

# Protected Health Information





# What Is Covered?

- ◆ Protected health information (PHI)
  - Individually identifiable health information
  - Transmitted or maintained in any form or medium by a Covered Entity or its Business Associate



# Individually Identifiable Health Information

- ◆ Health information, including demographic information
- ◆ Relates to an individual's physical or mental health or the provision of or payment for health care
- ◆ Identifies the individual



# What is NOT Covered?

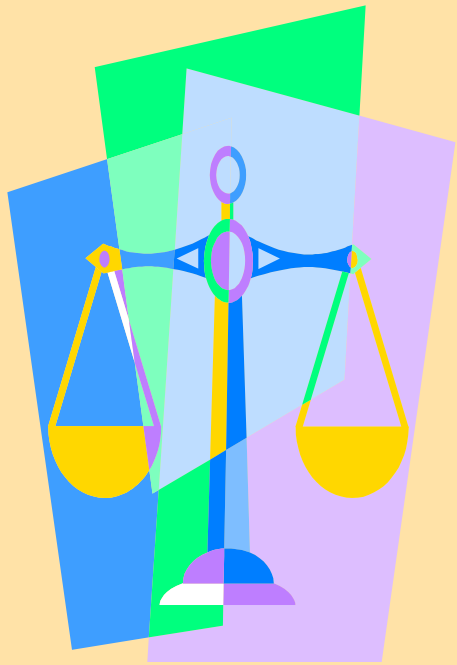
Not PHI:

- Employment records of Covered Entity
- Family Educational Rights and Privacy Act (FERPA) records



# De-identification of PHI

- ◆ Removal of certain identifiers so that the individual who is subject of the PHI may no longer be identified
- ◆ Application of statistical method or
- ◆ Stripping of listed identifiers such as:
  - Names
  - Geographic subdivisions < state
  - All elements of dates
  - SSNs



# Uses & Disclosures of PHI





# General Rule

Covered Entity may not use or disclose PHI, except as permitted or required by Privacy Rule



# Required Disclosures

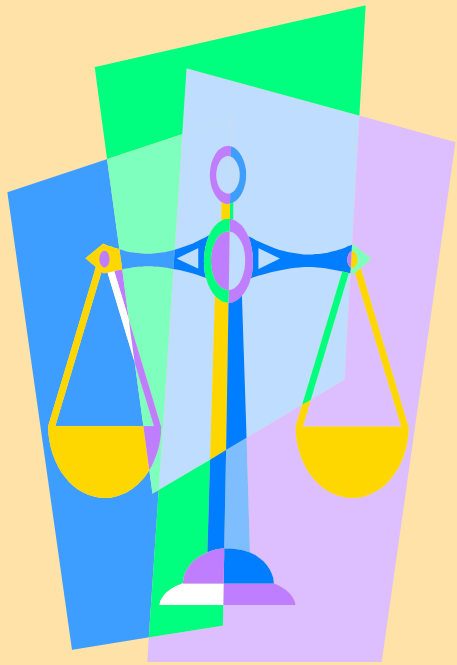
- ◆ To individual when requested & required by Section 164.524 (Access) & Section 164.528 (Accounting)
- ◆ To HHS, to investigate or determine compliance with Privacy Rule





# Permitted Uses and Disclosures

- ◆ Individual
- ◆ Treatment, Payment and Health Care Operations (TPO)
- ◆ Opportunity to Agree or Object
- ◆ Public policy
- ◆ “Incident to”
- ◆ Limited data set
- ◆ Authorized



