



HEALTH AFFAIRS



TRICARE  
Management  
Activity

# Privacy Essentials: Complaints

2007 Quarterly Training

TMA Privacy Office



# HIPAA Complaints

## Objectives

- Upon completion of this module, you should be able to:
  - Describe the background of complaints
  - Identify types of Disclosures related to complaints
  - Explain the complaint process
  - Describe concepts of patient advocacy

## HIPAA Complaints

# HHS and Compliance

- HHS is committed to voluntary compliance. The number of complaints is considered the key indicator of compliance
- Informal resolution is preferred; lapse in compliance will not necessarily result in immediate fines
  - Demonstrate compliance
  - Completed corrective action plan or agreement
- If no informal resolution, covered entity informed of details of complaint in writing and provided opportunity to submit documentation of mitigation or defenses
- Covered entity and complainant informed of decision in writing

## HIPAA Complaints

# HHS and Compliance

- Covered entity responsibilities while under investigation
  - Provide records and compliance reports
  - Cooperate with complaint investigations and compliance reviews
  - Permit access to information
    - If info requested is in possession of third party covered entity must certify efforts to obtain info
    - PHI obtained by HHS during investigation will not be disclosed unless required by law

## HIPAA Complaints

# HHS and Compliance

- As of March 2006
  - 18,900 complaints received by HHS
  - 300 (1.5%) complaints referred to Department of Justice
  - 204 (68%) of those cases referred to Department of Justice have been closed
  - Most complaints were against private physician practices

## HIPAA Complaints

# HHS and Compliance

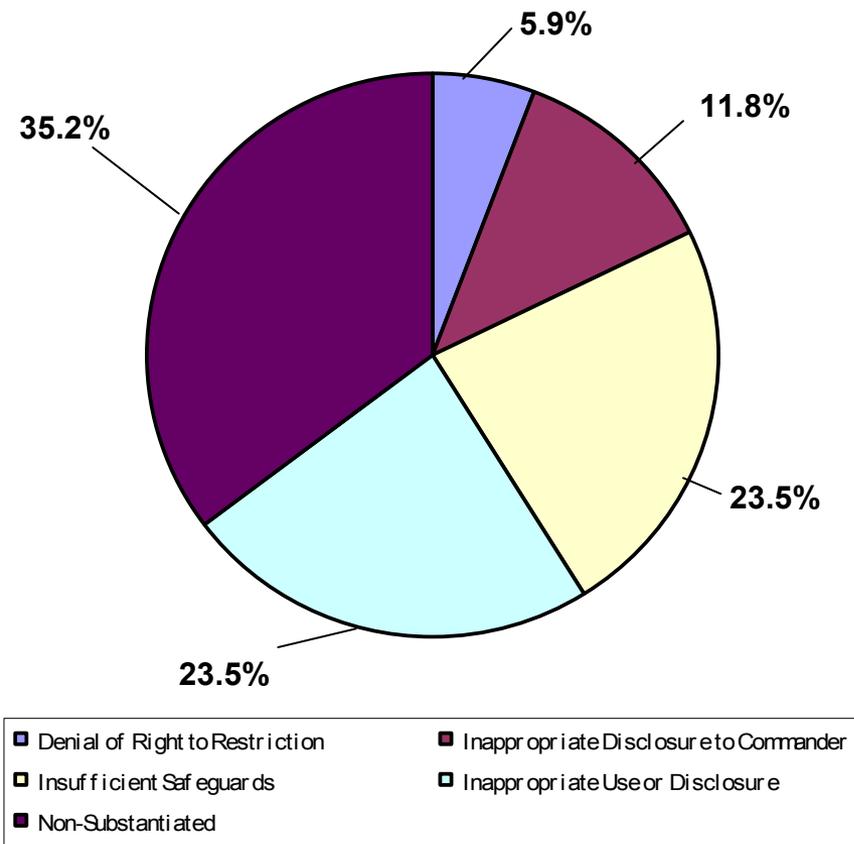
- Most frequently cited allegations
  - Impermissible use or disclosure of an individual's identifiable health information
  - Lack of adequate safeguards
  - Refusal or failure to provide the individual with access to his/her records and/or charging excessive fees
  - Disclosure of more information than is minimally necessary
  - Failure to obtain a valid authorization for a disclosure

# HIPAA Complaints

## Our Experience

- TMA Privacy Office coordinated the investigation of 17 complaints in 2005
- Complaints were generally filed because of:
  - Unauthorized disclosures of PHI
  - Failure to recognize patient request for rights
  - Failure to have or follow safeguards
  - Incomplete accountings of disclosures
  - Lack of workforce training

