

The
ADVOCATE

■ A Publication of the Office of Labor and Legal Affairs ■

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*“There is nothing
in all the world
more dangerous
than sincere
ignorance and
conscientious
stupidity.”*

*You have a moral
responsibility to be
intelligent.”*

■
*Dr. Martin Luther
King, Jr.*

GOVERNMENTAL REFORM: ETHICS TRAINING FOR STATE WORKERS

Just days after taking office, Governor Rod R. Blagojevich firmly established his commitment to changing Illinois state government. On January 23, 2003, Governor Blagojevich issued a trilogy of executive orders aimed at reforming government practices. The new measures create an Office of Inspector General, provide protection for whistleblowers and require ethics training for all state employees under the Governor’s jurisdiction.

In a press conference announcing the set of measures, Gov. Blagojevich stated, “these executive orders are designed to change a culture of corruption that has permeated state government.”

The first executive order creates the Office of Inspector General. The Inspector General, to be appointed by the Governor, will be charged with investigating allegations of corruption or misconduct by any officer, employee or appointee of the governor’s office or any agency, department, board or commission directly responsible to the Governor. Furthermore, this order empowers Illinois citizens to play a role in uncovering corruption or unethical behavior. The order mandates that the Inspector General establishes a Citizens Ethics Hotline, a toll-free phone number members of the public can use to anonymously report in-

stances of public corruption.

To successfully implement a government reform agenda, Governor Blagojevich’s second executive order issues stronger protective provisions for state employees who bring forth information regarding instances of misconduct. Although state law currently exists which makes it illegal to intimidate or threaten whistleblowers, the Governor’s second executive order goes further. It prohibits administrative disciplinary action or retaliatory conduct against whistle blowers. Moreover, any officer or employee who retaliates or in any way attempts to interfere with a whistleblower’s attempts to expose governmental misconduct will be subject to disciplinary action, including

“We must also change the culture — and establish a new mindset.” Gov. Blagojevich

termination of employment

The third executive order mandates future ethics training for all state employees. Governor Blagojevich remarked, “Reforming a system of corruption requires more than simply replacing corrupt public officials.” Thus, there is a

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HUMAN RESOURCES

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The *Advocate* Newsletter is a semi-annual publication of the Office of Labor and Legal Affairs. Its purpose is to provide the Chicago State University community with relevant information regarding legal issues. The material contained in this publication should not be construed as legal advice from the Office of Labor and Legal Affairs. Individuals are advised to consult an attorney for individualized legal advice.

Spotlight On . . . **Virnita A. Williams**

Virnita A. Wilkerson-Williams began her employment at Chicago State University in 1991. Currently serving as the Acting Director of Telecommunications, Virnita has held many positions within the department of Telecommunications since beginning her career as an Operator I. Her public service to the campus community has been significant. She served as a member of the Civil Service Employees Council and was elected its president in 1996. During her tenure, she was instrumental in acquiring an increase in the council's operating budget, securing the Ozzie Tucker Scholarship Fund and was founder of the State Universities Civil Service Employee Council's annual conference (Council of Councils).

As the newly elected Employee Advisory Council representative, Virnita states, "My crusade is to initiate social equality throughout the campus community." She models her vision after the leadership of Dr. Martin Luther King, Jr., her hero, and admires his ability to bring change and social justice in a time when people felt there was no hope for unity. Her dream is to bring back to Chicago State University the same energy, integrity, and servant leadership ability that Dr. King displayed in his short but greatly appreciated life. ■

"Spotlight On" is a feature recognizing civil service employees who expend extra effort in the performance of their duties. Please send the names of recommended candidates and a brief explanation to: Janelle Mason, Human Resource Director, ADM 203 or J-Mason@csu.edu.

Schedule of Upcoming Workshops and Events from the Office of Human Resources

Accounts Payable & Purchasing Workshop

April 1, 2003 9:00-11:00 A.M.
Speaker: Accounts Payable & Purchasing
Representative
EDUC 100

State Universities Retirement Systems Workshop

April 8, 2003
Session I 9:00-11:00 A.M.
Session II 1:00-3:00 P.M.
Speaker: Jim Beedie of SURS
EDUC 102

Civil Service Awards Program

2002 Honorees
April 17, 2003 9:30-11:30 A.M.
BHS 102

Conflict Resolution & Effective Communication

May 20, 2003 10:00-11:30 A.M.
Speaker: Michael Davis of Creative Care
Management (EAP)
SUB Conference Room AB

Improving Customer Satisfaction

June 3, 2003
10:00-12:00 Noon
Speaker: Michael Davis of Creative Care
Management (EAP)
EDU 100

For more information regarding any of the workshops, please contact LaDonna Obefemi, Training Coordinator at lobe-femi@csu.edu, 773.995.2361, ADM 204.

