HIPAA, PRIVACY AND SECURITY FUNDAMENTALS

Greater Chattanooga ARMA

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SH Data Technologies

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OBJECTIVES

- **Basic requirements of HIPAA**
- **What information is protected**
- **Practical privacy and security policies and guidelines for compliance**
- **Responsibilities of Business Associates**
- **How the rules are enforced**
- **HITECH Act and Final HIPAA Rule**

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GLOSSARY OF TERMS

HIPAA – Health Insurance Portability and Accountability Act of 1996

OCR – Office of Civil Rights

HHS – Department of Health and Human Services

HITECH Act– Health Information Technology for Economic and Clinical Health Act

EDI – Electronic Data Interchange

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WHAT IS HIPAA?

- **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

- **HIPAA includes:**
  - **Portability Rules ➡**
  - **Administrative Simplification ➡**

- **Goal = protect personal information**

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PRIVACY RULE PROVISIONS

- **Standards for access, use and disclosure of PHI**
- **Individual rights regarding access, use and disclosure of PHI and right to receive notice of privacy practices**
- **Administrative requirements**
- **Health plan sponsor compliance obligation varies depending on**
  - Self-insured vs. fully-insured
  - Access to PHI for plan administration

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WHAT IS PERSONALLY INDEFINABLE HEALTH INFORMATION (PHI)?

- **Any Healthcare Information that identifies the individual**

Or

- **Reasonable basis to believe can identify the individual**

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WHAT IS COVERED?

- All Formats
- All Health Records - past, present, or future
  - Physical, mental health, or condition of an individual
  - All Health care provided to an individual
- Payment for health care

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INDIVIDUAL RIGHTS

- **Inspect and copy their own PHI**
  - individual's right to access electronic PHI
- **Amend or correct incorrect or incomplete PHI**
- **Obtain an accounting of disclosures**
- **Receive a notice of privacy practices**
- **Request restrictions on use or disclosure of PHI**

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WHO MUST COMPLY?

- **HIPAA applies to Covered Entities**
- **Contractual obligations imposed on Business Associates**
  - HIPAA regulates what contracts must include
- **HITECH Act ➔ many parts of the law now apply directly to Business Associates**

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WHAT IS A COVERED ENTITY?

- Health related organizations that include, but are not limited to:
  - Any health plan
    - Insured and self insured plans
    - Healthcare Vendors and HMOs
    - Private sector plans
    - Government plans (Medicare and Medicaid)
- Healthcare Clearing House – may include medical billing service providers
- Healthcare Providers

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HOW CAN AN EMPLOYER BE A COVERED ENTITY?

- Handling PHI that is protected under HIPAA
  - Health Clinic Operations
  - Company Nurse
  - Wellness Program
  - Self-Insured Health Plans
  - Acts as Intermediary between employees and healthcare providers

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HOW MUST A COVERED ENTITY PROTECT PHI?

- Secure the PHI
- Written PHI privacy procedures
- Designate a Privacy Officer
- Require Business Associates to sign BAA
- Train Employees
- Provide written Privacy Practices

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BUSINESS ASSOCIATES

- **Covered Entities work with certain service providers who may be Business Associates**

- **Covered Entities can disclose PHI to Business Associates if there is a Business Associate Agreement in place**

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BUSINESS ASSOCIATE – DEFINITION

- **Person who (on behalf of a Covered Entity) creates, receives, maintains or transmits PHI**
- **A person who provides services to or for a Covered Entity, if the services involve use or disclosure of PHI**

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BUSINESS ASSOCIATES REQUIREMENTS

- **Implement safeguards to protect confidentiality, integrity and availability of PHI/ePHI**
- **Ensure that any subcontractor implements appropriate safeguards**
- **Report security incidents to Covered Entity**

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BUSINESS ASSOCIATE AGREEMENTS

- **Establish permitted uses and disclosures**
- **Prohibit improper use or disclosure**
- **Require appropriate safeguards**
- **Require reporting of unauthorized use or disclosure**

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HIPAA SECURITY RULE

- **Standards for protecting maintained ePHI and Paper Documents**

- **Must implement safeguards to:**

  Ensure confidentiality, integrity and availability of ePHI and Paper Records

  Protect against reasonably anticipated threats to security and impermissible uses or disclosures

  Ensure compliance by workforce

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SECURITY STANDARDS

- **Must comply with specific security standards**
  - Administrative safeguards
  - Physical safeguards
  - Technical safeguards
- **Must perform a risk analysis**
  - Implementation specifications
  - Required vs. addressable
  - Flexibility
- **HITECH Act –security standards now directly apply to Business Associates**

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WHAT ARE THE BEST METHODS TO PROTECT PHI?

