

### **HIPAA Series Part III of III: HIPAA and the Delivery of Healthcare**

The Part I installment, published in the February 2013 issue of HC Topics, provided an in-depth discussion of the historical underpinnings and foundation of the current HIPAA regulation.<sup>1</sup> Last month's Part II installment focused on the latest amendment to the HIPAA legislation, which significantly altered previously published requirements affecting business associates and their subcontractors.<sup>2</sup> This third, and final, installment considers HIPAA regulation and significance within the context of the current healthcare marketplace.

Although HIPAA was first established in 1996, healthcare providers and consumers may still misinterpret application of the law in current patient care settings.<sup>3</sup> Within the context of an ever-changing healthcare environment, most notably with regard to the implementation of electronic medical records and efforts to facilitate a more integrated system of care, the recent updates to HIPAA regulations and enhanced scrutiny of healthcare patient privacy practices may pose a continued compliance challenge for providers.

As the healthcare industry continues to transition from paper-based information management to electronic transactions and data management, in addition to the ICD-10 transition scheduled for October 2013, the current version of the HIPAA standards that regulate the transmission of specific health care information (Version 4010/4010AI) will be updated to ASC X12 Version 5010.<sup>4</sup> The HIPAA Version 5010 will include updated technical, structural, and data content requirements; transactional business standardization; data transmission specifications, and, delineation of various patient codes to accommodate the increased complexity and changes to medical care, billing, and reimbursement.<sup>5</sup> The transition to HIPAA Version 5010 will likely affect many healthcare industry stakeholders, including providers, health plans, healthcare clearinghouses, and business associates that participate in electronic transactions, all of which will also be affected by the new regulations governing business associates and subcontractors, as discussed in last month's issue of HC Topics HIPAA Series Part II.<sup>6</sup>

While simultaneously implementing advancements in electronic healthcare data management in the current healthcare environment in an effort to increase quality of care and lower healthcare costs, healthcare providers must also contend with challenges related to enhanced

HIPAA regulations. As the methods and frequency of communication between providers, e.g., communication between outpatient and inpatient settings, among differing specialties and organizations, etc., become more integrated, the inherent risk of HIPAA violation may also increase. To avoid the potential for non-compliance, healthcare systems and providers should consider introducing safeguards and oversight policies regarding communication processes to ensure consistent compliance, as well as to identify and correct potential deficiencies or areas of concern.

Providers and stakeholders in the healthcare arena must also consider the updated HIPAA regulations with regard to existing laws that govern and protect patient health information (PHI), such as the Red Flag Rules, the HITECH Act, and the Patient Safety and Quality Improvement Act. The Red Flag Rules, implemented on November 1, 2009 by the Federal Trade Commission, requires healthcare providers to enforce written policies to identify and prevent identity theft, including PHI beyond that required by HIPAA, e.g., credit card numbers, tax identification numbers, business identification numbers and employer identification numbers.<sup>7</sup>

One of the most significant amendments to HIPAA was implemented under the Health Information Technology for Economic Clinical Health (HITECH) Act, a portion of the American Recovery and Reinvestment Act of 2009 (ARRA), signed into law February 17, 2009. The HITECH act provides incentives and penalties associated with the adoption of electronic health records (EHR), including electronic prescribing; information exchange between systems; and, qualitative reporting, among other metrics.<sup>8</sup> Providers that aligned practices with many of the provisions in the original HITECH act likely have fewer changes to implement prior to the September 23, 2013 compliance deadline for covered entities under the updated HIPAA provisions.<sup>9</sup>

In addition to the Red Flag Rules and HITECH Act, the updated HIPAA regulations must be considered in relation to the Patient Safety and Quality Improvement Act of 2005 (PSQIA), which delineates guidelines and penalties for the protection and sharing of patient information related to patient safety events and quality improvement.<sup>10</sup> Providers should note that, although the information covered by the PSQIA may include PHI

also covered under HIPAA, dual penalties cannot be leveraged under both regulations.<sup>11</sup>

As PHI data transmission and management transitions with healthcare delivery integration and electronic system implementation, healthcare providers, including covered entities; business associates; and, subcontractors as defined by the latest amendment published on January 25, 2013, must remain compliant with current HIPAA regulations. Additionally, providers must be aware of HIPAA requirements relative to additional healthcare regulation regarding the use, transmission, and management of PHI and other additional patient information. The most recent amendment to HIPAA regulations will likely have significant effects on various healthcare industry stakeholders, though the enforcement and scrutiny of provider compliance has not been extensively considered to date, with the ultimate impact of the new rules remaining to be seen post-implementation in 2013 and 2014.