REGULATORY COMPLIANCE

HIPAA: Protecting Healthcare Information

By Robin M. Hawkins

Do you know who has access to your medical records or other information regarding your healthcare? In Tampa, Florida, a health department employee took a computer disk that contained the names of 4,000 people who had tested positive for HIV. In another matter, an individual bid \$4,000 to obtain the patient records of a family medical practice in South Carolina. One purpose for the purchase of the medical records was to sell the records back to the former patients. In a third case, a banker who also held a seat on the county health board, gained access to patients' records. The banker cross-referenced the names of cancer patients with the names of people who had mortgages with the bank. The banker then called those mortgages due. The Department of Health and Human Services (HHS) cited these cases and others involving a breach of medical privacy in the Preamble of the Health Insurance Portability and Accountability Act of 1996, or HIPAA, as it is most commonly called. Promulgation of HIPAA will effectively revolutionize healthcare privacy practices by mandating standards to prevent such breaches of confidentiality. Myriad entities that have access to individually identifiable health information will be significantly impacted by HIPAA.

OVERVIEW

HIPAA is comprised of two legislative actions: Title I, the Health Insurance Reform and Title II, the Administrative Simplification. The Health Insurance Reform regulations, which have been in effect for several years, ensure portability and continuity of health insurance coverage by allowing employees to carry health insurance from job to job. Title II, the Administrative Simplification, consists of three sets of interlocking regulations: (1) the Transaction Rule; (2) the Security Standards, and (3) the Privacy Rule. Many entities are finding, that of all the HIPAA regulations, complying with the Privacy Rule is proving to be the most daunting task. In general, the Privacy Rule will establish a national framework of policies and procedures for granting individuals greater access to

their healthcare records, while at the same time protecting such information from misuse by or improper disclosure to third parties.

PRIVACY LEGISLATION

In examining the need for the HIPAA Privacy Rule, Congress determined that while there were numerous federal statutes protecting the privacy of sensitive personal information, [see for example: the Fair Credit Reporting Act (1970), the Family Educational Rights and Privacy Act (1974), the Right to Financial Privacy Act (1978), the Identity Theft and Assumption Deterrence Act (1998)], a set of national regulations protecting health information did not exist. Furthermore, in the absence of national standards, many states enacted healthcare confidentiality statutes. Consequently, the healthcare privacy laws vary significantly from state to state and tend to pertain to specific health information; i.e., medical information regarding cancer, HIV/AIDS, mental illness, etc. There simply was not a comprehensive privacy protection standard for all health information nationwide.

Congress further reasoned that, in the past, health information was primarily recorded and maintained on paper and stored in an office file. However, with the increasing availability of electronic capabilities, the need for national privacy safeguards for electronic healthcare information, was all the more necessary.

HIPAA APPLICATION

In general, the Privacy Rule establishes how a *covered entity* may use and disclose *protected health information*. Covered entities are defined as health plans, healthcare providers who conduct specific financial and administrative electronic transactions, and healthcare clearinghouses. Protected health information (PHI), is defined as health information that is individually identifiable. HIPAA only applies to covered entities. The Privacy Rule recognizes that some entities, like colleges and universities, while not completely a

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Do You Know Who Has
Access to YOUR
Healthcare Information?

Regulatory Compliance

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covered entity, have components or units that perform covered functions and would qualify as a covered entity if separate from the entity. For example, a university hospital, health clinic, or counseling center that engages in electronic transactions would qualify as a covered healthcare provider, and a university administered employee health plan would qualify as a covered health plan if independent of the university. Conversely, the university's academic units, or administrative offices or campus security, would not be considered covered entities, being neither healthcare providers, health plans or healthcare clearinghouses. The Privacy Rule allows such *hybrid entities* to designate those units that perform covered functions as healthcare components and only those healthcare components are required to comply with the extensive HIPAA regulations, not the entire entity. Hybrid entities are required to establish policy safeguards and "firewalls" [technical security measures] to prevent PHI available in the designated healthcare components from being disclosed to non-healthcare components. Thus, in the university setting, where a university's health clinic constitutes a designated healthcare component, the medical records of a faculty member who utilizes the clinic cannot be given to the Human Resources department without the faculty member's authorization.

