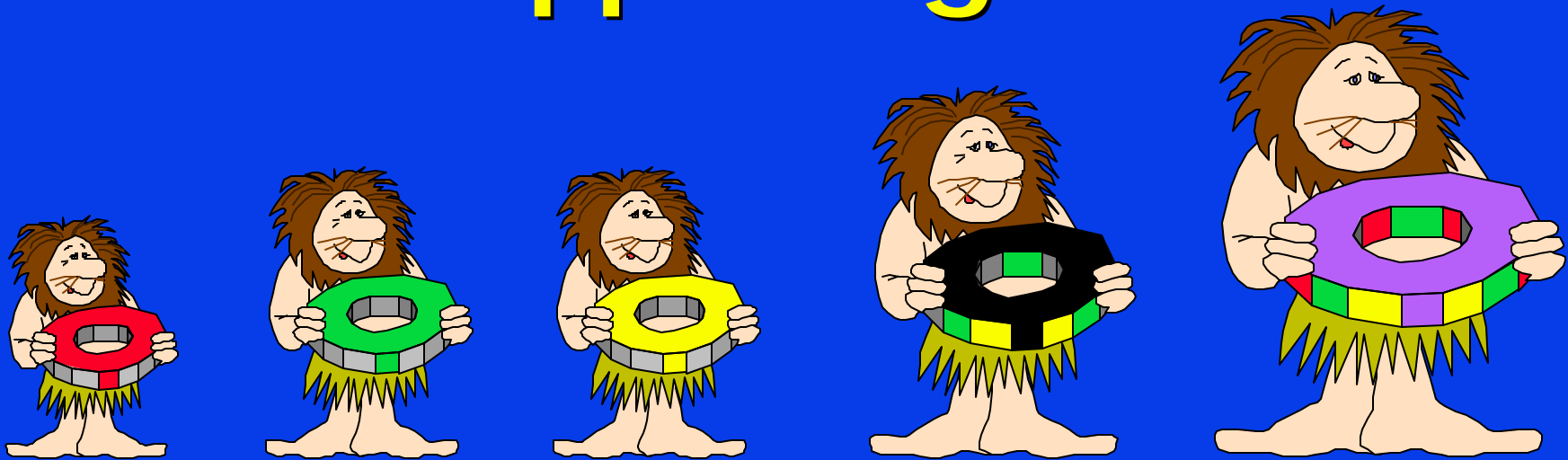


HIPAA PRIVACY User Guide

LAW OFFICES OF
GOODELL · STRATTON
EDMONDS & PALMER
ESTABLISHED 1881 LLP

Steve A. Schwarm

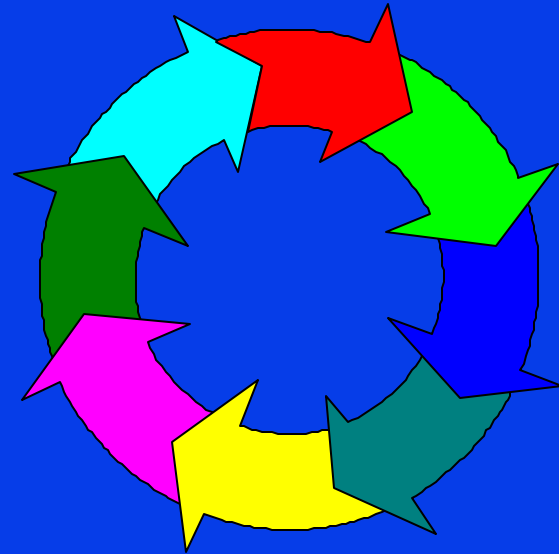
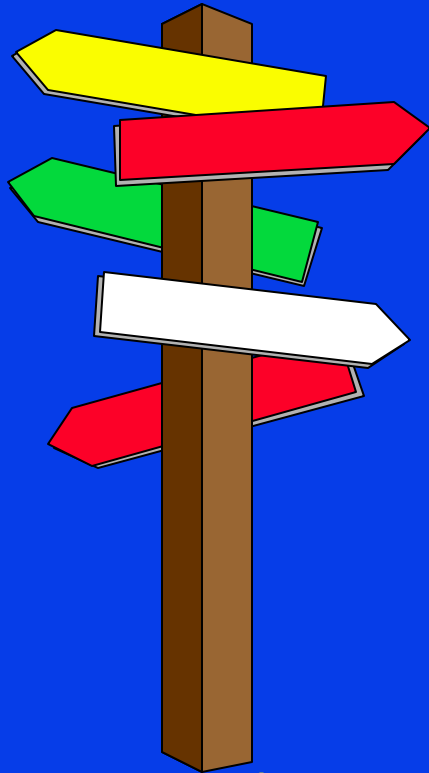
Where are we and what is happening now?