- **Encrypted At Rest, In Transit, & Back-up**
  - At Rest not currently required but considered a Best Practice
- **Portable Device Usage**
  - Password Protected
  - When Offsite – must be maintained in a secure and HIPAA compliant manner
- **Lost/Stolen Electronic Devices**
  - Remote wiping
  - Hard Drive Encryption

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WHAT ARE THE BEST METHODS TO PROTECT PHI?

- **Protect against reasonably anticipated threats to security and impermissible uses or disclosures**
  - **Encrypt**
    - Fax/E-mail
    - Portable Devices
    - Flash Media
    - Portable Media
- **Record and examine system activity for auditing purposes**

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WHAT ARE THE BEST METHODS TO PROTECT PHI?

WORKFORCE COMPLIANCE:

- **Individual User Names and Passwords**
- **Access limited to minimum required to perform job**
- **Annual HIPAA Training**
- **Incorporate HIPAA Regulations into Policies and Procedures**

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WHAT ARE THE BEST METHODS TO PROTECT PHI?

- Use Privacy Screen
- Use only secure Wi-Fi connections
- Use a secure Virtual Private Network (VPN)
- Reduce risks posed by third-party apps
- Securely delete all PHI stored on device before discarding or reusing
- Include Training on how to securely use mobile devices in workforce training programs

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DESTRUCTION OF PHI

- **Paper PHI (any paper-based document)**

- **Electronic PHI (disks, e-mails, files)**

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WHEN IS A PATIENT AUTHORIZATION REQUIRED?

- Not Required for disclosure for Treatment, Payment, or Health Care Operations

- Required when PHI is disclosed for any other Purpose

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WHEN DISCLOSING PHI, CONSIDER

- ✓ **Minimum necessary standard**
- ✓ **Health Care Plan amendment required for plan sponsor to receive PHI**

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ARE THERE EXCEPTIONS TO THE PRIVACY RULE?

It is possible to disclose PHI without an Authorization

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ARE EMPLOYMENT RECORDS PROTECTED?

- **Privacy Rule does not protect employment records.**
- **If work for health plan or provider,**
  - **Does protect your medical and health plan records if**
    - **patient of the provider**
    - **member of health plan**

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WHAT INFORMATION IS PROTECTED?

- **GENERALLY DOES NOT APPLY TO EMPLOYERS**
  - **IMPACTED WHEN OBTAINING HEALTHCARE RECORDS**
  - **EMPLOYEE BENEFITS**
  - **EMPLOYMENT RECORDS**

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WHAT INFORMATION IS PROTECTED?

- **Workers Compensation**
  - **May disclose as allowed by State Law**
  - **Does Not require Authorization**

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WHAT INFORMATION IS PROTECTED?

- **FMLA and ADA**
  - **No specific exception in HIPAA**
  - **Requires valid authorization**

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HOW ARE COURT ORDERS HANDLED?

- **Court Orders**
  - **Permissible Disclosure**
  - **Includes Administrative Tribunal**
  - **Limited to information specifically described in the Order**

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HOW ARE SUBPOENAS HANDLED?

- **May disclose only if the notification requirements of Privacy Rule are met**
- **Need proof of reasonable efforts to:**
  - **Notify person and allow:**
    - **Objection or**
    - **Seek Protective Order**

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WHAT ABOUT MENTAL AND BEHAVIORAL HEALTH RECORDS?

- **Mental Health Records**
- **Substance Use Disorder Treatment Records**

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WHAT ABOUT SCHOOL RECORDS?

- **Generally, No**
- **But, it could be, Yes**

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ARE DOCTOR'S NOTE/HEALTH INFORMATION REQUESTS PROTECTED?

- **Requests from Employee - Not Covered**

- **Requests from Employer directly to Health Care Provider – Requires a valid authorization, unless another law allows**

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ARE WELLNESS PROGRAM RECORDS PROTECTED?

Firewall between those working with wellness issues and those making employment decisions.

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WHAT ABOUT EMPLOYEE CLINICS OR COMPANY NURSES?

Firewall between those working with health issues and those making employment decisions.

