



2014 Ethics and AB 1234 Training for Tri-City Healthcare District

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What we will cover and why



- **AB 1234 mandates a written policy on board compensation and reimbursement for *special districts* (See Board Policy ## 14-20 and 14-40)**
- **AB 1234 mandates at least two hours of ethics training every 2 years for**
 - **Every elected or appointed official who gets compensation or reimbursements**
 - **Every employee or committee members, as designated by district policy**

What we will cover and why (cont'd)

■ **Training will cover**

- Topics required by Attorney General and FPPC (see, 2 Cal. Code Regs. section 18371)
- Ensuring fairness in government Laws regarding personal financial gain
- Laws concerning perks of office
- Government transparency rules

■ **We will identify key health care ethics laws:**

- State, federal anti-kickback, Stark, etc. rules
- Medicare/MediCal contracting rules
- Other federal and state compliance laws (HIPAA, CMIA)
- *Additional compliance training needed*

What is in an AB 1234 Policy?



- AB 1234 says
 - Written policy required on board compensation and reimbursement
 - Must specify events Board gets compensation for beyond “meetings” –if any!
 - IRS reimbursement rates, or lowest rates available by default
 - Documentation of reimbursement required
 - Post-activity “report” required
 - Agency must track compliance

AB 1234 Compliance



- TCMC has:
 - Bylaws and resolution setting board compensation
 - policy on employee reimbursements
 - policy on board reimbursements
 - policy requiring committee members to receive AB 1234 training
- You can use certificate provided following this course to show compliance

Fairness in Government



- Due process in decision-making
- Common law bias restrictions (including anti-nepotism rules)
- Incompatible offices
- Competitive bidding
- Freedom from sexual or other harassment

Fair Processes: Due Process



- Basic due process guaranteed by state and federal constitutions
 - Impartial decision maker (no bias, conflict)
 - Notice of decision to be made
 - Opportunity to be heard
 - Some right of appeal
- How much due process is enough?
 - Fundamental rights: practice of profession
 - Non-fundamental rights: overtime parking
 - Other rights: governmental benefits
 - Loss of “perks” of office under District policy

Fair Processes: Freedom From Bias



- Common law bias restrictions (including anti-nepotism rules)
 - Common law rule survives the Political Reform Act, Government Code 1090, etc.?
 - Non-economic interests in decision may require disclosure and disqualification: perception of fairness
 - Non-dependent family members
 - Current and former business associates
 - Appearance of personal bias based on prior association, advocacy of cause, membership in organizations
 - Example: Board member acting on credentials for physician who treats him/her? Close personal friend?

Fair Processes: Incompatibility



- “Public offices” that overlap in any way are “incompatible” (Gov. Code sec. 1099)
 - Penalty is forfeiture of second office assumed
 - “Overlap” means one supervises, oversees or regulates the other—even just potentially
 - Health care district board and city planning commission
 - County supervisor and water district director
 - Many statutory exceptions

Fair Processes: Incompatibility (cont'd)



- Public *employment* is not automatically “incompatible” though may be
 - Most public employees forfeit employment if assume office of agency which employs them
- Agencies need formal policies on “moonlighting” and notice to employee (Gov. Code section 1126)

Fair Processes: Incompatibility (cont'd)



- Personnel policy and employment contracts on “dual employment” allows in some instances if:
 - No impairment of ability to make business decisions
 - No personal financial gain as a result of continued TCMC employment
- Policies require disclosure to supervisor

Fair Processes: Bidding

- When competitive bidding is mandated is primarily statutory
 - Construction contracts over \$25,000 require
 - Services contracts generally don't require
 - Federal procurement rules may be grant condition
- Common exceptions:
 - Specialized equipment and technology
 - Energy management
- Even if *not* required, process must be fair
 - Rules agency sets must be followed or award can be set aside by writ
 - Don't change rules in the middle of game

Fair Processes: Bidding



- Hospital districts must also bid:
 - Materials and supplies over \$25,000
 - Any contract over \$25,000 for “work” to be done
- Exceptions:
 - Medical or surgical equipment or supplies
 - Professional services
 - Data processing and telecommunications
 - Emergencies
 - Group Purchasing Organization participation
- TCMC policy requires informal bidding, too