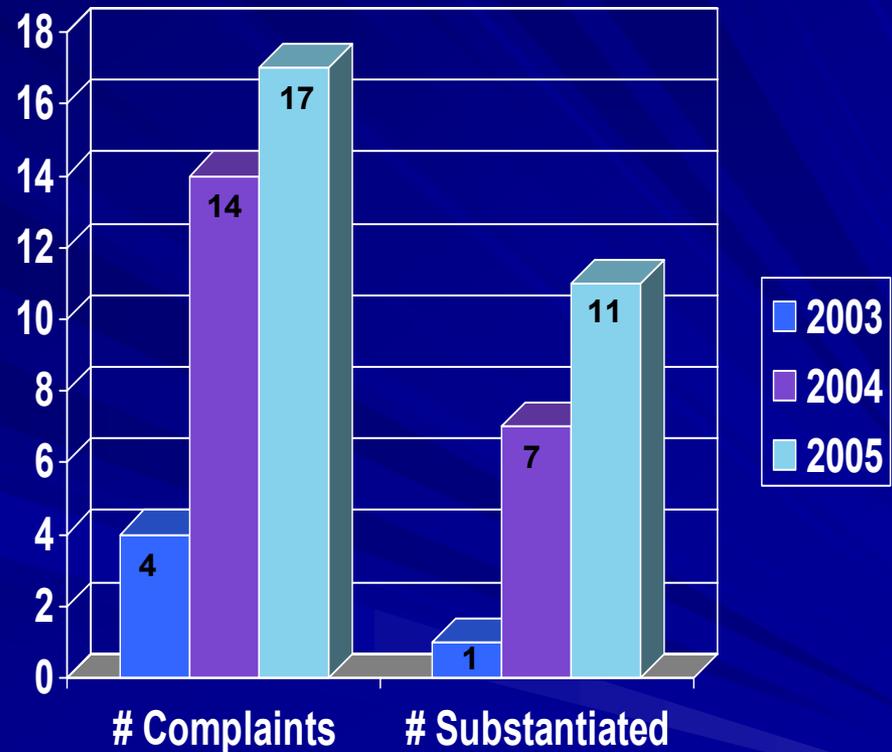
Complaints Received by TMA Privacy Office



# HIPAA Complaints

## Our Experience

- TMA Privacy Office receives more complaints every year
- The percentage of substantiated complaints goes up each year
- More complaints are generally received during the PCS season



## HIPAA Complaints

# Who Can Complain?

- Individuals have the right to make a complaint concerning your MTF or TMAs implementation and compliance with the rule
- You must provide that process and make it available
- You must document all complaints and their disposition
- You must not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for exercising their rights or obligations established by the rule or DoD's implementing regulation

# Background Information (1 of 7)

- Each MTF must have policies and procedures for addressing and resolving complaints
- Whenever possible complaints should be addressed at the local level
- TMA recommends MTFs report to their Service Representatives monthly on complaint statistics
  - HHS complaints
  - Beneficiary complaints
  - Staff and organization complaints
- TMA proposes that the Services provide aggregate complaint reports at a frequency to be determined

## HIPAA Complaints

# Background of Complaints (2 of 7)

- Some beneficiaries do not understand what constitutes a valid HIPAA Complaint under the rule
- Privacy Officer will need to read and analyze the complaint to determine if it is a valid HIPAA Complaint
- Things to look for:
  - Beneficiary provided information
  - Pursuant to an Authorization
  - PHI correctly used or disclosed as part of TPO, (i.e. Role Based Access Policy)
  - PHI released based on 14 Uses and Disclosures, was disclosure recorded
  - Determine if complaint is HIPAA based or based on other privacy laws

## HIPAA Complaints

# Background of Complaints (3 of 7)

- Beneficiary provided information
  - If a beneficiary provides the information to another individual or department outside of the CE, the information is no longer PHI as it was not in the possession of the covered entity
- Pursuant to an Authorization
  - If PHI was released per an authorization from the beneficiary, then the basis for a HIPAA violation is no longer valid as the covered entity complied with the beneficiary request

## HIPAA Complaints

# Background of Complaints (4 of 7)

- PHI used or disclosed as part of TPO
  - If the PHI was used or disclosed in a manner that meets the definition of TPO then the CE performed their duty per HIPAA
- Treatment:
  - “Treatment” generally means the provision, coordination, or management of health care and related services among health care providers or by a health care provider with a third party, consultation between health care providers regarding a patient, or the referral of a patient from one health care provider to another

## HIPAA Complaints

# Background of Complaints (5 of 7)

### ■ Payment:

- “Payment” encompasses the various activities of health care providers to obtain payment or be reimbursed for their services and of a health plan to obtain premiums, to fulfill their coverage responsibilities and provide benefits under the plan, and to obtain or provide reimbursement for the provision of health care

### ■ Healthcare Operations:

- “Healthcare operations” are certain administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and to support the core functions of treatment and payment

### ■ Ensure that PHI disclosed met the minimum necessary requirement

- Does a specific role Based Access Policy exist?
- Did CE staff perform duties per their assigned Role Based Access policy?

