

NAHU PROFESSIONAL
DEVELOPMENT

**COMPLIANCE CORNER
WEBINAR**

HIPAA Phase 2 Audits &
Special Enrollment Periods

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September 8, 2016



THIS COMPLIANCE CORNER WEBINAR

is brought to you jointly by

NAHU Professional Development Committee

NAHU Legislative Council's Compliance Corner

This program is not intended to be legal or tax advice but informational to assist NAHU members with educating and preparing their clients for the requirements associated with this issue.

The content is based on information available at the time of recording (September 2016) from public sources. Regulatory requirements, guidance and legal advice change frequently. For specific guidance, please contact an attorney or tax advisor.

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ASK QUESTIONS CONTRIBUTE CHALLENGE

The best way for us all
to learn and take
something away from
this





HIPAA Phase 2 Audits



HIPAA Phase 2 Audits

- HIPAA Audit Purposes per HHS Office of Civil Rights
 - to examine compliance mechanisms
 - identify best practices
 - discover risks and vulnerabilities
 - enhance compliance with HIPAA Privacy, Security, and Breach rules
- Mandated by Congress in 2009 to heighten HIPAA enforcement



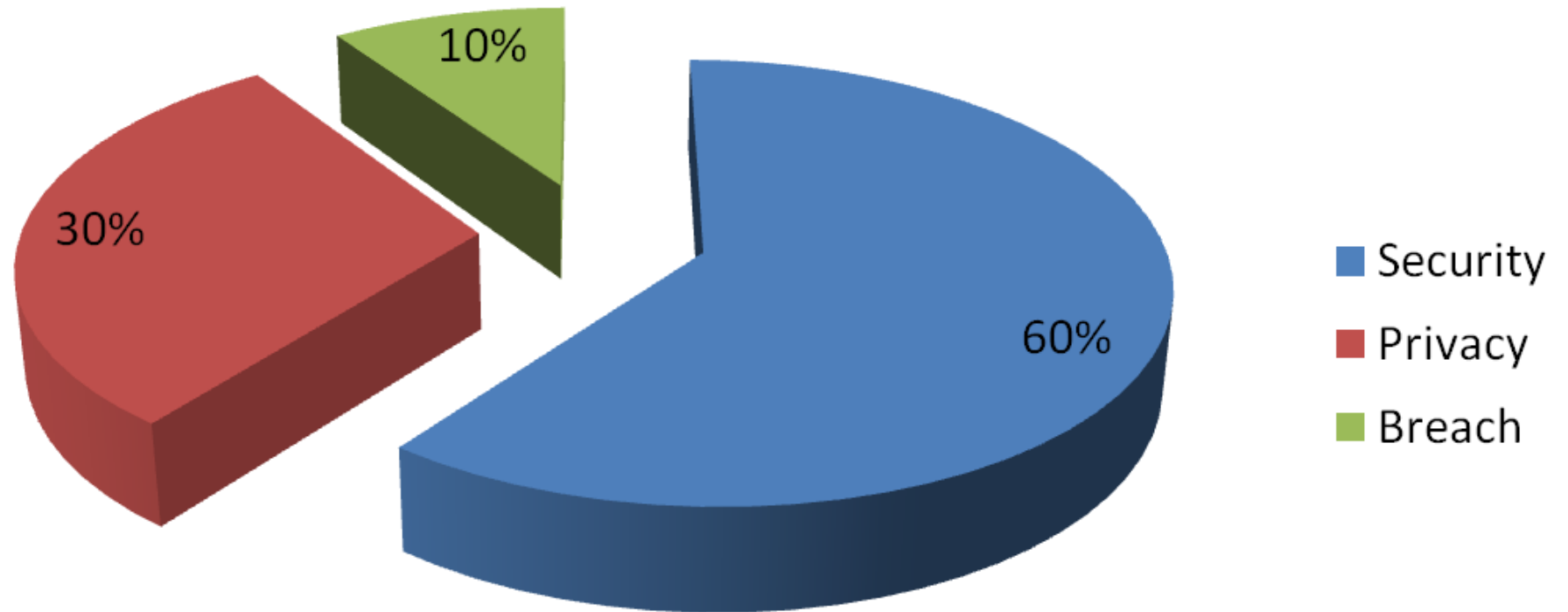
Background: HIPAA Phase 1 Audi

- 115 Covered Entities audited by private contractor (KPMG)
- Security findings accounted for 60% of issues
 - 67% did not have a complete and accurate risk assessment
- Providers had a greater number of findings (65%)
- Smaller Covered Entities struggled in all audit areas
- 30% indicated they were unaware of a HIPAA requirement