Effective Federal Compliance Program



- Board has adopted Compliance Program
- Encompasses all aspects of operations: public agency, local health care district, Medicare/Medi-Cal provider of services
- OIG Hospital Compliance Guidance; US Federal Sentencing Guidelines say seven elements of an **effective** Compliance Program:
 - Implement written policies, procedures and standards of conduct
 - Designate a compliance officer and compliance committee
 - Conduct effective compliance training and education
 - Develop effective lines of communication; no retaliation policy
 - Conduct internal monitoring and auditing
 - Enforce standards through well-documented disciplinary guidelines
 - Respond promptly to detected offenses and undertake corrective actions

Federal Stark Law: referrals



- Civil statute that prohibits certain physician referrals *unless an exception applies* to prevent inappropriate financial incentives from influencing medical decision-making
- Covers Medicare
- Strict liability - no criminal intent is required to prove a Stark Law violation; a violation will exist whether it is intentional or inadvertent
- No materiality threshold such that even minor violations can result in significant penalties
- Even if arrangement is allowed under Stark Law, it can still violate anti-kickback statute (AKS) if *intent* to induce referrals
- Potential for Civil Monetary Penalties (CMPs) – but requires intent

Definition Of Fraud



- “Fraud” means an intentional misrepresentation or deception made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or other person (includes fraud under applicable federal or state law) including:
 - Misrepresenting the diagnosis code
 - Unbundling charges
 - Up-coding
 - Billing for services not furnished
 - Falsifying certifications of medical necessity, plans of treatment

Definition Of Waste



- “Waste” means the overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs
- Generally not considered to be caused by criminally negligent actions or violation of law but rather the misuse of resources
- Relates primarily to mismanagement, inappropriate actions and inadequate oversight

Definition Of Abuse



- “Abuse” means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in unnecessary cost or reimbursement of services:
 - Billing for a non-covered service
 - Inappropriately allocating costs on a cost report
 - Medically unnecessary services that do not meet professionally recognized standards
 - Breaches in the assignment agreement
 - Billing Medicare when another insurer is responsible for payment under Medicare secondary payer regulation

Anti-kickback Prohibitions



- Criminal offense to knowingly and willfully offer, pay, solicit or receive any remuneration (including kickbacks, bribes or rebates), directly or indirectly, overtly or covertly, in cash or kind in return for:
 - Referring (or inducing referral of) any individual to a provider for any item or service paid by any Federal health care program; **OR**
 - Purchasing, leasing or ordering (or arranging for or recommending the purchase, lease, order of) any good, facility, service or item paid for by such programs.

*Federal health care program is any program that provides health benefits, directly or through insurance funded directly, in whole or in part, by the US Government or any state health care program (e.g. Medicare, TRICARE, Medicaid, etc.)

Purpose Of Anti-kickback Statute



- Avoid over-utilization
- Ensure objective medical advice
- Eliminate additional costs resulting from unduly favorable deals for referral business
- Ensure that providers chosen on merit rather than financial self-interest
- Maintain a level playing field for all competitors

Federal (Civil) False Claims Act



- Civil liability for **knowingly** presenting or causing another to present a false or fraudulent claim to the government for payment, making a false record or statement; failure to return overpayments
- “Knowingly” includes: actual knowledge; deliberate ignorance; and reckless disregard for truth or falsity of information
- Protects persons from retaliation for reporting false claims or bring legal actions to recover money paid on false claims
- Contains “whistleblower” provisions that extend to employees, contractors
- Penalties up to \$11,000 for each false claim, treble amount of damages government sustains by reason of each claim; and potential exclusion from Federal health care programs

Financial Gain



- Bribery
- Conflicts of interest
- Campaign regulation

Financial Gain -- Bribery



■ **BRIBERY - (Penal Code sec. 68)**

- Every officer, employee or appointee of any political subdivision who asks, receives or agrees to receive any bribe for an agreement to vote, opine or act in a certain manner on any is guilty of bribery punishable by imprisonment in the state prison for 2-4 years, or if no bribe has actually been received, by a restitution fine.
- Conviction results in loss of eligibility to hold public office