## HIPAA Complaints

# Background of Complaints (6 of 7)

### ■ PHI released based on 14 Uses and Disclosures

- If the PHI was released pursuant to one of the 14 uses and disclosure where beneficiary agreement or objection is not required, the CE must ensure disclosure was recorded, and that PHI provided met minimum necessary requirement

1. **As required by law**
2. **Avert serious threats to health or safety**
3. **Specialized government functions/ military provisions**
4. **Judicial and administrative proceedings**
5. **Medical facility patient directories**
6. **Cadaver organ, eye or tissue donation purposes**
7. **Victims of abuse, neglect or domestic violence**
8. **Inmates in correctional institutions or in custody**
9. **Workers' compensation**
10. **Research purposes**
11. **Public health activities**
12. **Health oversight activities**
13. **About decedents**
14. **Law enforcement purposes**

# Background of Complaints (7 of 7)

- Determine if it is a HIPAA complaint or based on other privacy laws
  - Many times complaints filed as HIPAA complaints are grievances under another privacy law
  - Review each complaint to determine if a Privacy Act, Freedom of Information Act (FOIA) or other Privacy statute applies
  - If the problem is not HIPAA based, direct the complainant to the appropriate office

## Types of Complaints

# Violation of Patient Rights

- Some of the most common complaints are based on the beneficiary's understanding of their rights as outlined in the NoPP
- Examples of Violations of Patient Rights:
  - Denying the beneficiary access to their record to inspect and copy
  - Releasing data from a record that has had a restriction placed on it
  - Contacting a beneficiary at their primary phone number or address when they have requested to be contacted at an alternate location
  - Denying a request for amendment without providing cause
  - Providing an incomplete accounting of disclosure
  - Not providing a copy of the NoPP when requested

## Types of Complaints

# Types of Disclosures (1 of 2)

- Many complaints are based on what the beneficiary feels was an inappropriate disclosure
- There are three types of disclosures that often result in complaints:
  - Incidental – Disclosures that occur during the course of routine business that are unavoidable
    - Calling patient's name in the waiting room
  - Accidental – Disclosures that occur due to an error
    - Misdialing a fax number and causing PHI to be sent to the wrong individual
  - Malicious Intent – Disclosures that were intended and malicious in nature. PHI that is taken for a wrongful purpose
    - Taking PHI for purpose of identity theft