NPRM Rule Preamble Guidance New NPRM

A new Privacy NPRM came out March 27, 2002.
In the end it will work with the December 2000
Rule & Preamble and the July 2001 Guidance.

Roadmap to Compliance



KHA Privacy User Guide

Current with “under construction” updates.

INTRODUCTION & HISTORY

- Patient health care information has always had some level of protection applied to it.
- HIPAA Privacy Rule is here to stay.
- “HIPAA 101” class is over.
- Now it is time to go into the real world and apply the HIPAA Privacy Rule.
- The “Tool” to use is the KHA HIPAA Privacy User Guide.

INTRODUCTION & HISTORY

- Patient health care information has always had some level of protection applied to it.
- HIPAA Privacy Rule is here to stay.
- “HIPAA 101” class is over.
- Now it is time to go into the real world and apply the HIPAA Privacy Rule.
- The “Tool” to use is the [KHA HIPAA Privacy User Guide](#).

Administrative Requirements

Administrative requirements under 45 CFR 164.530 can be broken down into 3 main areas for any covered entity to focus on.

All of these areas relate to each other.

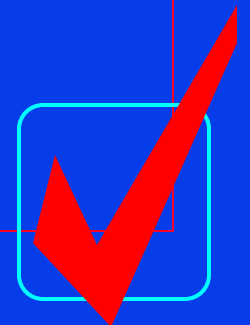
Administrative Requirements

- Personnel = who does what?
- Policies and Procedures = how do you apply the HIPAA Privacy Rule to your facility.
- Training and Education = train your personnel to understand HIPAA & how to apply the HIPAA Privacy Rule through your policies & procedures.

(See the *User Guide* pages 6 and 111 for summary information.)

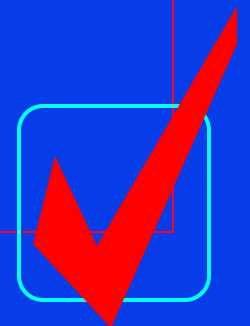
KHA HIPAA Privacy User Guide

- Chapters with flowsheets, guides, and checklists.
- GLOSSARY with general explanations and basic requirements.
- Forms and HIPAA Privacy Policy Checklist.



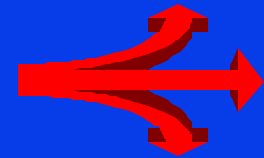
KHA HIPAA Privacy User Guide

- Policy Template is part of the *User Guide*.
- 36 page HIPAA Privacy Policy checklist is part of the *User Guide*.



