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Ensuring Non-Discrimination and Health Information Privacy for Persons with HIV/AIDS

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Compliance on the Frontlines

In this session, participants are expected to...

- ✓ Learn legal responsibilities to ensure non-discrimination and health information privacy
- ✓ Engage in an interactive dialogue on actual cases investigated by OCR where healthcare providers took voluntary corrective action
- ✓ Ask questions of HHS leaders
- ✓ Determine appropriate actions to take to prevent unlawful discrimination and protect the privacy of health information

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What is your role in ensuring these protections?

- **As a Health Care or Human Services Provider:**
 - ✓ Ensure compliance with the laws that apply to your organization
 - ✓ For technical assistance, go to <http://www.hhs.gov/ocr/crclearance.html>
- **As an Advocate:**
 - ✓ Educate your clients about their civil rights and their health information privacy rights
 - ✓ To assist your client in filing a complaint or to file a complaint on your client's behalf, go to <http://www.hhs.gov/ocr/hiv/aids/>

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Strong Health Privacy Protections


The HIPAA Privacy Rule

- Creates a nationwide baseline of privacy protections for health information
- Entities build comprehensive health information privacy programs to include
 - each state's requirements for sensitive information, such as HIV status
 - other protections


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Q: Who is covered by the Privacy Rule?
A: Covered Entities



Health plans



Health Care Clearinghouses



Health care providers
 who conduct certain electronic transactions (e.g., billing).

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Health Plans Include:

-  Employer sponsored health plans
-  Health insurance companies
-  HMOS
-  Certain government programs that pay for health care, such as Medicare & Medicaid

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Ryan White Programs

- Are excluded from the definition of **Health Plan**
- But a Ryan White grantee could be subject to the Privacy Rule as a **Covered Health Care Provider**

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What is a Covered Health Care Provider?

- A provider of medical or health services (as defined in SSA) or
- Any other person or organization who furnishes, bills, or is paid for *health care* in the normal course of business
 - Health care* is –
 - Care, services or supplies related to the health of an individual
 - Preventive, diagnostic, therapeutic, rehabilitative, other services related to health status or condition

Not transportation or other support services

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Which Health Care Providers Are Covered?

- Providers that conduct electronically a transaction for which the Secretary has adopted a standard, such as
 - claims
 - referral certification and authorization
 - payment and remittance advice
- Key question — *Do you accept insurance?*
- Includes most hospitals, pharmacies, clinics, nursing homes, large medical practices*
- Most purely grant funded entities not covered*

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Q: What is covered?

A: Protected Health Information

- Individually identifiable health information (other than education and employment records)
- Transmitted or maintained in any form or medium
- By covered entities (health plans, certain healthcare providers, and healthcare clearinghouses) or their business associates


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Protected Health Information includes:

Information in a medical record	Conversations a doctor has about a patient's care or treatment with nurses or others	Identifiable information about members in their health insurer's computer system	Billing information about patients in a health clinic	Most other information about a patient or plan member held by those who must follow this law
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Basic Construct of the HIPAA Privacy Rule

- Sets standards
 - When information can be used or disclosed
 - How information must be protected
 - New training, staffing, information management, contracts, policies and procedures
- Establishes rights for individuals
 - Access, correct, control, complain
- Enables HHS to enforce these requirements

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Uses and Disclosures

The Rule limits the uses and disclosures that may be made to those:

- For treatment, payment, and health care operations purposes
- To the individual
- Pursuant to a valid written authorization
- When the individual agrees, or does not object in circumstances that give the individual an opportunity to agree or object
 - Relevant information to family or friend caregivers; hospital directories
- For specific public policy purposes, such as public health or law enforcement purposes — requirements apply to each type




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Minimum Necessary Standard

- Covered entities must make reasonable efforts to use, disclose, or request the *minimum necessary* PHI for the purpose.
- Covered entities must identify classes of workforce members who need access to PHI to do their jobs.
- Exceptions include disclosures
 - To health care providers for treatment
 - Required by law

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Administrative Requirements Protect Information

Covered Entities must:

<ul style="list-style-type: none"> ▪ Designate a Privacy Officer ▪ Designate a contact person or office to receive complaints & provide further information ▪ Provide privacy training to all workforce members ▪ Develop & apply sanction policy ▪ Implement policies, procedures designed to comply with standards 	<ul style="list-style-type: none"> ▪ Implement administrative, technical & physical safeguards ▪ Mitigate any harmful effect of a violation known to covered entity to extent practicable ▪ Provide an internal complaint process for individuals ▪ Refrain from intimidating and retaliatory acts ▪ Not require individuals to waive their rights
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Successful Enforcement: *Corrective Action*

- Complaint alleges improper safeguarding of his PHI in dental practice: red sticker on medical record file notated with the word "AIDS" on outside cover; record handled by staff in manner that other patients can see notation.
- CE admitted reasonable safeguards not in place as required by Privacy Rule.