## Complaint Process

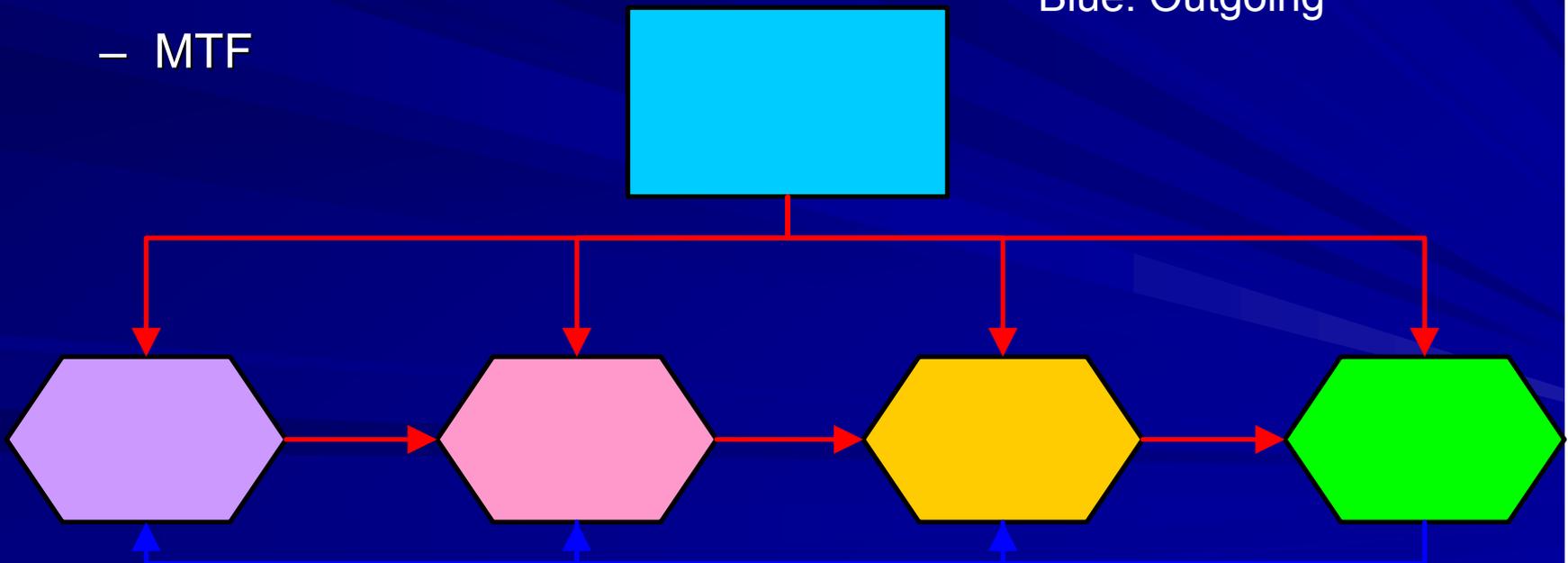
# Routing of a Complaint

- HIPAA gives patients the right to send their complaint to many levels:

- HHS/OCR
- TMA Privacy Office
- MTF

Red: Incoming

Blue: Outgoing



# Responsibilities of Investigating Officer

- Privacy/Security Officer at the MTF will ensure an Investigating Officer (IO) is appointed
- IO is responsible for:
  - Collecting and verifying all information related to the complaint
  - Ensuring documentation is retained in accordance with HIPAA and local policy
  - Meeting investigation timelines
  - Responding to all necessary parties
  - Documenting findings of facts, opinions and recommendations
  - Briefing MTF Commander who will have the responsibility to take appropriate action based on the recommendations of the IO

## Complaint Process

# Investigation Process (1 of 2)

- The IO will:
  - Determine if incident is in violation according to MTF/Service/DoD policies
  - Determine if policies were available to all workforce members involved
  - Interview all involved parties
  - Verify training status in the Learning Management System of personnel involved in the complaint
  - Check PHIMT to ensure disclosure recorded if complaint is related to disclosure