Financial Gain -- Conflicts



■ **CONFLICTS OF INTEREST- Political Reform Act (Gov. Code 87100, 87103)**

- 87100 – No governmental official at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

[Violation a misdemeanor; penalty can be 4 year bar from holding public office]

- 87103 – A public official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her family, or one of the following financial interests:

Conflicts of Interest: Political Reform Act



“Personal financial effect” rule :

- Income does not include salary, reimbursement, per diem, or benefits received from a state, local or federal agency, or reimbursement for travel from a tax-exempt nonprofit organization (Gov. Code sec 82030)
- But, FPPC may still treat this kind of compensation as having a disqualifying “personal financial effect” if a decision may, for example, result in loss of employment (e.g., outsourcing decision)

Financial Gain – Conflicts (cont'd)



- Business Interest-Direct or Indirect Investment of \$2000 or more
- Real Property Interest – Direct or Indirect Interest worth \$2,000 or more.
- Any source of income, except gifts or loans by a commercial lender, worth \$500 or more within the prior twelve months.
- Any business entity in which the official is a director, officer, partner, trustee employee or holds any position of management
- Any donor of gifts, aggregating \$250 or more in the prior 12 months – provided, received, or promised

www.fppc.ca.gov FPPC publication: “Can I Vote?”

Financial Gain – Conflicts (cont'd)



- What do I do if I have a conflict?
- Publicly identify the nature of the conflict so as to be understood by the public
- Recuse yourself from discussing or voting
- Leave the room until the matter is concluded (unless the item is on consent)
- But, you may speak when the general public speaks
- If uncertain, 1-800-ASK-FPPC

Enforcement of Political Reform Act:



- Fair Political Practices Commission staff, local district attorney, private plaintiff may sue:
 - Civil or criminal penalties for individual
 - Injunctive relief against agency if improper participation affected decision
 - 4-year statute of limitations

Financial Gain – Prohibited Contracts (1090)



- Government officials cannot participate in making of a contract in which he or she has a financial interest . . .
- Nor have a financial interest in contracts made by any board or body of which they are a member.

Financial Gain -- Prohibited Contracts (1090)

(cont'd)



- Gov. Code 1090 applies when:
 - A financially interested director is a member of the board that actually approves the contract. Note: abstention is not enough!
 - A staff member has a financial interest in a contract if the staff member participates in making the contract.

Financial Gain -- Prohibited Contracts (1090)

(cont'd)



- Making a contract includes:
 - Preliminary discussions, negotiations, compromises, reasoning, drawings of plans, solicitations for bids, modifications to contracts.
 - There is an exception to 1090 for remote interests and non-interests as defined by statute and for existing contracts (but not amendments to existing contracts).

Financial Gain -- Prohibited Contracts (1090)

(cont'd)



- PENALTIES FOR 1090 VIOLATION:
 - A contract made in violation of 1090 is void and payment is prohibited.
 - Courts can require disgorgement of compensation paid, but agency will keep benefits.
 - Maximum penalty for *willful* violation is a felony conviction, \$1,000 fine or imprisonment in the state prison and the official is forever disqualified from holding any office in this state.

Financial Gain -- Prohibited Contracts (1090)

(cont'd)



- Nonprofit defenses not available:
 - Good faith doesn't matter.
 - Reliance on advice of counsel doesn't matter
 - Fairness of transaction doesn't matter
 - Approval by remaining Board doesn't matter
 - Lack of direct benefit doesn't matter
- Enforcement can be private, DA, AG and FPPC
 - FPPC advice now available before transaction

Financial Gain -- Prohibited Contracts (cont'd)



- Healthcare district special conflict rules
 - No director on medical staff shall:
 - Possess any ownership interest in any other hospital serving the same area
 - Be a policymaker (director or staff) of any hospital serving the same area (5% admission overlap)
 - However boards can determine overlap serves the interests of the areas in efficiency
 - Health & Safety Code section 32110 makes persons ineligible to serve district

Financial Gain -- Prohibited Contracts (1090)

(cont'd)



- Health Care Districts -- Special Rules
 - H&S 32111: A board member who is also on the medical staff or allied health professional staff is not “financially interested” under Section 1090 in professional services contracts offered on the same terms as they are offered to other members of the medical staff if:
 - He or she abstains
 - Discloses the relationship
 - Board approves the contract in District’s best interests
 - Employees of district still can’t be on Board