To resolve the matter, the practice:

- Immediately removed red sticker with "AIDS" notation from C's file
- Revised policy & operating procedures
- Privacy Officer & representatives met with patient and apologized, followed by a written apology
- CE now places all medical alert stickers on the inside of file

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Successful Enforcement: *Corrective Action*

- CE mistakenly faxed medical records to patient's place of employment, instead of new health provider, thus disclosing HIV status.
- CE acknowledged unauthorized disclosure.

To resolve the matter:

- Written disciplinary warning
- All employees informed of incident, counseled on proper faxing procedures
- Fax cover page revised with large bold letters stating "Please note that this fax is confidential communication for recipient eyes only"
- Both employee and physician apologized to patient

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Enforcement Resolution: *No Violation*

- Complaint alleges that although the patient only authorized CE to send to insurance company those records pertaining to an auto accident, the CE sent medical records also showing C's history of HIV, Hepatitis C & substance abuse.
- Patient provided OCR a copy of Authorization, which in fact authorized disclosure of information related to Sexually Transmitted Diseases, AIDS, HIV, and other communicable diseases, behavioral health care/psychiatric care, and treatment for alcohol and drug abuse.

Disclosure permitted pursuant to individual's authorization.


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OCR's Privacy Website

<http://www.hhs.gov/ocr/hipaa/>

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Protecting the Civil Rights of Persons with HIV/AIDS



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Relevant Civil Rights Laws Enforced by OCR

- **Section 504 of the Rehabilitation Act of 1973** (*disability*)
- **Title II of the Americans with Disabilities Act of 1990** (*disability*)
- **Title VI of the Civil Rights Act of 1964** (*race, color, & national origin*)
- **Age Discrimination Act** (*age*)



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Who must comply with these civil rights laws?

- Section 504, Title VI, Age Discrimination Act—Recipients of *Federal financial assistance* (**Ryan White Grants, Medicare, Medicaid, Block Grants, and other grants that fund health and social service programs**)



- Title II of the ADA—**State/Local Government Agencies** (for example, State TANF offices, State and County Hospitals, and County Health Clinics)

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Section 504 of the Rehabilitation Act of 1973 & The Americans with Disabilities Act of 1990



SECTION 504

- Prohibits discrimination on the basis of disability in programs and activities that receive **federal financial assistance** (FFA).

ADA

- HHS-OCR enforces Title II of the ADA regarding **state/local government** health & human services.
- DOJ enforces Title III of the ADA regarding places of **public accommodation** -- private facilities open to the public.

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Definition of Disability

- A physical or mental impairment that substantially limits one or more major life activities

HIV-AIDS can be a disability under this definition

- Major life activities include (but are not limited to) walking, talking, hearing, seeing, eating, speaking, working, caring for oneself, and reproduction




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Direct Threat Defense

- A recipient or covered entity is not required to treat an individual when that individual poses a direct threat to the health or safety of others, if reasonable modifications will not eliminate the risk
- Bragdon v. Abbott, 524 U.S. 624 (1998): a health care provider who decides not to treat a patient with HIV because of viral transmission risk must show that his/her decision not to treat because of direct threat is *reasonable in light of available medical evidence*

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Title VI of the Civil Rights Act of 1964

Recipients of federal financial assistance may not on the basis of race, color, or national origin:

- Deny or restrict an individual's enjoyment of a service, aid or benefit under the program;
- Provide a benefit which is different or provided in a different manner; or
- Subject an individual to segregation or separate treatment.

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Title VI of the Civil Rights Act of 1964 Provides for "meaningful access" to Limited English Proficient (LEP) persons


- Recipients' failure to take reasonable steps to provide meaningful access to their programs, activities and services for LEP persons may constitute national origin discrimination.
- An LEP person is someone who does not speak English as their primary language and who has a limited ability to read, write, speak or understand English.
- Strategy: develop procedures for securing interpreters or translating material

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Civil Rights Cases

- Primary Medical Care
- Surgery
- Dental Care
- Nursing Homes
- Licensing of Health Occupations




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**Successful Enforcement: *Corrective Action*
Access to Primary Medical Care**

- Complaint alleged physician in private practice referred patient with HIV to local emergency room for treatment of conjunctivitis ("pink eye")
- Regulations prohibit health care providers from denying service within scope of their license due solely to an individual's HIV status.