#### **HIPAA Series Part II: Effect on Business Associates**

#### **HIPAA Series Part I: History and Overview of HIPAA Legislation**

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- 1 [“HIPAA Series Part I: History and Overview of HIPAA Legislation.” Health Capital Topics Newsletter, Vol. 6, No. 2, February 2013](#)
  - 2 [“HIPAA Series Part II: Effect on Business Associates”, Health Capital Topics Newsletter, Vol. 6, No. 3, March 2013](#)

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- 3 [“A Privacy Law Often Misinterpreted”, by Paula Span, The New York Times, March 27, 2013,   
<http://newoldage.blogs.nytimes.com/2013/03/27/a-privacy-law-often-misinterpreted/> \(Accessed April 7, 2013\)](#)
  - 4 [“New Health Care Electronic Transactions Standards: Versions 5010, D.0, and 3.0” Centers for Medicare & Medicaid Services, January 2010,   
\[http://www.cms.gov/ICD10/Downloads/w5010\\\_BasicsFctSht.pdf\]\(http://www.cms.gov/ICD10/Downloads/w5010\_BasicsFctSht.pdf\) \(Accessed 11/29/11\).](#)
  - 5 [“Is Your Practice Ready for Version 5010” MGMA Connexion Supplement, October 2011, p. 9.](#)
  - 6 [“HIPAA Series Part II: Effect on Business Associates”, Health Capital Topics Newsletter, Vol. 6, No. 3, March 2013](#)
  - 7 [“Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003; Final Rule”, Federal Register, Vol. 72, No. 217, November 9, 2007, p. 63718, 63723](#)
  - 8 [“American Recovery and Reinvestment Act of 2009” 111th Congress, 1st Session, January 6, 2009, Section 13001](#)
  - 9 [“New HIPAA/HITECH Rules Implementation Roadmap: Countdown Begins to September 23, 2013 Compliance Deadline”, by Boris Segalis, Information Law Group, March 31, 2013,   
<http://www.infolawgroup.com/2013/03/articles/hipaa/hipaahitechrules/> \(Accessed April 9, 2013\)](#)
  - 10 [“Patient Safety and Quality Improvement”, U.S. Department of Health and Human Services, Federal Register, Vol. 73, No. 226, November 21, 2008, p. 70732](#)
  - 11 [“Health Information Privacy: Delegation of Authority”, U.S. Department of Health and Human Services,   
<http://www.hhs.gov/ocr/privacy/psa/understanding/delegationofauthority.html> \(Accessed April 11, 2013\)](#)



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**Robert James Cimasi**, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as Chief Executive Officer of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“Accountable Care Organizations: Value Metrics and Capital Formation”* [2013 - Taylor & Francis, a division of CRC Press], *“The Adviser’s Guide to Healthcare”* – Vols. I, II & III [2010 – AICPA], and *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books]. His most recent book, entitled *“Healthcare Valuation: The Financial Appraisal of Enterprises, Assets, and Services”* will be published by John Wiley & Sons in the Fall of 2013.

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows. In 2011, he was named a Fellow of the Royal Institution of Chartered Surveyors (RICS).



**Todd A. Zigrang**, MBA, MHA, ASA, FACHE, is the President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives, and serves as President of the St. Louis Chapter of the American Society of Appraisers (ASA). He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser’s Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



**Anne P. Sharamitaro**, Esq., is the Executive Vice President & General Counsel of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the Journal of Health Law, published by the American Health Lawyers Association. Ms. Sharamitaro has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in *“Healthcare Organizations: Financial Management Strategies,”* published in 2008.