Prohibited Contracts-Exemptions



- Financial interests which are “non-interests” (don’t require disqualification, but may require disclosure):
 - Officer reimbursed for actual expenses of performing official duties
 - Recipient of public services generally provided by agency
 - Non-compensated officer of nonprofit, tax-exempt corporation with legal obligation to support agency
 - A person receiving salary, per diem or reimbursement, unless the contract involves the person’s department

Financial Gain -- Conflicts Campaign Contributions



■ **CAMPAIGN CONTRIBUTIONS (Gov. Code 84308)**

- Disqualifies any officer who is running or has run for elective office from participating in decisions affecting campaign contributors.
- Generally, the officer is disqualified if he or she received contributions of more than \$250 in the prior 12 months.
- The officer is required to disclose all contributions in the prior year.
- And, the officer is prohibited from soliciting or receiving contributions in excess of \$250 during proceedings or for three months afterwards.

Financial Gain – Conflicts

Leaving Office (Gov. 87406.3, 87407)

- Employment Restrictions (revolving door rule)
 - Local elected official, chief administrative officer of a county, city manager or general manager or chief administrator of a special district shall not, for a period of one year after leaving employment, act as agent or attorney for, or otherwise represent, for compensation, any other person by making appearance or oral or written communications to that local government agency or any subcommittee for the purpose of influencing administrative or legislative action or any action on a proceeding involving amendment, award, revocation of a permit, license, grant or contract.

Financial Gain -- Conflicts Leaving Office (Gov. 87406.3, 87407)



- **Employment Restrictions** (cont'd)
 - No public official shall make, participate in making, or use his or her official position to influence any decision relating to any person with whom he or she is negotiating prospective employment.

Perquisites of office (perks)



- Compensation and reimbursement
- Limits on receipt of gifts
- Ban on honoraria
- Ban on free transportation
- Gifts of public funds
- Misuse of public funds
- Mass mailing limits

Perks: Gift and Honoraria Limits



- Receipt of gifts above \$460 (indexed) is illegal—even from friends
- Receipt of honoraria for appearance or speeches are prohibited
 - Travel expenses, lodging may count
 - FPPC regulations exempt some gifts
 - Can be paid for practicing profession

Perks: Free Transportation



- California constitution (art XII, sec. 7) expressly prohibits public officers from accepting free or discounted transportation from transit companies
- Penalty is forfeiture of office
- Doesn't apply to public employees

Constitutional Public Employment Rules



- ARTICLE VII, sec. 7.
 - *A person holding a lucrative office under the United States or other power may not hold a civil office of profit. A local officer or postmaster whose compensation does not exceed 500 dollars per year or an officer in the militia or a member of a reserve component of the armed forces of the United States except where on active federal duty for more than 30 days in any year is not a holder of a lucrative office, nor is the holding of a civil office of profit affected by this military service.*

Constitutional Public Employment Rules



- ARTICLE XI, sec. 10.
 - (a) A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor *after service has been rendered or a contract has been entered into and performed in whole or in part*, or pay a claim under an agreement made without authority of law.

Perks: Misuse, Gifts of Public Funds



- Misuse of public funds can be crime (Penal Code section 424)
 - Violation of AB 1234 policy
 - Allowing political use of public funds or resources for candidate, ballot measure
 - Spending or allowing below-cost use of public resources for purpose beyond agency authority
 - Donation of medical services or used medical equipment?
 - Paying for dinner for health care district director's spouse?
 - Buying advertisement in Chamber of Commerce publication?

Perks: Misuse, Gifts of Public Funds (cont'd)



- Gift of public funds is unconstitutional in California (art. 16 section 6)
 - Officials may have personal liability
 - Courts allow public officials to determine value of expenditure to agency
 - “Gifts” include “lending credit”
 - Can’t guarantee private debt (so no partnerships)
 - Can’t “mortgage” public property
 - Agency can’t hold stock
 - Physician inducements to move to community limited (Health & Safety Code section 32121.3)
 - Amount of severance for breach of public employment contract limited (Government Code section 53260 et seq.)