# To the Individual

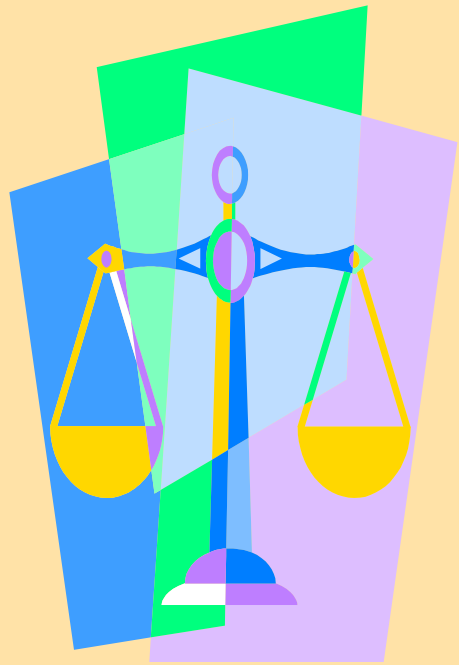




# To Individuals

Besides required disclosures, Covered Entities also may disclose PHI to their patients/health plan enrollees  
Examples:

- Health plans can contact their enrollees
- Providers can talk to their patients



# Treatment, Payment and Health Care Operations





# Treatment, Payment and Health Care Operations (TPO)

Covered Entity may use/disclose PHI to carry out essential health care functions

- Treatment
- Payment
- Health care operations



# Treatment

**Treatment** means the provision, coordination, or management of health care by one or more health care providers, including:

- consultation between health care providers; or
- patient referrals



# Payment

- ◆ Payment means activities of:
- ◆ Health care providers to obtain payment or be reimbursed for their services
- ◆ Health plans to obtain premiums, fulfill coverage responsibilities, or provide reimbursement for the provision of health care



# Health Care Operations (1)

- ◆ Health Care Operations are administrative, financial, legal and quality improvement activities
- ◆ Necessary to run business and to support core functions of treatment and payment





# Health Care Operations (2)

- ◆ Quality assessment and improvement activities
- ◆ Training, accreditation, certification, credentialing, licensing, reviewing competence, evaluating performance
- ◆ Fraud and abuse detection



# Health Care Operations (3)

- ◆ Underwriting, rating, other activities relating to the creation, renewal or replacement of a contract of health insurance or benefits
- ◆ Conducting or arranging for medical review, legal services, or auditing
- ◆ Business planning and development
- ◆ Business management and general administrative activities



# Sharing for TPO (1)

- ◆ Use/disclose PHI for own TPO
- ◆ Disclose for treatment activities of a provider
- ◆ Disclose to another Covered Entity or provider for recipient's payment activities



## Sharing for TPO (2)

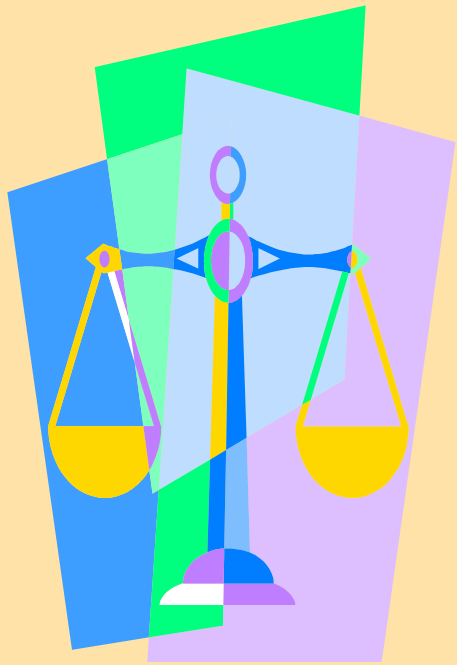
- ◆ Disclose to another Covered Entity, if mutual relationship with individual, for other Covered Entity's
  - quality, training/credentialing
  - fraud and abuse detection activities
- ◆ Disclose to another OHCA member for their joint health care activities