HIPAA PRIVACY PROTECTION

In general, the Privacy Rule mandates that covered entities may not use or disclose an individual's PHI except as authorized by the individual or as explicitly required or permitted by the regulations. The Rule even goes so far as to list the elements that must be included in an authorization for it to be valid.

A covered entity may disclose PHI for treatment, pay-

ment or other health care operations without the individual's authorization. The Rule enumerates specific public health and safety situations where a covered entity may disclose PHI without the individual's authorization. Nevertheless, except when disclosing the PHI to the individual, the covered entity is required to limit disclosures to the minimum necessary amount of PHI needed to accomplish the intended purpose of the use or disclosure.

In addition to restricting how a covered entity may use and disclose PHI, the Privacy Rule establishes several rights for individuals. An individual has the right to review and obtain a copy of his/her medical records; the right to request the amendment of inaccurate records; the right to an accounting or listing of disclosures of the PHI; and the right to receive PHI by alternate means or at an alternate location to ensure confidentiality. The covered entity must also supply the individual with a written *Notice of Privacy Practices* which explains the individual's rights and how the provider will use and disclose his/her PHI. The individual has the right to request restrictions on certain uses and disclosures. Even with these privacy provisions, HIPAA provides only the "floor" or the minimum healthcare privacy standards. States have the discretion to enact laws that grant an individual greater access to his or her medical information or provide more stringent disclosure policies.

FERPA EXCLUSION

Educational institutions that receive funding from the Department of Education must comply with another federal law: the Family Educational Rights and Privacy Act (FERPA). FERPA protects the privacy of information maintained by an institution in a student's Educational Record. In

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HIPAA RESOURCES

Visit any of the following websites for more information regarding HIPAA

HIPAA Learning Center
www.LearnHIPAA.com

U.S. Dept. of Health and Human Services - *HHS Fact Sheet*
www.hhs.gov/news/press/2000pres/00fprivacy.html

U.S. Dept. of Health and Human Services - *Privacy Rule*
www.hhs.gov/ocr/hipaa

U.S. Dept. of Health and Human Services - *Administrative Simplification Regulations*

<http://aspe.hhs.gov/admsimp/>

Illinois Department of Public Aid:
HIPAA On-Line
www.state.il.us/dpa/hipaa

HIPAAAdvisory
www.hipaadvisory.com

HIPAAAlert - *newsletter*
www.hipaalert.com

Health Privacy Project
Institute for Health Care Research and Policy
Georgetown University
www.healthprivacy.org

School of Government, University of North Carolina at Chapel Hill
<http://www.medicalprivacy.unc.edu/resources.htm>

EQUAL EMPLOYMENT OPPORTUNITY

YOU ARE THE JUDGE

Sexual Harassment? What is *your* judgment?

Case 1: Amy is Bob’s boss. They’ve worked together for 3 years and dated for 1 year. Now, Bob wants to “see other people.” Amy told Bob he’ll have to look for another job if he breaks up with her.

Case 2: Rhonda's male co-worker remarks on how pretty she looks today in her new dress.

Case 3: Cathy frequently overhears Brian and his co-workers at the water cooler discuss their love life in explicit detail. Cathy complains to her supervisor.

Do you know the difference between sociable behavior and unlawful behavior? Compare your responses. See page 6.
Do you know what to do if you are the recipient of what you suspect is sexual harassment? Speak with the EEO Coordinator and/or attend the next workshop.

“PREVENTING SEXUAL HARASSMENT” WORKSHOPS

During the 2002-2003 school year, the Office of Labor and Legal Affairs is conducting a series of workshops entitled Preventing Sexual Harassment in the Workplace to address the types of issues presented in the sidebar. The workshops, which are open to faculty, staff and administrators, define sexual harassment under the law, delineate the Chicago State University policy regarding sexual harassment and explain the process for filing a sexual harassment complaint. Through the use of numerous hypothetical situations, the workshop panel, Attorneys Nancy Hall-Walker and Jim Crowley, EEO Coordinator Adela Hernandez and HR Director Janelle Mason, deftly explore the complexities involved in complaints of a sexual nature. In addition to the viewing of a sexual harassment prevention video, a portion of each work-

