A DEPARTMENT OF MANAGEMENT AND BUDGET PUBLICATION

Volume 1, Issue 2

Fall 2006

THE MANDATE REVIEW

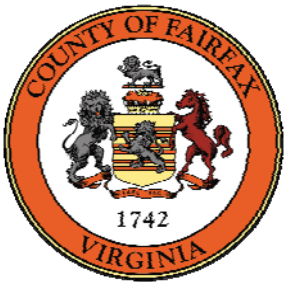
INSIDE

HIPAA: Has It Really Been Ten Years? 1

Did You Know 2

Have You Ever Wondered Who Closed The Swimming Pool?.... 4

The Corner on Mandates: Tax Increase Prevention and Reconciliation Act of 2005..... 4



The County of Fairfax is committed to a policy of nondiscrimination in all County programs, services and activities and will provide reasonable accommodations upon request. To request special accommodations, call 703-324-2391 or TTY 711. Special accommodations/alternative information formats will be provided upon request. Please allow five working days in advance of events in order to make the necessary arrangements.

Prepared by the
Fairfax County Department of Management and Budget
12000 Government Center Parkway, Suite 561
Fairfax, VA 22035
703-324-2391

HIPAA: Has It Really Been Ten Years?

This year is the 10th anniversary of the Federal Health Insurance Portability and Accountability Act (HIPAA). Since HIPAA was signed into law on August 21, 1996, health care providers and businesses that support health care have adopted its many regulatory requirements into their everyday business practices. The many HIPAA rules are applicable to Fairfax County's agencies that provide health services to individuals – such as the Health Department, Fire and Rescue Department and the Fairfax-Falls Church Community Services Board (CSB) - and to the County's self-insured health plan for employees. Compliance with HIPAA imposes a federal unfunded mandate on Fairfax County; no federal or state resources have been made available to assist Fairfax County with HIPAA compliance.

HIPAA is commonly considered to be merely a health care privacy law. In reality, its impact on health care is much broader. HIPAA's acronym stands for "health insurance portability" so employees may continue to maintain health insurance coverage when they change or lose their jobs and for "accountability" to support efforts to combat waste, fraud and abuse in the health care sector.

Shortly after the law was passed, County health care provider agencies such as the Health Department and the Fairfax-Falls Church Community Services Board (CSB) partnered with the Department of Information Technology, the County Attorney's Office and the Department of Management and Budget to serve as early leaders to address the County's HIPAA compliance direction.

Because HIPAA's requirements have a countywide impact, the Board of Supervisors approved a HIPAA Compliance Manager position to work with County agencies in addressing the many compliance requirements. Designating a countywide privacy official for Fairfax County was one of the first HIPAA administrative requirement mandates to be funded by the County.

Within HIPAA, there is an Administrative Simplification section that consists of five rules: Transactions and Code Sets, Privacy, Security, National Provider Identification, and the Enforcement Rule. The federal government has mandated that localities, such as Fairfax County, comply with each rule in this section, yet has not provided funding to assist in that requirement. Each rule has a different compliance date, with the last compliance date to be reached in May 2007 with the National Provider Identifier Rule. The County has been addressing its HIPAA compliance responsibilities and impact since 2001, more than a year before the first required rule compliance (Transactions and Code Sets in October 2002).

The **Transactions and Code Sets Rule**, the first of HIPAA's rules, standardized the electronic transmission of billing and provider information associated with health care claims. Non-compliance with these rules would result in rejected claims and therefore a reduction in reimbursement revenue for health care services provided by the County. The CSB with the assistance of the County's Department of Administration for Human Services staff, submits Medicare, Medicaid, and other payer claims electronically through its compliance with HIPAA's Transactions and Code Sets requirements. This has also reduced the time it takes to receive a reimbursement, reduced staff time in processing insurance paperwork, and has standardized the coding system for denials, adjustments and general remarks. Compliance with the Transactions and Code Sets Rule also can be outsourced to a clearinghouse billing vendor as is currently done by the Fire and Rescue Department for the EMS Transport Billing program. (continued on page 3)

"Transactions and Code Sets Rule"

Did You Know....

That the Commonwealth requires state agencies to assess the local government impact from state mandates? In 1993, the General Assembly enacted legislation that required all executive branch agencies to conduct an assessment of the mandates they impose on local governments to determine which mandates may be altered or eliminated without interruption of local service delivery or undue threat to the health, safety, and welfare of residents. Further, upon request of a local government body, the Governor can choose to suspend, for up to one year, any administrative mandate imposed on that locality (except for those administered by the Department of Education) if the requesting local government faces fiscal stress and the Governor determines that the suspension of the mandate would help alleviate the fiscal hardship faced by the local government. (Code of Virginia § 2.2-113)

In addition, the 1993 General Assembly charged the Commission on Local Government, housed in the Commonwealth's Department of Housing and Community Development, with publishing an annual *Catalog of State and Federal Mandates on Local Governments*, now in its thirteenth year of publication.