Perks: Misuse, Gifts of Public Funds (cont'd)



- Do's and don'ts on ballot measures?
 - Before calling election, can do polling, public forums, distribute information
 - After election is called, all activities must be balanced and may not advocate
 - Even if information is fair, photos can't be slanted
 - Adopting of resolution on position is permitted
 - Use of public facilities and resources for electioneering for candidates prohibited

- Due to “ballot-box budgeting” measures, courts have given agencies more latitude to provide explanation of needs

Perks: Mass Mailings



- Political Reform Act treats 200+ piece *mailing* of information about elected officials as a campaign expense
 - Emails may be ok
- If at public expense, is a misuse of funds
- Watch out for newsletters, annual reports and press releases
- Photos of elected officials get special scrutiny

Government Transparency



- Disclosure
- Open meetings
- Public records

Government Transparency -- Disclosure of Economic Interests (Gov. Code 87200 et. seq)



- “Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the official should be disqualified from acting in order that conflicts of interest may be avoided (Gov. Code 81002(c).)”
- Be familiar with reporting requirements—they have a broad reach

Government Transparency -- Disclosure of Economic Interests (cont'd)



HOW DOES IT WORK?

- Adopt a conflict of interest code; update every other year.
- File a Statement of Economic Interests, called “SEIs” or “Form 700s.”
- Form 700s are filed with the agency
- Form 700s must be signed under penalty of perjury.
- FORM 700s are PUBLIC DOCUMENTS (no home addresses and telephone numbers).

Government Transparency -- Disclosure of Economic Interests (cont'd)



- Form 700 includes extensive instructions
- FPPC levies penalties if not filed timely. The fines are up to \$5,000 per day.
- Must be filed by: Elected and Designated Officials
- File when: Assuming Office, Annually, Leaving Office, Candidate for Office, Amendment of Form
- File with state, city or county agency

www.fppc.ca.gov FPPC Publication: “Your Duty to File”

Government Transparency -- Disclosure of Economic Interests (cont'd)



- TCMC conflict code lists 6 categories of holdings, business positions and sources of income to be disclosed by directors and senior staff
- Conflict code designates many decision-makers as filers, and limits disclosure based on scope of authority
- “Those who manage public investments” have broader disclosure obligations and include Board, CEO and CFO

Government Transparency -- Brown Act (Gov. 54950 et seq.)



- “The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

Government Transparency -- Brown Act – Open Meetings



Applies to Legislative Bodies:

- Governing bodies, committees and commissions, whether advisory or decision making, created by formal action of a legislative body.
- Private corporations when created to exercise public authority or if it receives funds and a member of the agency is appointed as a voting member.
- Lessee of any hospital the whole or part of which is first leased pursuant to H&S Code section 32121 where lessee exercises the authority of a legislative body of a local agency.

Government Transparency -- Brown Act – Open Meetings (cont'd)



NOTE: Districts should carefully consider how committees, such as a joint conference committee, is created in order to avoid creating a Brown Act committee subject to open meeting requirements.

- Does the Board of Directors appoint voting members to the committee? Give it funds or support?
- Does or did the Board of Directors create the committee by official action?
- **Exception:** Ad hoc committees comprised solely of less than a quorum of the legislative body

Brown Act – Legislative Bodies



Ad hoc committees are not subject to the Act

An ad hoc committee is:

1. Comprised solely members of the legislative body
2. Advisory
3. Less than a quorum
4. Has a limited life and limited scope of jurisdiction

Brown Act – Legislative Bodies



Other local meetings which Board members may attend:

Tri-City Hospital Foundation

Medical Executive Committee

Committees *established by* management, even if include board members

So long as not “created by” formal Board action to “exercise delegated authority” Brown Act is likely inapplicable, provided Board attendees are less than a quorum.

Government Transparency – Brown Act – Open Meetings (cont'd)



■ MEETINGS

- All meetings of a legislative body of a local agency shall be OPEN and PUBLIC and all persons shall be permitted to attend any meeting subject to certain narrow exceptions.
- Meetings must be held in a public place, properly noticed, with agenda items containing a sufficient description to put the public on notice of what will be discussed.
- Action cannot be taken on items not on the agenda.