Background: HIPAA Phase 1 Audi



Audit Findings by Rule





Background: HIPAA Phase 1 Audi

- Top compliance issues of which Covered Entities were unaware
 - Privacy Rule
 - Notice of Privacy Practices
 - Right of Individuals to Access their Health Information
 - Minimum Necessary Standard
 - HIPAA Authorizations
 - Security Rule
 - Security Risk Analysis
 - Media Movement and Disposal Policies
 - Audit Controls
 - System Information Activity Review



HIPAA Phase 2 Audits

- Desk Audit Focus
 - Request data via letter and pre-audit questionnaire
 - Select who will be audited
 - Review data from electronic submission (may have some on-site)
 - Identify if further investigation is required
- Audit performed by HHS Office of Civil Rights (OCR) staff and not outside contractors, and will focus on largely on areas identified from Phase 1 audits



HIPAA Phase 2 Audits

- Typical HIPAA Documents Requested by Phase 1 Audits
 - Privacy Policy and Procedure
 - Security Policy and Procedure (if separate)
 - Breach Notification Policy and Procedure (if separate)
 - Business Associate Agreements
 - Need to be scanned for signatures
 - For health plans and other covered entities: BAA's with vendors
 - For business associates: BAA's with covered entities, as well as similar agreements with BA's vendors, subcontractors or agents that handle protected health information (PHI)



HIPAA Phase 2 Audits

- HIPAA Documents Expected to Be Requested (continued)
 - HIPAA Risk Assessment, including evidence of security measures to reduce the risks identified in the risk analysis (e.g. risk management plan and accompanying evidence)
 - Logs of unauthorized uses and disclosures of PHI, including known unauthorized uses and disclosures by business associates
 - Documents that describe investigation of potential HIPAA breaches, as well as attempts to mitigate potential and confirmed breaches
 - Breach notification letters for confirmed breaches, as well as any assessments that determined an exception applied under the breach notification requirements



HIPAA Phase 2 Audits

- HIPAA Documents Expected to Be Requested (continued)
 - Documentation of requests for access to, and amendment of, PHI, as well as the response to the individual
 - HIPAA notice of privacy practices, including records demonstrating timely and correct distribution, as well as links to any websites where these notices are posted
 - Records demonstrating that employees with access to HIPAA PHI regularly receive HIPAA privacy and security training (e.g., attendance sheets, signed certifications) as well as applicable training materials
 - OCR has indicated that it favors annual HIPAA privacy and security training
 - Sanctions imposed on employees who violated HIPAA



Audit Response Expectations

- **Completeness:** Pay close attention to the content and document submission requirements contained in the request
- **Timeliness:** Only responses submitted on-time will be considered
- **Currency:** Submitted documentation must be current as of the date of the data request
- **Concise:** Extraneous data may make it difficult for auditor to assess submitted documentation
- **Accuracy:** there will not be an opportunity for auditors to



Beware of Phishing Attempts

- OCR has advised covered entities and business associates to check their spam folders to ensure that all emails are received
- But spam may include attempts by hackers to obtain access to sensitive documents by sending similar emails with fake contact letters and creating their own sites for information uploads
- Employers should ensure that their employees refer all electronic or paper inquiries that appear to be from HHS and/or OCR to the company's authorized person (e.g privacy officer)



What Should You Do?

- Be Prepared: Make sure your agency has completed:
 - HIPAA Privacy Corporate Policies
 - HIPAA Security Risk Assessment
 - HIPAA Security Corporate Policies
 - HIPAA Breach Notification Policies
 - HIPAA Privacy, Security & Breach Training



What Should You Do?

- Have you made sure that your clients have signed Business Associates with your agency?
 - One point of caution: clients who are providers (physicians, hospitals, etc) may try to have you sign a BAA giving you access to their patients' PHI – you only want access to PHI of their employees and covered dependents
- Prepare Your Clients for HIPAA Phase 2 Audit and let them know of your willingness to assist them within the scope of your capabilities



Changes to Special Enrollment Periods

Why tighter enforcement?