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WHAT INFORMATION IS PROTECTED?

- **OSHA Logs**
  - **Required by Federal Law to disclose**
  - **Does Not require Authorization**

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WHAT OTHER INFORMATION IS PROTECTED?

- **American Reinvestment and Recovery Act of 2009**
  - **HITECH Act**

  - **Disclosure may require patient authorization**

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WHAT IS A BREACH?

Impermissible use or disclosure presumed to be breach unless can show through risk assessment there is a low probability PHI has not been compromised

- **Exceptions –**
  - No retention of information
  - Certain unintentional, internal disclosures
  - Certain inadvertent disclosures among people authorized to access PHI

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WHAT RISK FACTORS ARE CONSIDERED TO DETERMINE IF A BREACH?

- Nature and extent of PHI involved;
- Unauthorized person who received or used PHI;
- Whether PHI was actually acquired or viewed; and
- Extent risk to PHI has been mitigated.

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UNSECURED PHI

- **Breach notification rule applies only to breaches of unsecured PHI**
  - **PHI not secured by a technology or methodology approved by HHS**
  - **Must render PHI unusable, unreadable or indecipherable to unauthorized individuals**

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SECURITY BREACH NOTIFICATION

- **Created by HITECH Act**
- **Requires notification of individuals whose unsecured PHI has been breached**
- **If breach involves PHI held by a Business Associate, the Business Associate must notify the Covered Entity**
- **Must notify HHS of breaches and, in some cases, the media**

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PROVIDING NOTICE OF BREACH

- **Deadline for notice: without unreasonable delay and no later than 60 days**
- **Must be in writing and delivered via first class mail**
- **Provide notice to media outlets if breach affects more than 500 individuals in a particular area**

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CONTENT OF NOTICE

- **Description of the breach**
- **Type of PHI involved**
- **Steps individuals should take to protect themselves from potential harm resulting from the breach**
- **Steps the Covered Entity/Business Associate is taking to investigate breach, mitigate losses and protect against future breaches**
- **Contact information for individuals to ask questions**

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WHAT HAPPENS IF YOU BREAK HIPAA RULES?

Four potential outcomes

- **Handled internally**
- **Termination of Employment**
- **Professional Board Sanctions**
- **Criminal Charges including fines and imprisonment**

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WHAT HAPPENS IF YOU BREAK HIPAA RULES?

Depends of the Severity of the Violation

- Nature of Violation
- Knowledge that violation occurred
- Whether Action was taken to Correct
- Malicious Intent/Personal Gain
- Harm caused
- Number of People impacted
- Violation was criminal provision of HIPAA