Administrative Requirements: Summary

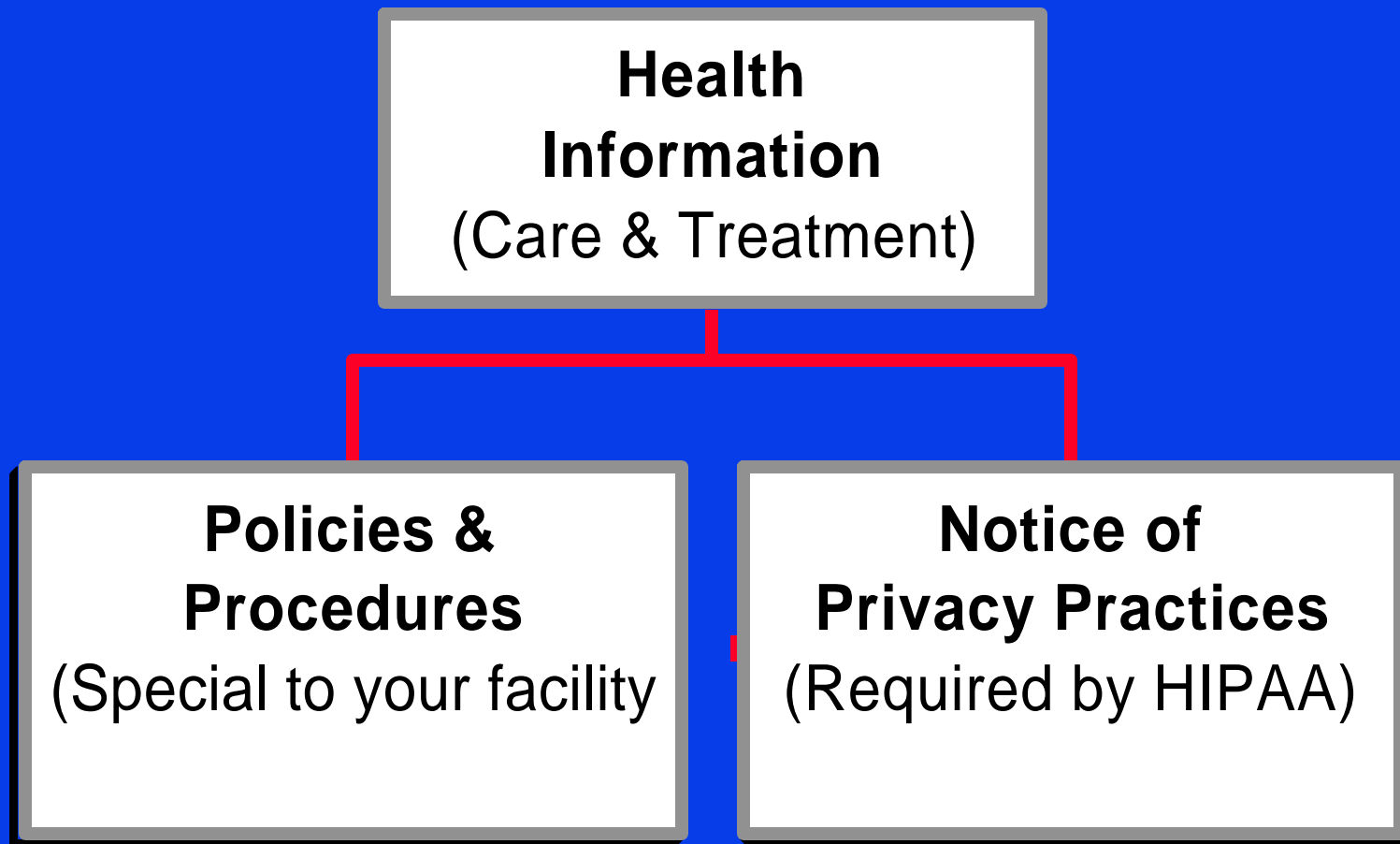
- What do the “administrative requirements” cover?
- What must a covered entity do to comply and address all of the “administrative requirements”?
- See pages 12 - 16 in the *User Guide* for a general summary of the requirements.



Administrative Requirements: Summary

- Protect from accident or intentional misuse or disclosure of PHI. (workforce and business associates)
- Establish a grievance procedure for violations of your privacy policies.
- Impose sanctions against employees who violate your privacy policies.
- Mitigate effects or errant disclosures by you or by your business associate.
- Prevent retaliation for complaints.