- Oliver Wyman study for AHIP findings:
 - individuals who purchase coverage through an SEP are more than 40% more likely to stop paying for their coverage than individuals who enroll through the annual enrollment period
 - Consumers who enroll in coverage through an SEP cost 10% more to insure (per member per month) than consumers who enroll during annual open enrollment
 - As a result, health insurers have concluded they may not be receiving sufficient premium to cover these members over the course of the plan year

But the need exists...

- Over 33.5M individuals experience a life changing event (marriage, birth, death, losing job, getting a job that reduces eligibility for Medicaid) each year
- Fewer than 15% of those experiencing an SEP enroll to get coverage through individual markets (on/off exchanges)

ADVERSE SELECTION?

How to find the proper balance

- Reduce number of reasons why someone could qualify for coverage due to an SEP
- Implement tighter SEP verification process for Marketplaces and state-based Exchanges
 - Expectation is that carriers who are handling outside enrollments have already adopted processes to verify enrollment

Special Enrollment Events

- February 2016: HHS announced new rules to:
 - reduce the number of ways that an individual could enroll outside of annual enrollment period
 - tighten verification process to ensure that there is a legitimate SEP
- New rules apply to Individual policies in/out Marketplace & exchanges, primarily to eliminate or reduce “enrollment fraud” and abuse of special enrollment events

Special Enrollment Events

- SEPs are available in six defined circumstances:
 - losing other qualifying coverage
 - changes in household size like marriage or birth
 - changes in residence (permanent changes only)
 - changes in eligibility for financial assistance
 - experiencing defined types of errors made by Marketplaces or plans
 - other specific cases, including exceptional circumstances like natural disasters

<https://marketplace.cms.gov/outreach-and-education/special-enrollment-periods-for-marketplace.pdf>

SEP Enforcement

- SEP enrollees must attest their understanding of the SEP eligibility requirements, including documentation requirements
- Consumers may upload documents (which CMS has deemed to acceptable for verification of eligibility) to their account or mail them in (deadline expected to be 90 days from enrollment)
 - CMS will review the documents and inform the consumer if more information is needed
 - Consumers who fail to provide appropriate documentation may

SEP Eligibility Determination Notices

- CMS has provided models of the Eligibility Determination Notices (EDN) that consumers will receive
 - Different letters based on type of SEP
 - Each includes list of acceptable documents that an individual could submit to verify SEP eligibility

SEP Eligibility Determination Notices

- Sample Eligibility Determination Notices (EDN) on web:



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CMS.gov | Health Insurance Marketplace
Centers for Medicare & Medicaid Services

Type search term here Search

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Applications, Forms, & Notices Technical Assistance Resources Outreach & Education

Health Insurance Marketplace home > Applications, Forms, & Notices

Notices

Open Enrollment Notices

- Marketplace Open Enrollment and Annual Redetermination Notices (September 2015)
 - [English](#) | [Spanish](#)
- Marketplace Automatic Enrollment Confirmation Messages (December 2015)
 - [English](#) | [Spanish](#)

Eligibility Notices

- Marketplace Eligibility Determination Notice (2016 coverage) (November 2015)
 - [English](#) | [Spanish](#)
- Special Enrollment Periods (2016 coverage) (June 2016)
 - [English](#) | [Spanish](#)