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NEW JOB POSTING FORMAT

In an effort to create a more professional looking EEO web page, the EEO Office has developed a new format for job postings. Effective January 2003, all departments and offices seeking to post notice of available positions on the CSU EEO website are required to use the format below. To download this form or obtain a listing of available positions, visit www.csu.edu/eo. ■

| |
|--|
| <p>Department/Office Job Title [Assistant Professor, Director, etc.]</p> <p>The Department / College / Office invites applicants for the position of _____.</p> <p>Job Responsibilities / Duties: [Provide oversight, teach, etc.]</p> <p>Qualifications: [Ph.D. / Masters / Bachelors or state field and any required certificates, training, etc.]</p> <p>Salary: [Optional: May state a salary range or “Commensurate with qualifications and experience.”]</p> <p>Deadline: [Month / Day / Year or “Review of applicants to begin (date) and continue until position is filled.”]</p> <p>Application Process: Submit [Letter of Interest, resume, etc.] to :</p> <p style="text-align: center;"> Chairperson of Search Committee or Department / Office [Room Number] Chicago State University 9501 S. King Drive Chicago, Illinois 60628-1598 </p> <p style="text-align: center;">Chicago State University is an Equal Opportunity Employer</p> |
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(HIPAA - Continued from page 4)

general, FERPA requires a university to obtain the student's consent before disclosing personally identifiable information from the student's Educational Record. The university may disclose directory information without the student's consent. It may also share Educational Record information with school officials who have a legitimate educational interest without the student's consent. FERPA affords students the right to access their Educational Record and the opportunity to amend inaccuracies. The university must have security measures to protect any identifiable information electronically maintained. Given the FERPA protections, HIPAA's Privacy Rule expressly excludes individually identifiable health information contained in Educational Records subject to FERPA and certain student medical records that are exempt from FERPA. Note: FERPA only protects student information, therefore, where a university's designated healthcare component, a health clinic for example, provides services to non-students, such as faculty, dependents of students, employees, or visitors, the clinic must comply with HIPAA regulations with respect to the non-student's medical records.

COMPLIANCE REQUIREMENTS

Letters to the Editor are encouraged. Please direct inquiries or comments regarding the *Advocate* or suggestions for upcoming issues to the Editor, Robin Hawkins at ADM 204 or RM-Hawkins@csu.edu. ■

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shop is reserved for interactive participation by the attendees. Overall, the workshops have generated positive responses.

If you were unable to attend previous Preventing Sexual Harassment Workshops, please attend an upcoming workshop. The next workshop will be an afternoon session held in the SUB - the date to be announced. For more information regarding sexual harassment, contact Adela Hernandez, EEO Coordinator at 773.995.2380 or AHernandez@csu.edu. ■

You Are the Judge Responses

1. Yes. Amy threatens Bob with his job if he doesn't continue to see her. Amy is guilty of "quid pro quo" sexual harassment against Bob.
2. No. In isolation, this comment is not sexual harassment. [NOTE: If this remark is combined with gestures or suggestive comments or if the co-worker's conduct escalates and Rhonda objects, then the co-worker's behavior would be seen as sexual harassment.]
3. Yes. Brian and his co-workers have created a hostile work environment for Cathy.

Congress' reformation of the healthcare industry's privacy practices imposes numerous compliance requirements upon covered entities, including hybrid entities. The covered entity must appoint a Privacy Officer and conduct an audit evaluating the entity's policies and procedures and the degree of HIPAA compliance. Each covered entity must analyze its state law to determine if the state law offers individuals greater access or more stringent privacy protection. Stronger state law must be incorporated into the HIPAA regulations. The entity must establish policies and procedures consistent with HIPAA regulations and revise all forms and documents accordingly. The covered entity is required to amend all contracts with business associates who receive PHI from the covered entity. The amendments require the business associate to comply with the entity's privacy policies and procedures. The covered entity must also train members of the workforce as to the entity's policies and procedures. Finally, the entity must implement a system for addressing complaints of HIPAA violations and establish a policy for sanctions. Covered entities that violate HIPAA provisions would be subject to substantial civil and criminal penalties.

While the task of implementing HIPAA is complex, many entities recognize that there is a severe need for a national standard of healthcare privacy protection. ■

(Governmental Reform - Continued from page 1)

"compelling interest" in confirming that state employees are aware of their ethical duties and responsibilities to Illinois citizens. The Governor's order directs the General Counsel to explore the nature and scope of an Ethics Awareness Training Program which would address a range of ethical issues that employees encounter during the course of business. Once the Ethics Awareness Training Program is instituted, all officers, employees and appointees of agencies directly responsible to the Governor will complete the program. Agency Ethics Officers required under various state statutes, will be responsible for implementing the Program within their agency.

Gov. Blagojevich stated, "The people of Illinois expect a new day of integrity, of openness and accountability—and they deserve a government as good and honest as they are." ■

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