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pulse

Perpetual Motion

HIPAA turned 25 in August, and with more changes ahead to the privacy rule, it's a good time for health care providers and business associates to evaluate their policies and procedures. *By Katy Zillmer*

In 1996, the world was introduced to the first flip phone, Microsoft Hotmail and Fox News. But many companies in the health care industry were preoccupied with another big event that happened that year: The Health Insurance Portability and Accountability Act (HIPAA), which was enacted on Aug. 21.

Since then, many accounts receivable management (ARM) industry professionals have become intimately familiar with HIPAA since it is one of the industry laws—in contrast to the Fair Debt Collection Practices Act or Telephone Consumer Protection Act—that has evolved significantly over the years.

Signed by former President Bill Clinton, HIPAA was designed to improve the efficiency and effectiveness of the health care system, according to the U.S. Department of Health and Human Services (HHS).

The law mandated HHS to adopt standards for electronic health care transfers and coding, unique health identifiers and security. Meanwhile, Congress recognized that updates in electronic technology could impact the privacy of consumers' health information. As a result, Congress added requirements to the law outlining the adoption of federal privacy protections for individually

identifiable health information.

"HIPAA established protections for the hard copy transfer of health care data from employer to employer or from payer to payer," said Shawn Stack, the Health Care Financial Management Association's (HFMA) director of perspectives and analysis. "I think HIPAA is a little bit of an odd duck because it has actually evolved with time, and that has been a good thing because it's kept us challenged to stay on top of privacy and protection."

HIPAA didn't launch fully formed, nor were debt collection companies initially impacted. It took HHS almost four years to publish a privacy rule as part of HIPAA to set national standards for covered entities, including health insurance plans, health care clearinghouses and health care providers, to protect individually identifiable health information when sending electronically.

A few years later HHS enacted a security rule and enforcement rule and in 2013 the Final Omnibus Rule was passed, which addressed gaps in regulation between HIPAA and the Health Information Technology for Economic and Clinical Health (HITECH) Act.

The omnibus rule identified standards to safeguard consumers' protected health information (PHI) in the event of a data breach. ARM industry agencies working

with health care provider clients entered the fold at this time because the omnibus rule included business associates.

Business associates, also covered by the privacy rule, include collection agencies in the ARM industry because they could be required to disclose consumers' PHI as part of a billing or payment transaction and need to have secure access to the necessary information from their clients.

"The omnibus rule pulled in business associates to HIPAA to make sure they complied," Stack said. "I think that is when the rubber really started to meet the road with HIPAA. It started to really help hospitals, providers and business associates establish security procedures for each other and patients."

HIPAA and Medical Debt Collection: Practical Tips

HIPAA improved how health care providers handle patient health information, including how they communicate with insurance carriers. It also changed medical debt collections significantly. Even 25 years later, agencies that collect medical debt have to consider HIPAA in every aspect of collections.

On a recent episode of the ACA Huddle, Leslie Bender, IFCCE, CCCO,

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HIPAA Timeline

August 1996

HIPAA signed into law

April 2003

HIPAA Privacy Rule effective

April 2005

HIPAA Security Rule effective

March 2006

HIPAA Enforcement Rule effective

February 2009

Health Information Technology for Economic and Clinical Health Act (HITECH) introduced

September 2009

HIPAA Breach Notification Rule effective; HITECH effective

March 2013

Omnibus Final Rule effective

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senior counsel at Clark Hill PLC, Irene Hoheusle, vice president of collections and education at Account Recovery Specialists Inc., and Hal Trapp, director at Early Out and Revenue Cycle Support Services, discussed how HIPAA affects training and business associate relationships with clients. They also explored the upcoming and more recent rules, regulations, acts and practical recommendations best practices for the challenges that we face today when collecting medical debt.

The panel encouraged covered entities to continually evaluate their established policies especially with potential changes to HIPAA on the horizon.

What can business associates do to ensure they're on the same page as their clients when it comes to sharing consumers' PHI and remaining compliant with HIPAA and the Consumer Financial Protection Bureau's Reg F?

First, review your policies with existing clients and explore new clients expectations when you're crafting your business associate agreements.

These policies, stemming from HIPAA, cover how to respond if either party is subject to a data breach, disclosures of PHI and processing requests for that information between the business associate and their client in a timely manner or ensuring the business associate can access it securely.

It's also about education between

business associates and clients.

While agencies have an important role in outlining their requirements and expectations for working on accounts, remember health care providers are the clients that have a financial investment in your work.

HIPAA also gives business associates some authority to proceed with payment activities that should be included in written policies with health care clients.

For example, let's say a patient is taken to the hospital in an ambulance and then has to see an orthopedist and have some lab work done. If a business associate gets information from the hospital emergency room and also has those other providers in the consumer's spectrum of care, HIPAA allows collection agencies to use and disclose the minimum necessary information to satisfy each request you may get from a patient about what the caregivers did.

HIPAA and Reg F: How They Intersect

Reg F compliance will be in effect Nov. 30, 2021, and there are some overlaps between HIPAA and the CFPB's update to the Fair Debt Collection Practices Act business associates and their clients will want to explore as both laws evolve.

Explore self-service portal options with your software vendor that will offer email options compliant with Reg F.

With proposed HIPAA privacy rule

changes in the works and Reg F taking effect soon, it's also an important time to do annual check-ins with your clients.

