



## HIPAA, Assisted Living and A.L. Wizard

### SUMMARY

***The HIPAA is a complex federal law which attempts, among other goals, to standardize and protect the communication of data within health care. Most assisted living communities will probably not be affected unless they encompass a home health agency, a skilled nursing facility, a Medicare recognized hospice or operate in a state that may classify them as a "health care facility." Communities whose employees directly furnish "health services" to their residents or bill for such services may also be subject to the privacy provisions of this law. Accepting residents through Medicaid waivers may also require compliance with this law. Enforcement of the privacy provisions is scheduled for April 2003. Final security regulations have not yet been issued.***

***Assessing residents, providing assistance with medications within a social model and employing a supervising nurse who renders no direct care will probably not subject a community to the HIPAA, however forthcoming regulation details warrant monitoring. A.L. Wizard meets all current HIPAA regulations and is committed to maintaining compliance in the future.***

The Health Insurance Portability and Accountability Act of 1996 (the HIPAA or the Act) was enacted by Congress in 1996 "... to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes." One of its subchapter provisions, Administrative Simplification, is intended to protect the privacy of medical records and reduce the costs and administrative burdens of health care by making possible the standardized, electronic transmission of many administrative and financial transactions currently carried out manually on paper. Congress and the health care industry have agreed that standards are needed for the electronic exchange of administrative and financial health care transactions to improve the efficiency and effectiveness of the health care system. This part of the Act is a monumental plan for the restructuring of health information transmission.

The HIPAA, thus far, contains four major elements of concern to the health care industry.

**1.) Uniform Electronic Data Interchange (EDI) Standards** This portion of the Act deals with standardization and designation of medical data code sets used in the health care industry. These include diagnosis, medication and medical procedure codes. Included also are coding systems for impairments, other health related problems and their manifestations; causes of injury, disease, actions taken to prevent, diagnose, treat, or manage diseases, injuries and impairments along with any substances, equipment, supplies or other items used to perform these actions. In this aspect, HIPAA has become a comprehensive law that drives the development of electronic data interchange for all specified administrative (and financial)

healthcare transactions for every “covered health care entity” (see below for definition). This Standard became effective October 16, 2002 unless a compliance plan was submitted before October 16, 2002 in which case the standard is effective as of October 16, 2003.

2) **Privacy Standards** This standard was promulgated in April, 2001 and deals with consent and disclosure of individually identifiable information about “patients.” These standards, due for enforcement in April 14, 2003, are discussed below.

3) **Security and Electronic Signature Standards** The Secretary of Health and Human Services (HHS) issued proposed regulations in August 1998 and has since issued updates. Compliance will be required 26 months after publication of the final regulations. The proposed regulations detail administrative security policies, authorization and access controls, integrity, authentication and encryption procedures and electronic signature standards. Documentation of procedures and the appointment of an individual or organization responsible for maintaining these policies are required but the “scalable” policy details are left to the individual entity for formulation. The policies and procedures must address such issues as maintaining confidentiality when records are sent to other entities, training and terminating personnel, supervising maintenance workers, auditing access to records, ensuring the integrity of health records, maintaining the physical security of computer workstations and software and managing security breaches. Also requiring attention are emergency response standards, data back up standards and disaster recovery procedures. This Standard’s effective date is not yet finalized but has tentatively been set for late 2004.

4) **Unique Health Identifiers** for providers, employers and health plans. . This Standard’s effective date will be various dates throughout early 2004.

### ***Who is required to use the standards?***

The Act specifies that “...all private sector health plans (including managed care organizations and ERISA plans, but excluding certain small self administered health plans) and government health plans (including Medicare, State Medicaid programs, the Military Health System for active duty and civilian personnel, the Veterans Health Administration, and Indian Health Service programs), all health care clearinghouses, and **all health care providers that choose to submit or receive these transactions electronically are required to use these standards.**” The definition of health care provider includes “any other person or organization that furnishes, bills, or is paid for health care.” Health care is further defined as “care, services or supplies related to care of individuals in the normal course of business.” These “covered entities” must use the standards when conducting any of the defined transactions covered under the HIPAA. Entities are defined as “health care providers” if they provide:

- (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; counseling; service; assessment or procedure with respect to the physical or mental condition, or functional status, of an individual or affecting the structure or function of the body.
- (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.
- (3) Procurement or banking of blood, sperm, organs, or any other tissue for administration to individuals.

From A.L. Wizard’s research, it appears that The HIPAA will, when final regulations are posted, apply only to assisted living facilities with integrated home health agencies and/or Medicare hospice programs, those receiving payments from health insurers (including

governmental insurers) for health care services or those operating in states which classify assisted living communities as health care providers. Payment as part of Medicaid waivers will probably also be classified as rehabilitative or therapeutic service.