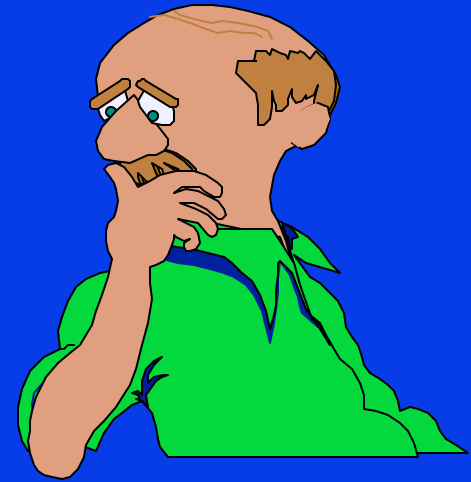
HIPAA PRIVACY DOCUMENTS



HIPAA Privacy Documents

- How do the CE's "Policies & Procedures" work with the "Notice of Privacy Practices?"
- The NPP tells the world how you will use & disclose PHI.
- The "mental process" a CE uses to determine how it will use & disclose PHI is accomplished through drafting written policies & procedures.

Where to start:



- Collect all current forms.
- List all current “business associates.”
- List all types of uses & disclosures.
- List all people who access PHI.
- List why people need to access PHI.
- Determine who need PHI & why.

Is it Health Information?

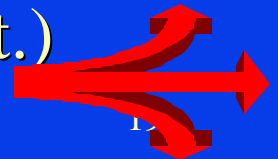
- Is it Protected Health Information under HIPAA?
- Is it “protected” under some other federal law?
- Is it “protected” under some state law?
- Is it addressed in “policies and procedures?”
- Does HIPAA Privacy even apply?

Is it Health Information?

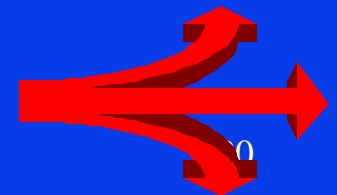
- Review the *User Guide* to determine if it is health information subject to HIPAA Privacy.
- Page 116 and page 186 cover the definitions from 45 CFR 160.103
- Review the government defined exceptions at 45 CFR 160.203 (See pages 52 & 191 in the *User Guide*)
- Review the definition of “designated record set.”

If it is Health Information and I already have a confidentiality policy - what do I need to do?

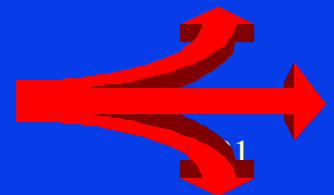
- Identify the people or class of people on your staff that require access to PHI. (Use the tracking worksheet.)
- Identify the category of information to which those people need access. (Use the tracking worksheet.)



- Prevent access to PHI by unauthorized people.
- Ensure the “minimum necessary” amount of PHI is released for routine disclosures.
- Review requests for other disclosures & determine the appropriate amount of PHI to release.



- Verify the identify of the requester of information.
- Provide individuals with access to their records.
- Provide individuals with an opportunity to request amendment of their records.



- Provide an accounting of disclosures to individuals upon request.
- Make sure your “business associates” protect PHI.
- Draft a formal “*Notice of Privacy Practices*” that applies to your facility.
- (Review the *User Guide* checklist on page 16.)

People to have in place:

Privacy Official

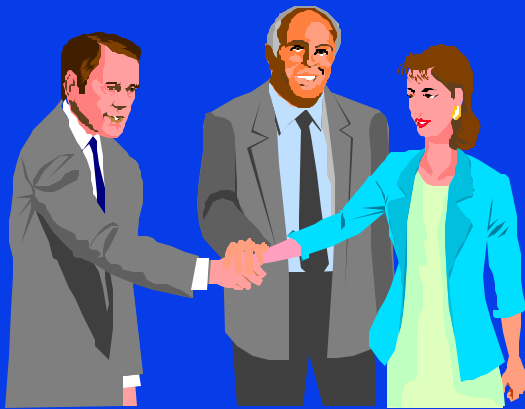
Contact Person

Persons to process access requests

Persons to process amendments

Persons for accounting requests

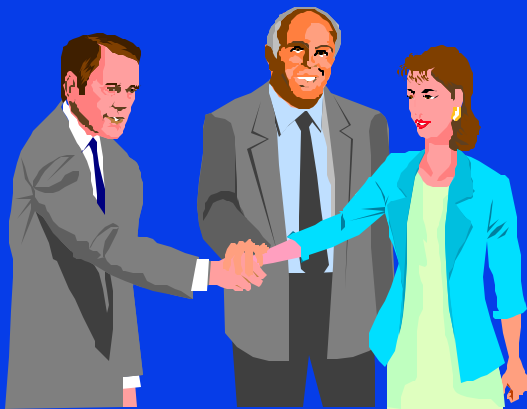
(See the first section in the HIPAA Privacy Policy Checklist.)



People to have in place:

These persons can all be the same person, can be 5 different persons (or more) or can be a combination of positions.

See page 96 of the *User Guide* for summary information.





**Notice of
Privacy
Practices**

Notice of Privacy Practices

Glossary

**HIPAA
Privacy
Policy
Checklist**

See page 25 and page 142 in the *User Guide* and the 8 page NPP template form.

User Guide Glossary

Shortcut merged definitions and concepts from the HIPAA Privacy rule in alphabetical order.

The “chapters” before the GLOSSARY combine the HIPAA Privacy concepts that relate to each other together under a concept heading.

What Policies do I need?

- **The HIPAA Privacy Policy Checklist brings together the different policies, procedures, and issues that need to be addressed.**
- **The following pages summarize what needs to be in certain policies.**
- **Review the various forms, Glossary terms, Policy Template and chapter checklists.**

Policies

Consents*

&

Authorizations

*possible modification with
March 2002 NPRM.

- Draft the different forms.
- Tell when required.
- Tell when *not* required.
- Tell why & what it is for.
- Tell what to do with it.
- Address how it is used.
- Address who can use it.
- Address denials.
- Address retention.

Policies

Consents*

&

Authorizations

*possible modification with
March 2002 NPRM.

- See page 39 and 82 in the *User Guide* for Consents
- See page 43 in the *User Guide* for Authorizations.
- Review the *User Guide* forms.
- The March 2002 NPRM may make the “consent” optional and replace it with an “acknowledgment.”

Policies

Access

- Draft the different forms.
- Tell when & when *not* required.
- Tell why & what it is for.
- Tell what to do - when to do it - how to do it - who can use it.
- Identify persons processing requests.
- Address agreements & denials.
- Address retention.

Policies

Access

- Review pages 19 and 63-65 of the *User Guide*.
- Address the difference between “access” [PHI released to an individual at the request of the individual] and “authorization” [PHI released to a third party at the request of an individual.]

Policies

Amendment

- Draft the different forms.
- Tell when & when *not* required.
- Tell why & what it is for.
- Tell what to do - when to do it - how to do it - who can use it.
- Identify persons processing requests.
- Address agreements & denials
- Address retention.

Policies

Amendment

- Review pages 21 - 22 and 70 -71 of the *User Guide*.
- Review the different forms and letters in the Forms section that can be used to address this issue.

Policies

Accounting

- Draft the different forms.
- Tell when & when *not* required.
- Tell why & what it is for.
- Tell what to do - when to do it - how to do it - who can use it.
- Identify persons processing requests.
- Address suspended accounting.
- Address retention.

Policies

Accounting

- Review pages 22 - 24 and pages 67-68 in the *User Guide*.
- Review the Accounting form in the *User Guide*.

Policies

Copying of the Record

- Draft a form (*Access form?*).
- Tell when required.
- Tell when *not* required.
- Tell why & what it is for.
- Tell what to do - when to do it
- how to do it - who can use it.
- Identify persons processing requests.
- Address retention.

Policies

Copying of the Record

- Review pages 86-87 in the *User Guide*.
- “Costs” are addressed on page 87.
- Address when one can “inspect & copy” and when one can only “inspect.”