Government Transparency -- Brown Act – Open Meetings (cont'd)



- A majority of the members of the legislative body at the same time and place
- To hear, discuss, or deliberate (including retreats!)
- Use of direct communications, personal intermediaries, or technological devices employed by a majority of members to discuss is prohibited, even if “decision” is to take no action. (*Wolfe v. City of Fremont*)
- It does not include individual contacts, conferences, community meetings, social events or meetings of other legislative bodies.

Government Transparency -- Brown Act – Closed Sessions



- Personnel
- Litigation – Threatened, existing, anticipated
- Real Estate Negotiations – Price and Terms
- Labor Negotiations
- Public Security

Government Transparency -- Brown Act – Closed Sessions (cont'd)



- Hospital Trade Secrets (H&S 32106)
- Allows closed sessions to discuss of trade secrets if necessary to initiate a new district service AND if prematurely disclosed would likely deprive the district of economic benefit.
- No closed session for considering the sale or conversion, contract for management or leasing of any health care facility or assets thereof to any for-profit or non-profit, conversion of any facility to any other form of ownership, or the dissolution of the District.
- Congruent provisions apply to County and City hospitals.

Government Transparency Brown Act – Closed Sessions



- H&S Code section 32155
- Hearings to consider reports of hospital medical audits or quality assurance committees may be held in closed session
- But, an applicant or medical staff member may request a public hearing on an item concerning his or her staff privileges

Brown Act – Closed Sessions



Except as expressly authorized by law, no closed sessions are permitted (Gov. Code section 54962)

No “semi-closed” sessions: “The general rule is that closed-session access is permitted only to people who have ‘an official or essential role to play’.”
(A.G. Opinion No. 04-408, 2005)

Government Transparency -- Public Records – Prop 59



- Voter Approved Prop 59
- Cal Const., Art 1, Sec. 3 “the people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public official and agencies shall be open to public scrutiny.”

Government Transparency -- Public Records Act (6250 et seq.)



- The Legislature . . . finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

Government Transparency -- Public Records Act (cont'd)



- Generally, the laws favor disclosure.
- The burden is on the agency to justify a failure to disclose.
- Public records include all writings, photographs, electronic files, etc., including e-mail, if kept in the ordinary course of business.
- Public records must be open for inspection.

Government Transparency -- Public Records Act (cont'd)



Extensive list of exempt confidential documents including:

- Preliminary Drafts
- Personnel and Medical Records
- Litigation Records (while pending)
- Trade Secrets
- Name, Address & Phone Numbers

Government Transparency?

State Health Care Privacy Laws



- *Confidentiality of Medical Information Act (CMIA)*
Cal. Civil Code §§ 56 - 56.16
- *Security Breach Notification law*
Cal. Civil Code § 1798.82 (amended (2011) by Senate Bill 24, effective January 1, 2012)
- *Licensed Health Facilities Data Breach law*
Cal. Health & Safety Code § 1280.15 (Senate Bill 541 (2008), amended Cal. Health & Safety Code § 1280.1 and § 1280.3 and added § 1280.15)
- *Patient Access to Health Records law*
Cal. Health & Safety Code § 123110 *et seq.*

Governmental Transparency: Federal Privacy Law: HIPAA



- Health Insurance Portability & Accountability Act of 1996 (HIPAA)
Public Law 104-191
- Privacy and Security Regulations
45 CFR Part 160 and Part 164, Subparts A, C and E
- Breach Notification Regulations
45 CFR Part 164, Subpart D
- Amended by American Recovery and Reinvestment Act of 2009, Title XIII entitled Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), 42 USC § 17921 *et seq.* and implementing regulations
- Omnibus Rule issued January 2012

HIPAA: Protected Health Information



- The Privacy Rule protects all "**individually identifiable health information**" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy rule calls this "**protected health information**" or "**PHI**"
- "Individually identifiable health information" is information, including demographic data, that relates to:
 - the individual's past, present or future physical or mental health or condition,
 - the provision of health care to the individual, or
 - the past, present, or future payment for the provision of health care to the individual

and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual (e.g., name, address, birth date, Social Security Number).

- No restrictions on using "de-identified" information

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