***Which health care transactions are required to use the standards under the EDI regulation?***

As required by the HIPAA, HHS is adopting standards for the following administrative and financial health care transactions

1. Health claims and equivalent encounter information.
2. Enrollment and disenrollment in a health plan.
3. Eligibility for a health plan.
4. Health care payment and remittance advice.
5. Health plan premium payments.
6. Health claim status.
7. Referral certification and authorization.
8. Coordination of benefits.
9. Standards for the first report of injury and claims attachments  
(also required by the HIPAA) will be adopted at a later date.

The transaction standards will apply only to electronic data interchange (EDI) when data are transmitted electronically between health care providers and health plans as part of a standard transaction. Data may be stored in any format as long as it can be translated into the standard transaction when required. Privacy and security standards, on the other hand, will apply to all health care information collected by all the above-mentioned health care entities.

For health care providers, designated codes for diagnosis and medical procedures are ICD-9 and CPT, respectively. Virtually all such covered providers already use these codes.

HHS, the regulating agency, suggests that if a question exists about whether the standards are required, a simple two-part test, in question form, be used to determine applicability:

Question 1: Is the transaction initiated by a covered entity (as defined above) or its business associate? If no, the standard need not be used.

Question 2: Is the transaction one for which the Secretary had adopted a standard (as defined above)? If yes, the standard must be used. If no, the standard need not be used.

It is not yet clear that any of these transactions occur in most assisted living settings. As noted above, the provisions clearly apply to campuses offering skilled nursing facilities and entities that provide "health care services" or receive health care benefits. Home health agencies and Medicare hospice programs are also included under its coverage. A search of the entire regulation text in the Federal Register fails to mention "residential services" or "assisted living" at all. "Covered entities" must use the standards when conducting any of the defined transactions covered under the HIPAA. This provision is effective October 16, 2003.

The law gives the Secretary of HHS the authority to impose monetary penalties for failure to comply with a standard. The Secretary is required by statute to impose "penalties of not more than \$100 per violation on any person or entity who fails to comply with a standard except that the total amount imposed on any one person in each calendar year may not exceed \$25,000 for violations of one requirement." Enforcement procedures will be published in a future regulation.

## ***What are the Privacy standards?***

This part of the regulations, promulgated by HHS, is effective as of April 14, 2001 and applies only to covered entities and "protected health information." Compliance will not be required until April 2003. These standards provide that all individually identifiable health information (not merely records and not only those subject to electronic transmission), regardless of the form in which it is maintained or transmitted, may not be disclosed (with some exceptions) without the "patient's" authorization if it is gathered by a covered entity. Further, specific security measures will be required to insure that privacy. The regulations delineate what is required in and covered by general authorizations and later consents for special authorizations, how and in what form authorizations and consents can be obtained and the responsibilities of the "covered entities" in regard to these disclosures and consents. The privacy regulations also apply to "business associates" of the "covered entities" including those who perform functions related to the use of identifiable health information. Assessment of Internal privacy standards, training of staff in privacy issues, and appointment of a designated privacy official are also required. State privacy regulations, if more stringent, will supercede the HIPAA. In addition, this regulation contains a stipulation that allows the Secretary of HHS to make changes to the rule a year after it takes effect. Even those communities that are not a "designated health care entity," A.L. Wizard encourages adoption of the HIPAA privacy standards (password control, private viewing of computer screens, orientation of personnel to privacy etc.) to all our customers as good general practice.

In some instances (as noted above), A. L. Wizard's services will be subject to the security and privacy requirements of the HIPAA. We are confident that our advanced security features, including sophisticated authentication procedures, cryptographically secure passwords and 128-bit encryption of all data transmissions and storage are in a format that is and will remain state of the art. A.L. Wizard is committed to ensuring all its products are fully HIPAA-compliant well before final governmental standards go into effect and, upon request, we will supply any of our customers a signed, HIPAA-compliant "Business Associate Agreement" which may be required of vendors of "designated health care entities" having access to covered resident information..

For direct information and a copy of the regulations, see <http://aspe.os.dhhs.gov/admnsimp/>. Other resources include HHS's Final Privacy Rule <http://www.hhs.gov/ocr/hipaa>, a summary sheet at <http://www.hhs.gov/news/facts>, a summary/question and answer sheet on privacy regulations at <http://www.hhs.gov/ocr/hipaa/finalmaster.html> and the Health Privacy Project at <http://www.healthprivacy.org/>. A. L. Wizard is actively monitoring HHS communications on all aspects of the HIPAA and also maintains a complete file of analyses of the entire Act. We would be glad to share this information at your request. There may be aspects of the HIPAA that must be satisfied at the community level and may require consultation with the community's attorney.