# Optional Consent

Rule permits consent on voluntary basis for TPO

- Optional consent may not be used where an authorization is required



# Opportunity for Individual to Agree or Object





# Facility Directories

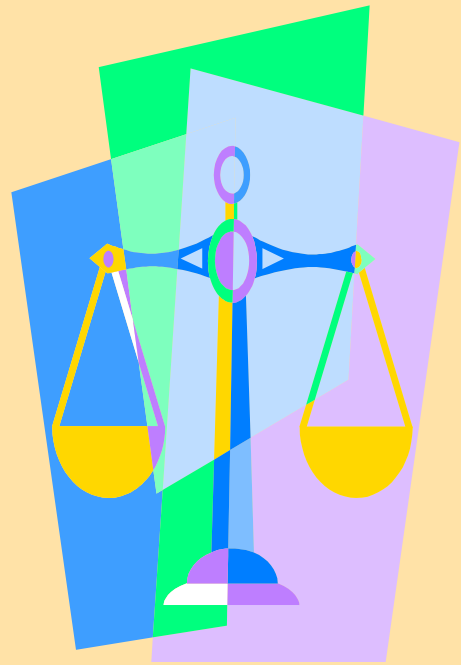
- ◆ Must give individual opportunity to restrict or prohibit (can be oral) the use or disclosure of name, location, general condition, and religious affiliation for:
  - Disclosure to persons who request the individual by name (except religion)
  - Disclosure to clergy
- ◆ Emergency exception



# Family, Friends, and Advocates

- ◆ Must give individual opportunity to agree or object:
  - **May disclose PHI relevant to person's involvement in care or payment** to family, friends, or others identified by individual
  - **May notify of individual's location, condition, or death** to family, personal representatives, or another responsible for care
    - Applies to disaster relief efforts
- ◆ When individual is not present or incapacitated:
  - Above uses and disclosures are permissible using professional judgment to determine if in best interest of individual





# Public Policy Uses and Disclosures





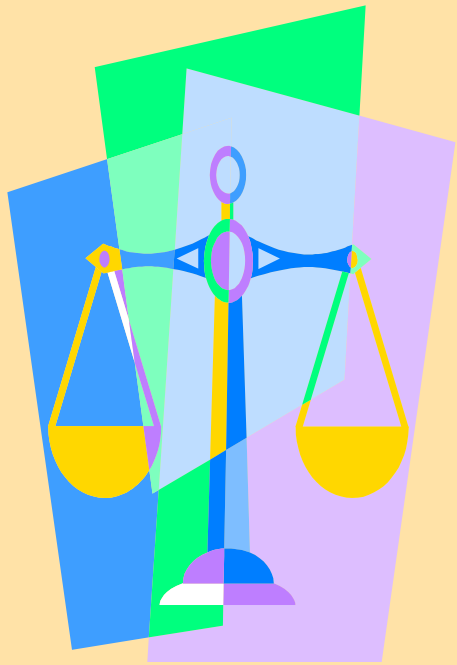
# Public Policy Purposes

- (a) As required by law**
- (b) For public health**
- (c) About victims of abuse, neglect or domestic violence**
- (d) For health oversight activities**
- (e) For judicial & administrative proceedings**
- (f) For law enforcement purposes**



# Public Policy Purposes (2)

- (g) About decedents (to coroners, medical examiners, funeral directors)**
- (h) For cadaveric organ, eye or tissue donations**
- (i) For research purposes**
- (j) To avert a serious threat to health or safety**
- (k) For specialized government functions (military, veterans, national security, protective services, State Dept., correctional**
- (l) For workers' compensation**



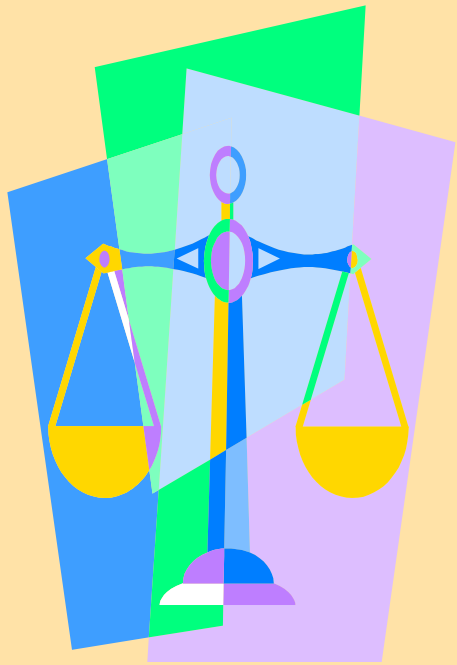
# Overheard, Seen in Passing...