Policies

Opt-Out Situations

- Draft forms. *Facility Directory, Marketing*, & Fundraising*
- Tell when & when *not* required.
- Tell why & what it is for.
- Tell what to do - when to do it - how to do it - who can use it.
- Address what to do with response.
- Address retention.

Policies

Opt-Out Situations

- Review Facility Directory information on page 104 of the *User Guide*.
- Review Marketing information on page 137 of the *User Guide*.
- Review Fundraising information on page 109 of the *User Guide*.
- Review page 46 for a summary and page 47 for a checklist.

Policies

Verifications of Requester

- Draft a form.
- Tell when & when *not* required.
- Tell why & what it is for.
- Tell what to do - when to do it - how to do it - who can use it.
- Address what is a “verification”.
- Address retention.

Policies

Verifications of Requester

- Review page 175 of the *User Guide*.
- 45 CFR 164.514(h) contains very detailed information about “verification” and what is acceptable and when.

Policies

Complaints

- Draft a form.
- Draft a tracking form.
- Tell why & what it is for.
- Tell what to do - when to do it - how to do it - who can use it.
- Address the “process” & who handles the “complaint”.
- Address the “outcome” decision.
- Address retention.

Policies

Complaints

- Review pages 75 and 245 in the *User Guide*.
- Address both internal (within the CE) complaints and external (to HHS) complaints in your policies.
- Know when you must inform a person of how to file a complaint.

Policies

Violations & Sanctions

- Draft a reporting form.
- Draft a tracking/investigation form.
- Tell why & what it is for.
- Tell what to do - when to do it - how to do it - who can use it.
- Address the “process” & who handles the “violation”.
- Address the “outcome” decision.
- Address retention.

Policies

Violations & Sanctions

- A CE must have an effective discipline program.
- Review page 245 in the *User Guide*.

Policies

Release of PHI

- Draft a policy for *each type* of release.
- Tell why & what it is for.
- Tell what to do - when to do it - how to do it - who can disclose it - who can receive it .
- Address the “request,” “use,” or “disclosure.”
- Address “routine” disclosures.

Policies

Release of PHI

- Review page 32 and page 170 in the *User Guide*.
- Address every “use” and every “disclosure.”
- Cross reference to access, amendment, accounting, business associates, and public policy purposes.

PREEMPTION

45 C.F.R. 160.203

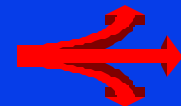
State law provisions that are contrary to the HIPAA provisions are preempted by HIPAA.

If the state law is “more stringent” (e.g., provides more protection) then the state law will control.

PREEMPTION

“More Stringent” means:

with respect to use or disclosure, the law prohibits or restricts a use of disclosure in circumstances which such use or disclosure otherwise would be permitted under HIPAA unless in connection with a compliance determination by the Secretary of HHS or to the individual.



PREEMPTION

Permits greater rights of access to or amendment of the individual's health information (but shall not preempt any state law that authorizes or prohibits disclosure of PHI about a minor to a parent, guardian, or *loco parentis*.)

about a use, disclosure, right or remedy if it provides the greater amount of information.



PREEMPTION

- **Any law that narrows the scope or duration, expand the criteria for privacy protections, or reduce the coercive effect - all related to consents or authorizations.**
- **Provides for longer retention or requires reporting of more detailed information as it relates to recordkeeping or accounting.**



PREEMPTION

- **OR provides greater privacy protection for the individual who is the subject of the individually identifiable health information.**

HIPAA establishes a federal “floor” of minimum privacy standards.

PREEMPTION & STATE LAWS

- **Selected Kansas laws have been summarized as part of a handout to the *User Guide*.**
- **Each Kansas law should be reviewed with legal counsel for determination if and when it is preempted as any specific situation applies to your facility.**

Thank You

Steve A. Schwarm

GOODELL, STRATTON, EDMONDS & PALMER, L.L.P.

515 South Kansas Ave., Topeka, KS 66603-3999

Tel. 785-233-0593 Fax 785-233-8870

www.goodellstrattonlaw.com

sschwarm@goodellstrattonlaw.com