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To resolve the matter, the physician

- Issued notice to staff that patients with HIV/AIDS will receive treatment
- Issued notice to referral services that services will be provided to persons with HIV/AIDS
- Issued written apology and offer to provide services in the future
- Reimbursed expenses for hospital

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Successful Enforcement: *Corrective Action*
Access to Dental Treatment

- Complaint alleged dentist referred 7-year-old girl with HIV to Children's Hospital for routine dental treatment
- Complaint alleged dentist terminated services to patient after learning of his HIV status, and required patient's partner to provide proof of HIV negative status prior to future treatment

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To resolve the matter, the dentists:

- Issued notice of nondiscrimination policy, with explicit reference to disability, including HIV/AIDS
- Provided training to all staff on nondiscrimination, the use of universal precautions, and the availability of grievance procedures
- Issued written offer to provide/ reinstate services

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Successful Enforcement: *Corrective Action*
Access to Nursing Homes

- The Complainant needed short-term rehabilitative care following hip replacement surgery; he alleged that the nursing home denied him admission because he is HIV positive
- A nursing home employee left a voice mail message with the referring social worker saying that the nursing home could not take the patient because he was "too young" and "HIV positive"
- The OCR investigation revealed evidence of the nursing home's history of denying admission to individuals with HIV, without regard to each patient's acuity level or whether or not each patient had a medical condition which the facility was equipped to treat

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As a result of OCR's intervention, all three nursing homes in the corporate chain took the following corrective actions:

- Issued notice of their new nondiscrimination policy (with an explicit reference to HIV/AIDS) to staff, referral sources, and the general public
- Provided annual and mandatory staff training on: (1) the new nondiscrimination policy; (2) a new procedure governing the admission of patients with HIV/AIDS; (3) the use of universal precautions in patient care; and (4) the protection of the health information privacy of patients and applicants for admission
- As a result of the corrective actions taken at the three nursing homes, an additional 200 nursing home beds are now available to people living with HIV/AIDS in Northern California

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How OCR Protects Civil Rights & Health Information Privacy Rights

- **Complaints:** people who believe that they have been discriminated against, or the law otherwise has been violated may file a complaint with OCR
- **Compliance reviews:** OCR may initiate a civil rights review of any agency or program that receives HHS funds or a Privacy rule review of any covered entity
- **Technical assistance:** OCR provides resources, training, outreach materials, and presentations
- **Pre-Grant Reviews:** OCR conducts civil rights reviews of health care providers who are applying to participate in the Medicare Part A program

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Q: What if OCR finds noncompliance with civil rights or health information privacy laws?

A: OCR emphasizes compliance through corrective action or voluntary resolution agreements.

<p>Civil Rights Formal Enforcement options:</p> <ul style="list-style-type: none"> cs Terminate HHS funding cs Refer to the U.S. Department of Justice for enforcement 	<p>Privacy Rule Formal Enforcement:</p> <ul style="list-style-type: none"> cs Impose civil monetary penalties
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Civil Rights and Health Information Privacy Rights Hypothetical

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Other Important HHS Resources

www.aids.gov/podcast/ocr/ocr_podcast_play.html ("Conversations on AIDS.gov" with Winston Wilkinson, J.D., Director, Office for Civil Rights, HHS)

www.aids.gov (Domestic HIV/AIDS information and Resources)

<http://aidsinfo.nih.gov/infoSIDA> (Information in Spanish)

www.cdc.gov/hiv (Centers for Disease Control and Prevention)

www.hhs.gov/ophs/ohap (Office of HIV/AIDS Policy)

www.nih.gov (National Institutes of Health)

<http://www.hrsa.gov/healthliteracy/training.htm> (HRSA)

www.lep.gov (Federal Interagency Working Group on Limited English Proficiency – numerous resources)

www.hhs.gov/ocr/lep (video: "Breaking Down the Language Barrier: Translating Limited English Proficiency Into Practice")

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**To learn more about
these rights and protections, go to:**


Web site: www.hhs.gov/ocr

*For fact sheets, complaint forms, FAQs,
regional office contact information*

Or E-mail: OCRmail@hhs.gov

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