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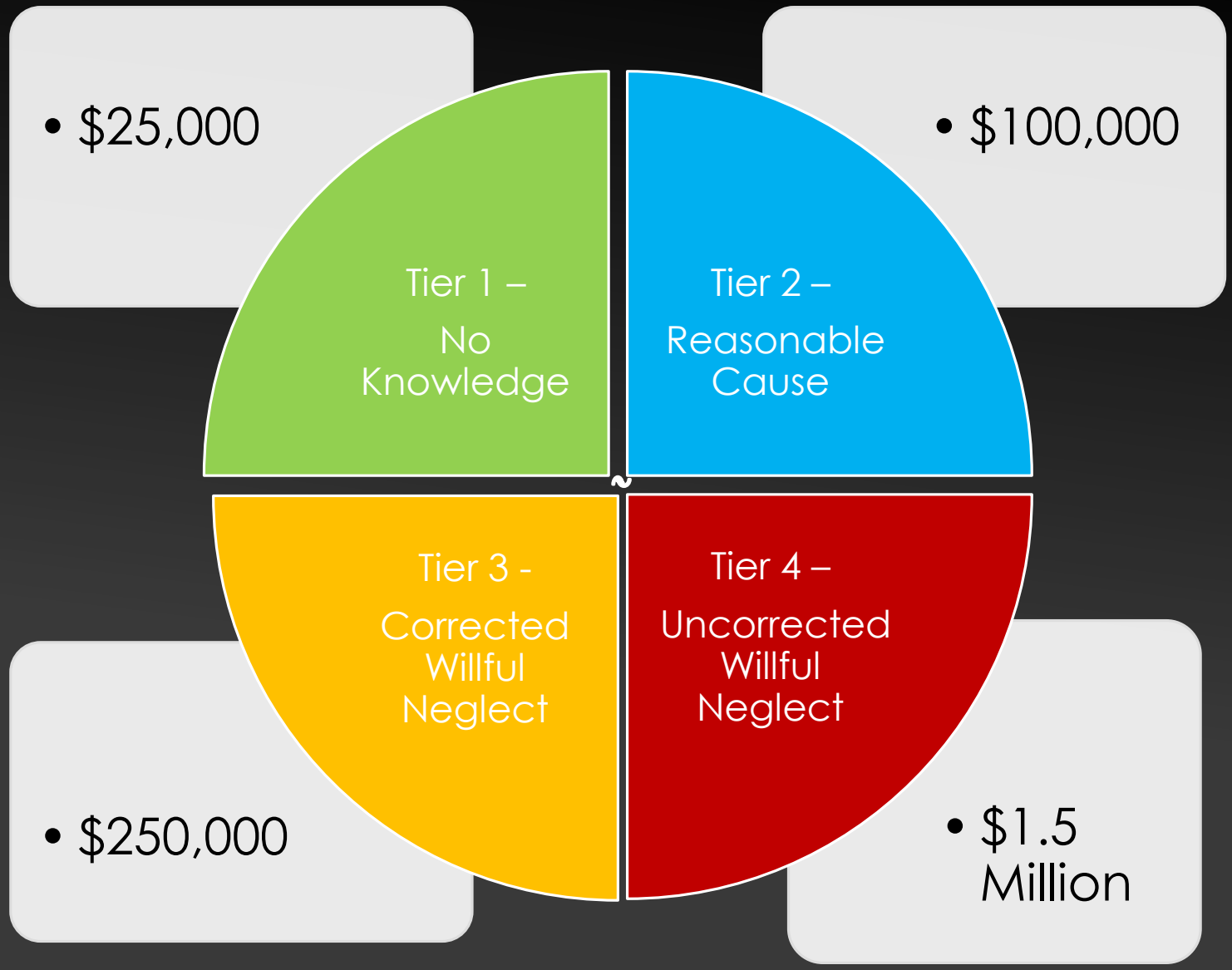

MONETARY CAPS FOR VIOLATIONS

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WHAT CRIMINAL PENALTIES APPLY TO VIOLATIONS?

- **$50,000 fine and up to one year in prison for a willful violation**
- **Up to $100,000 fine and up to five years in prison for a violation committed under false pretenses**
- **Up to $250,000 fine and up to 10 years in prison for a violation with the intent to sell, transfer or use PHI for commercial advantage, personal gain or malicious harm**
- **Also, Mandatory two-year jail term for aggravated identity theft**
- **Now applies to anyone who improperly uses/discloses PHI, not just Covered Entities and their employees**

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IS HIPAA PRIVACY RULE SUSPENDED DURING A NATIONAL OR PUBLIC HEALTH EMERGENCY?

No

Certain Provisions can be waived

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WHAT ABOUT STATE LAWS?

Tennessee State Law:

TCA 47-18-2107 – Does not apply if subject to HIPAA

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WHAT ARE THE MOST COMMON HIPAA VIOLATIONS?

- Employees disclosing information
- Medical records mishandling
- Lost or Stolen Devices
- Texting patient information
- Social Media
- Employees illegally accessing files
- Social Breaches
- Authorization Requirements
- Accessing PHI on home computers
- Lack of Training

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WHAT ARE OTHER HIPAA VIOLATIONS?

- Malware Incident
- Ransomware Attack
- Hacking
- Business Associate Breach
- EHR Breach
- Office Break-in

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COMMON CATEGORIES FOR HIPAA VIOLATIONS

- Uses and disclosures
- Improper security safeguards
- The Minimum Necessary Rule
- Access controls
- Notice of Privacy Practices

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WHAT IS THR BEST DEFENSE AGAINST VIOLATIONS?

- Privacy and Confidentiality always a priority
- Annual Staff Training
- Incorporate HIPAA regulations into policies and procedures
- Effective Compliance Program

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WHAT DO I NEED TO DO?

Three objectives:

1) **Keep records confidential**
2) **Maintain integrity of the records**
3) **Ensure authorized individuals may access records as needed**

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QUESTIONS

Thank you for your time and attention

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RESOURCES

American Health Information Management Association - ahima.org

Department of Health and Human Services – HHS.gov

Office of Civil Rights – hhs.gov/civil- rights

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