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THE HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT (HIPAA) Information Sheet for HIV Providers in New York State

What is HIPAA? The Health Insurance Portability and Accountability Act (HIPAA) establishes a federal floor of safeguards to protect the privacy of medical records and other personal health information which is transmitted in electronic, written, or oral form. HIPAA went into effect on **April 14, 2003**.

Who must comply with HIPAA? Health care providers, health plans and health care clearinghouses are "covered entities" who must comply with HIPAA *if* they transmit health information *electronically* in connection with certain health care transactions. A "health care provider" is any individual or entity that furnishes, bills, or is paid for health care in the normal course of business. "Health care" includes preventive, diagnostic, therapeutic, counseling, and assessment services with respect to the physical or mental condition of an individual. See the reverse side for examples of who's covered and who's not.

What should you do if you're covered by HIPAA?

- Put in place **new privacy policies and procedures** and **administrative requirements**;
- Ensure that your patients/clients are afforded **new patient rights**; and
- **Continue to comply with New York's HIV Confidentiality Law (Article 27-F of the Public Health Law)** in handling and disclosing any confidential HIV related information.

HIPAA's Administrative Requirements:

- Design a **notice** to advise patients of their **privacy rights** under HIPAA;
- Appoint a **privacy official** to be responsible for the provider's privacy policies;
- Provide **training** to all staff on HIPAA's privacy rules;
- Put in place appropriate administrative, technical, and physical **safeguards**;
- Establish a process for patient **complaints** and workforce **sanctions** to address violations of patients' privacy rights and HIPAA's requirements;
- **Document** all privacy policies and procedures.

HIPAA's Patient Rights:

- Right to an **accounting** of disclosures of protected health information made in past 6 years;
- Right of **access** to patients' own health records, with some exceptions;
- Right to request that information in their health records be **amended**;
- Right to request **restrictions** on how their health information is used or disclosed;
- Right to receive **confidential communications** regarding their health information.

Are You Covered by HIPAA?

Examples of those who are, and who are not, covered “health care providers.” Here is a list of the types of organizations, including those providing HIV/AIDS services, that generally will be considered “health care providers” who must comply with HIPAA (assuming they conduct covered transactions electronically), and those that generally will not be considered subject to HIPAA (regardless of whether they conduct covered transactions electronically) because they are not health care providers as defined by HIPAA.

Covered by HIPAA

Hospitals
Health clinics
Doctors’ offices
Home health care providers
Nursing homes
Drug and alcohol treatment programs
Mental health providers and professionals
HIV counseling and testing providers

Not Covered by HIPAA

Laboratories/testing facilities
Schools
Foster care agencies
Public assistance offices
Housing and shelter services
Day care programs
Jails & prisons
Courts
Law enforcement, probation & parole
Employment/vocational counseling
Programs
Budget counseling programs
Case management programs (including
COBRA case management)

Covered “health plans.” The State Department of Health (DOH) has determined that the following DOH units and programs are “health plans” covered by HIPAA:

- Medicaid programs (including the Medicaid Managed Care, Family Health Plus, Family Planning Extension, Community Health Worker programs, and the Medicaid component of Health Care Financing);
- HIV uninsured programs;
- Elderly Pharmaceutical Insurance Coverage ("EPIC") program;
- Cystic Fibrosis program;
- Indian Health Programs; and
- Child Health Insurance Program ("CHIP").

¹ While case management providers coordinate many services, including health care, they are not “health care providers” as defined by HIPAA. HHS has stated that simply billing for certain services does not bring those services under HIPAA. Because there has been some confusion about this within and outside the State DOH, the Legal Action Center is asking HHS to issue an opinion clarifying that case management programs are not “covered entities” under HIPAA. DOH Medicaid staff have decided that all agencies that bill Medicaid will, however, have to comply with HIPAA’s transaction code set and other security regulations (see 45 C.F.R. Parts 142 and 162) when submitting claims, because Medicaid is a covered health plan and its system must comply with HIPAA.