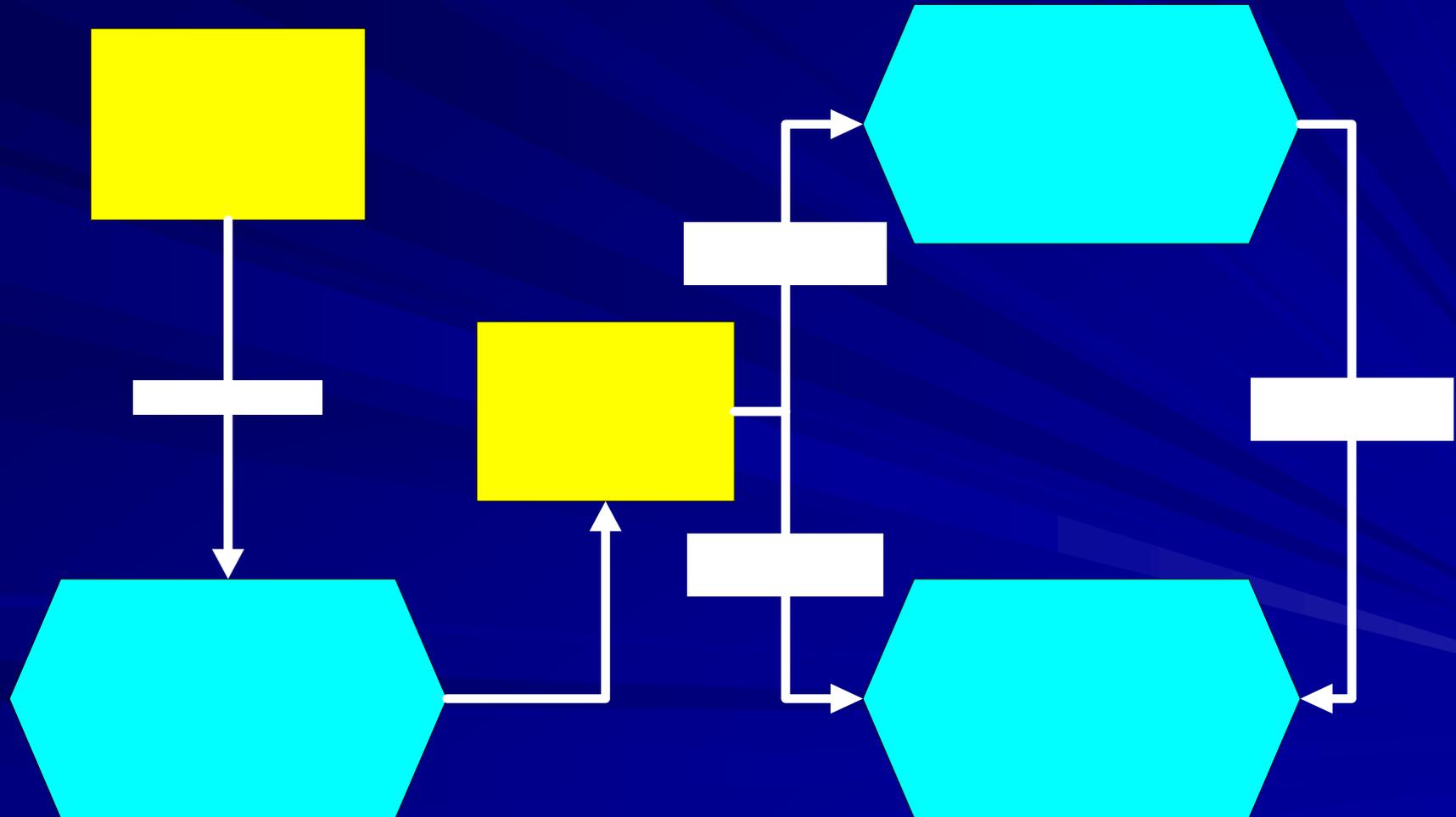
## Complaint Process

# Investigation Process (2 of 2)

- The IO will (cont'd):
  - Consult with legal counsel as needed
  - Consult with Privacy/Security Officer as needed
  - Determine if a violation occurred
  - Determine complaint validity

## Complaint Process

# TMA's Recommended Timeframe of a Complaint Process



## Complaint Process

# Service Responses

- Beneficiary complaint received at MTF:
  - Handled at MTF/Service level
- TMA routed complaint:
  - Instructions for response will be provided in forwarding letter
- HHS routed complaint:
  - All Service responses are to be routed via TMA Privacy Office for endorsement to HHS
  - Responses to complaining party will be determined on a case by case basis

## Complaint Process

# Content of Response Letter

- Beneficiary complaint received at MTF:
  - A written response by MTF including the high level details of the investigation must be sent to the complainant for all complaints
  - If the complaint is proven to be a valid HIPAA complaint, include any corrective actions and mitigation steps that were taken
  - If the complaint is not a valid HIPAA complaint, provide explanation and resources for redirection
  - TMA developing periodic reporting requirements
- TMA routed complaint:
  - Instructions for response will be provided in forwarding letter
- HHS routed complaint:
  - Each response requirement will be determined on a case by case basis

## Complaint Process

# Entry into the PHIMT

- Privacy/Security Officers are able to track complaints and create reports using the Protected Health Information Management Tool (PHIMT)
- Allows for easy tracking and documentation of complaints in one centrally managed application
- Only Privacy Specialists can record complaints
- Both Privacy Specialists and User Admins can run a report on the number of complaints recorded



## Complaint Process

# Patient Advocacy

- PO's should act as the patient's advocate
- Consider the patient's perception, even if complaint is not valid
  - If problem is with another area, direct patient to correct Point of Contact (POC)
  - If no HIPAA violation has occurred, explain facts surrounding the circumstance to the patient
  - Never ignore a patient's concerns
- The mission of the MHS is to deliver health care services to our beneficiaries
- The mission of the TMA Privacy Office is to ensure the confidentiality of PHI

# HIPAA Complaints Summary

- You should now be able to:
  - Describe the background
  - Identify types of complaints
  - Explain the complaint process
  - Describe concepts of patient advocacy

# Resources

- DoD 6025.18-R, “DoD Health Information Privacy Regulation”, January 2003
- DoD 8580.X-R, DoD Health Information Security Regulation (Draft)
- <http://www.tricare.osd.mil/tmaprivacy/HIPAA.cfm>
- <http://www.tricare.osd.mil/tmaprivacy/Mailing-List.cfm> to subscribe to the TMA Privacy Office E-News
- <https://hipaasupport.tricare.osd.mil> for tool related questions
- [Privacymail@tma.osd.mil](mailto:Privacymail@tma.osd.mil) for subject matter questions
- Service HIPAA Representatives