Special Enrollment Period (SEP) Verification Notices

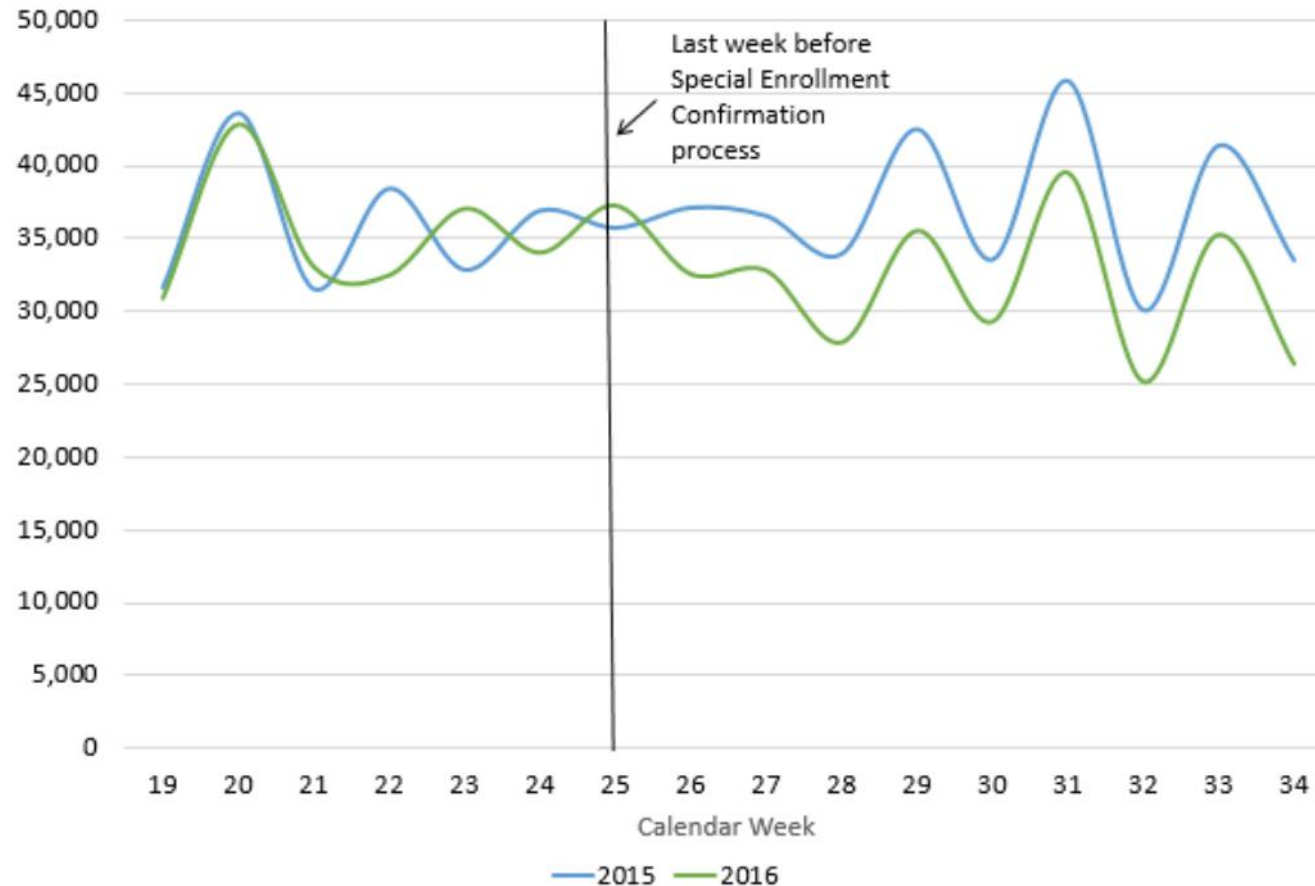
- Marketplace Special Enrollment Confirmation Process: Initial Verification Selection Notice for Consumers who Qualified for an SEP Before June 18, 2016
 - [English](#) | [Spanish](#)
- Marketplace Special Enrollment Confirmation Process: Nonresponder Notice for Consumers who Qualified for an SEP

- <https://marketplace.cms.gov/applications-and-forms/notices.html>

- Look under “Special Enrollment Period (SEP) Verification Notices”

Is it working?

Special Enrollment Period Plan Selections by Week



SEP: What's Next

- CMS announced pilot on September 6 for pre-enrollment verification to assess impact on compliance, enrollment, continuity of coverage, risk pool and other potential outcomes
- Also included reassurances about their concern about SEPs in the draft 2018 Payment Notice released in August
 - <https://www.federalregister.gov/articles/2016/09/06/2016-20896/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2018>
- Will be proposing regulations to minimize payment of Marketplace premiums by provider groups

Excellent SEP Resource

- <http://www.healthreformbeyondthebasics.org/wp-content/uploads/2015/06/SEP-Reference-Chart.pdf>

Chart is regularly updated

Questions

