Overview

- Different varieties of long-term care
  - Nursing Home
  - Community-Based Care
  - Regulatory and payment structures
- HIPAA
  - Covered entities/Business Associates/Hybrid entities
- What is long-term care when it comes to HIPAA?
Long-Term Care

- In the beginning (mid-19th century), there were almshouses.
- So destitute elderly of good character did not have to keep company with those in the almshouse, private institutions were developed.
- By the 1930s, growing number of elderly in almshouses became a policy concern.
- Monthly pensions through Social Security seen as a means to allow elderly to live independently.
Long-Term Care

- People who lived in publicly controlled institutions were barred from receipt of monthly pension under Social Security
- Result - aged individuals in need of long-term care were forced to seek shelter in private institutions
- During the 1950s, Social Security Act amended to allow federal support to individuals in public facilities.
Long-Term Care

- Passage of Medicare and Medicaid in 1965 provided impetus for growth
- Between 1960 and 1976:
  - Number of nursing homes grew by 140 percent
  - Nursing-home beds increased by 302 percent
  - Revenues received by the industry rose 2,000 percent.
Long-Term Care

- By the year 2000:
  - $100 billion dollar a year industry, paid by Medicaid, Medicare, and out-of-pocket expenses
  - Although only 2 percent of all elderly individuals between sixty-five and seventy-four live in nursing homes, 25 percent of people over eighty-five do
Nursing home economics

- **Payers**
  - Medicare
    - Federal program; regulated at a national level
    - Pays only for:
      - All of a “skilled stay” – short-term stay following a hospital stay
      - All of days 1 to 21; part of days 22 through 100
      - In 2011, accounted for 14.5% of all payer days nationally
Nursing home economics

- **Payers**
  - **Private Pay**
    - Residents paying for care directly out of pocket
    - Accounted for 22% of all payer days nationally
    - Average national cost in 2012: $6,083 per month
    - Double occupancy room
Nursing home economics

- Payers
  - Medicaid
    - State and Federal partnership
      - Federal government “matches” state cost after the fact
      - Match rates vary from 50% to 73.58%
        - This means that in California, for example, after the State spends $1 for nursing home care, the Federal government reimburses the State 50 cents
        - In Mississippi, reimbursement is almost 74 cents per dollar spent
Nursing home economics

- Payers
  - Medicaid pays for over 63% of all nursing home days nationally
  - Medicaid becomes the primary payer (the payer of last resort after residents have “spent down” their assets)
Community-based Care

- Beginnings
  - Concerns over lack of quality care in nursing homes in the 1970s
  - Concerns over escalating costs at the Federal and State levels
  - Advocacy by senior groups
- First authorized in 1981
Community-based Care

- Regulated and offered at State level
  - Within a set of standards, each State sets its own rules about
    - Eligibility
    - Payment
    - Service settings

- Medicaid and Private Pay only
  - Medicare does **not** pay for community-based care
Community-based Care

• “Let a thousand flowers bloom”
  • Arizona defines an assisted living facility as:
    • A *residential care institution*, including adult foster care, that provides supervisory care services, personal care services or directed care services on a continuing basis.
  • Oregon defines an assisted living facility as:
    • A building consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings. The facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents...
Community-based Care

- **Range of services:**
  - Case management
  - Homemaker
  - Home Health Care
  - Personal Care
  - Habilitation
  - Respite
  - “Other” services that help divert and/or transition people out of institutions and back into their homes and communities
    - Foster Care
    - Client-directed (and employed) service aides
HIPAA definitions - 45 CFR §160.103

- Covered entity:

“Covered entity means:

(1) A health plan.
(2) A health care clearinghouse.
(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.”
HIPAA definitions - 45 CFR §160.103

- “Health care provider means a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.”
- Skilled nursing facilities, home health agencies and hospice included in health care provider definition
HIPAA Transaction Standards

- Health care claims or equivalent encounter information
- Health care payment and remittance advice
- Coordination of benefits
- Health care claim status
- Enrollment or disenrollment in a health plan
- Eligibility for a health plan
- Health plan premium payments
- Referral certification and authorization
HIPAA definitions - 45 CFR §160.103

- Business Associate

“...creates, receives, maintains, or transmits protected health information for a function or activity regulated by this subchapter, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities...billing, benefit management, practice management, and repricing; or
Business Associate

“...provides, ...legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information...”
Hybrid Entity:

*Hybrid entity* means a single legal entity:

1. That is a covered entity;
2. Whose business activities include both covered and non-covered functions;

and

3. That designates health care components....”
The intersection of Long-Term Care and HIPAA

- Skilled Nursing Facility
  - Health Care Provider under 45 CFR §160.103
  - Medicare requires electronic billing
  - Covered Entity
- Home Health Agency
  - Health Care Provider under 45 CFR §160.103
  - Medicare requires electronic billing
  - Covered Entity
The intersection of Long-Term Care and HIPAA

- Assisted Living Facility
  - May provide health care services under 45 CFR §160.103 – or may not
  - State Medicaid may require electronic billing – or may not
  - May be a Covered Entity – or may not
The intersection of Long-Term Care and HIPAA

- Personal Care Attendants/ Personal Care Organizations
  - Do not provide health care services under 45 CFR §160.103 as per CMS
  - State Medicaid may require electronic billing – or may not
  - Not a Covered Entity
Continuum of Care – a single entity encompasses

- Skilled Nursing and Residential Care
- Independent and Assisted Living
- Adult Day Care
- Home Care Services
- Specialized Housing
- Affordable Housing

What is it??
The intersection of Long-Term Care and HIPAA

- **Hybrid Entity**
  - **Health Care Components =**
    - Yes: Skilled Nursing
    - Maybe: Residential Care and Adult Day Care
    - Probably not: Independent and Assisted Living
    - No: Home Care Services, Specialized Housing and Affordable Housing
The intersection of Long-Term Care and HIPAA

References that help:

- **State Publications**
  - Licensing laws define scope of services in community-based care
  - Medicaid provider guides define the extent of electronic and non-electronic billing
  - CMS provides information about Home and Community-Based Services in each state at [www.medicaid.gov](http://www.medicaid.gov)

- **WEDI – NPI Whitepaper** Atypical Service Providers published May 2, 2006
  - Appendix B overview of “flavors” of long-term care setting and services
The intersection of Long-Term Care and HIPAA

Summary:

- No one size fits all long-term care
- 50 states; 50 sets of definitions of community based care
- CMS encourages (cost-saving) innovation, so States are free to experiment – and encouraged to do so
- Do your homework
Questions?