# “Incident to” Uses and Disclosures

- ◆ Rule permits uses/disclosures incident to an otherwise permitted use or disclosure, provided minimum necessary & safeguards standards are met
- ◆ Allows for common practices if reasonably performed



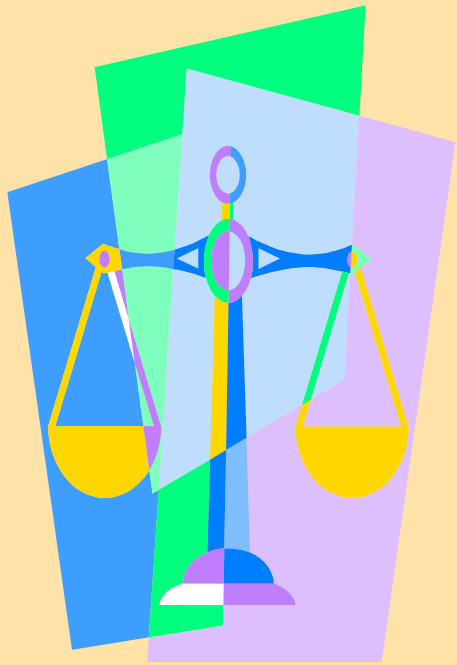
# Limited Data Set





# Limited Data Set

- For research, public health, health care operations purposes
- Direct identifiers must be removed
- Allows zip codes, dates
- Requires Data Use Agreement: recipient cannot use for other purposes or identify or contact individuals



# Authorized Uses and Disclosures







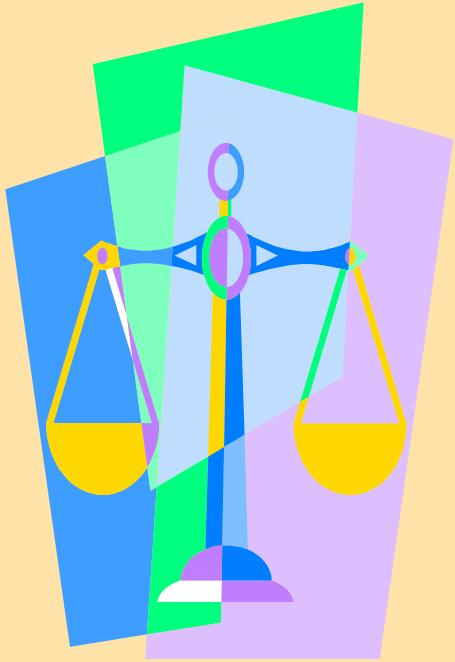
# Uses/Disclosures Requiring Authorization

Authorizations are required for uses and disclosures not otherwise permitted or required by the Rule



# Authorization

- ◆ Generally, cannot condition treatment, payment, eligibility, or enrollment on an authorization
- ◆ Special rules:
  - psychotherapy notes
  - marketing
- ◆ Authorization must contain core elements & required statements, including:
  - Expiration Date or event
  - Statement that authorization is revocable



# Minimum Necessary





# Minimum Necessary

Covered entities must make reasonable efforts to limit the use or disclosure of, and requests for, PHI to minimum amount necessary to accomplish intended purpose



# Policies & Procedures for Uses, Disclosures, Requests

## ◆ Uses

- Role-based access

## ◆ Disclosures & Requests

- Standard protocols for routine/recurring
- Case-by-case review for non-routine



# Reasonable Reliance

Covered entities may reasonably rely upon requester's determination as to minimum amount necessary if:

- Public official
- Another covered entity
- Business associate for provision of professional service
- Researcher with IRB/Privacy Board documentation or other appropriate representations



# Minimum Necessary Exceptions

- ◆ Disclosures to or requests by providers for treatment
- ◆ Disclosures to individual
- ◆ Uses/disclosures with an authorization
- ◆ Uses/disclosures required for HIPAA standard transaction
- ◆ Disclosures to HHS/OCR for enforcement
- ◆ Uses/disclosures required by law



# Summary

- ◆ What information is covered under the Privacy Rule
- ◆ What Covered Entities can do with that information
- ◆ How much information can flow, and to whom in the organization