- Ask clients what, if any, HIPAA policies they have updated or changed in the past year. Try a client survey to achieve this task.
- Ensure you are clear on what training they offer their employees.
- Coordinate your debt validation processes with clients' right of access.
- Work together on training employees and make sure your collection floor staff knows about policy changes.
- Business associates should conduct annual risk assessments.

What's Next for HIPAA?

Health care is expanding into telehealth and medical devices, which present risks for data breaches, he said.

Looking back on HIPAA's evolution, Stack said health care providers and business associates and organizations like HFMA are happy that the rules and regulations are in place.

"I think that very few people would argue that HIPAA is not needed," Stack said. "It came with a significant, but well-warranted, cost for providers and business associates."

Katy Zillmer is ACA International's Communications Manager.

Health Care Bankruptcy Filings Drop in Ongoing COVID-19 Pandemic

A recent report shows an unprecedented decline in health care bankruptcy filings for the first time in over 13 quarters—an unusual occurrence for the normally distressed industry.

While several industries have seen economic decline throughout the COVID-19 pandemic, the health care sector has been uncharacteristically unaffected. For the first time in more than 13 quarters, the Health Care Services Distress Research Index dipped below 100 points—an unprecedented drop in Chapter 11 filings for the commonly distressed industry, according to the Distress Indices Report by Polsinelli released in late August.

The Polsinelli - TrBK Distress Indices are research indices based on Chapter 11 bankruptcy filing data. The Chapter 11 Distress Research Index serves as the primary index and is based on filings by entities with assets scheduled at greater than \$1 million as represented on initial Chapter 11 petitions, according to Polsinelli. Throughout the second quarter of 2021, the health care industry has seen the lowest recorded number of bankruptcy filings since the benchmark period of 2010.

“We think this drastic change is due to substantial and continued government support for the most vulnerable of health care industries during the pandemic,” says Polsinelli Shareholder Jeremy Johnson and co-author of the report.

Other significant updates in the report include:

- The Chapter 11 Distress Research Index was 66.24 for the second quarter of 2021, which is down over 33 points compared with the benchmark period of the fourth quarter of 2010—making it the second highest the index has registered since the first quarter of 2011.

- Compared with the benchmark period of the fourth quarter of 2010, the Real Estate Distress Research Index was down over 77 points at 22.24 in second quarter 2021. This is the first decrease after several stable quarters.
- The Health Care Services Distress Research Index was 63.33 for the second quarter of 2021—decreasing more than 333 points since the last quarter. Compared with the same period one year ago, the index has decreased over 446 points. The index has continued to be significantly higher than the other indices.

Since the report was released, the health care industry is still experiencing a slow, steady stream of bankruptcies with experts anticipating an increase in filings from post-pandemic changes, such as the end of the eviction moratorium.

Read more from the indices report here: <https://bit.ly/healthcare-filings>.

NEWS & NOTES

Pros and Cons of OPPS Proposed Rule

The newly proposed Medicare Outpatient Prospective Payment System (OPPS) rule for 2022 has caused quite a stir with new hospital price transparency enforcement requirements and other policies. Major pros of the rule include the halt in eliminating the Inpatient-Only list, and the proposed rule’s new opportunity to push for health equity and access to rural patients. The proposed rule will require higher penalties for noncompliance of price transparency as well as a new payment rate methodology, resulting in cuts to hospital outpatient reimbursement through the 340B Drug Pricing Program. <https://bit.ly/3hLhVcm>

New HHS Rule Describes Surprising Billing Penalties

A new rule from the U.S. Department of Health and Human Services has established the maximum penalty for violations of patient-billing regulations at \$10,000, taking effect Jan. 1, 2022. Enforcement of the rule will start at the state level. A state’s enforcement of surprise-billing regulations can apply to providers that offer telehealth services to residents of that state “even in circumstances where the provider or facility is located in a different state.” <https://bit.ly/3hKF9zn>

We Want to Hear From You

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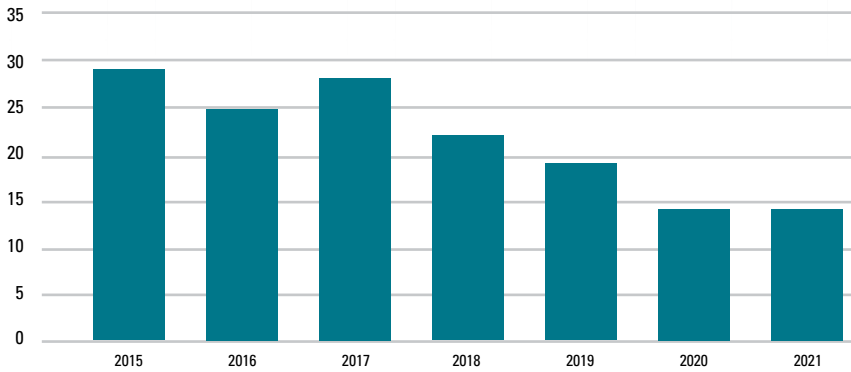
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M&A Regional Partnerships in the Last Quarter

According to the Kaufman, Hall & Associates M&A Quarterly Activity Report: Q2 2021, merger and acquisition revenue volume was at an historical low pre-pandemic with just 14 transactions. However, a high number of the second quarter transactions had revenues above \$500 million, including a so-called “mega merger” announced in the second quarter of 2021, with average annual revenues more than \$1 billion, as well as three transactions with seller revenues between \$500 million and \$1 billion.

Number of Q2 Announced Transactions by Year



Source: Kaufman, Hall & Associates M&A Quarterly Activity Report: Q2 2021.
<https://bit.ly/3IDEUqY>