The process by which agencies perform the mandate assessment was outlined by Governor Allen in 1994 and reaffirmed by Governor Gilmore in 1998. The existing assessment process requires executive branch agencies assess the impact of all local government mandates which they administer as listed in the most recent edition of the *Catalog of State and Federal Mandates on Local Governments*. Mandates imposed by the legislative or judicial branches or without state agency oversight are not assessed. In addition:

- Existing mandates are required to be assessed once every four years. Examples of mandates currently being assessed include: Comprehensive Services for At-Risk Youth and Families; Urban and Community Forestry Assistance Program; Virginia Pollution Discharge Elimination Permit; and Verification of Student Immunization.
- New mandates are to be assessed after they have been in effect for a minimum of two years.
- Agencies propose a schedule within which they will assess their new or existing mandates; these schedules are approved by the Commission, the Secretary of Commerce and Trade, and the Governor, and are published in *The Virginia Register*.
- All assessments are conducted using the standardized form developed by the Commission. Agencies are to solicit feedback from affected local governments on the mandate, and report and respond to those comments in their assessment.
- Completed assessments are signed by the agency head, approved by the appropriate cabinet secretary, and submitted to the Commission within the specified assessment period.
- The Commission distributes copies of the completed assessments to the Governor, the Secretary of Commerce and Trade, the Clerks of the House of Delegates and Senate, the Virginia Association of Counties (VACo), the Virginia Municipal League (VML), and to other interested parties upon request.

It should be noted that if state agencies recommend one of their mandates for alteration or elimination in their final assessment, they are responsible for initiating appropriate action to see that it occurs. The process for altering or eliminating a mandate is extensive and requires many of the same steps taken to get the original mandate approved; very few mandates have been altered or eliminated during this process.

In an effort to ensure that the mandate assessment process is working effectively, the Commission began a re-evaluation of the process with the assistance of various city, county and town representatives, as well as state agencies, VML, and VACo in July 2006. The task force will examine opportunities to make the assessment process easier to use for both state and local officials, as well as review the outcome of the assessments to determine if modifications should be made to the format or content of the *Catalog of State and Federal Mandates on Local Governments*. The Commission expects to submit recommendations on the process to Governor Kaine in 2007, resulting in an updated official Executive Memorandum sometime next year.

For information on the 2006 Fairfax County Federal/State Mandate Report, please go to:
www.fairfaxcounty.gov/dmb/mandates.htm

For more information on mandates at the national level, please go to:
Mandate Monitor from the National Conference of State Legislatures at http://www.ncsl.org/standcomm/scbudg/manmon.htm

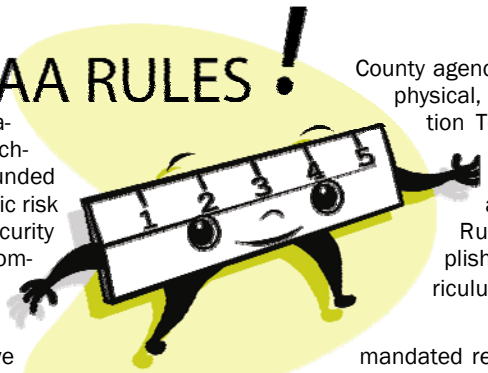
Federal Legislation Shifts Program Costs to States:

As of March 2006, the National Conference of State Legislatures reported that Congress shifted close to $75 billion in costs to states between FY 2004 and FY 2006.

HIPAA (continued from page 1)

"Privacy Rule"

The **Privacy Rule** requirements provide the most visual examples of HIPAA as an unfunded mandate. While County agencies have always been committed to patient privacy, HIPAA's Privacy Rule was established as the first national baseline privacy standard for patient health information. The Privacy Rule regulates how an organization may internally use and externally disclose patient information; it clarifies patient rights concerning their protected health information; it requires a health care provider to provide the patient a notice of privacy practices; and it mandates many other administrative requirements such as training for all employees, a complaint mechanism to report compliance violations, the development of appropriate policies and procedures for compliance, contract agreements for vendors supporting the County's health care services, and document retention requirements. When EMS Transport Billing within the Fire and Rescue Department was approved, this occasion provided the County an opportunity to establish a standardized countywide *Notice of Privacy Practices.* This document is distributed to Health Department clients and EMS patients and is available in eight different languages. In addition, as a result of this rule, several County facility modifications have been made including installing new exam room doors, relocating interview room doors, and installing a permanent wall in the records room of the Herndon-Reston Health Care Clinic.



The **Security Rule** requirements also apply across many County agencies. Although the Security Rule has costly requirements for the administrative, physical, and technical security of electronic health information, the Department of Information Technology's on-going commitment to enhancing the security of the County's information technology network has positioned the County to reduce the impact of many of these unfunded mandate requirements. Additional compliance requirements have required agency-specific risk assessment studies and efforts to address identified compliance vulnerabilities. The Security Rule mandates security awareness training for all workforce members and this was accomplished for County HIPAA agencies through additions to the County's security awareness curriculum.

"Security Rule"

Both the Privacy Rule and the Security Rule have mandated requirements for the County that must be supported through the resources of our central agencies. The Department of Purchasing and Supply Management supports the incorporation of HIPAA's business associate requirements into relevant contracts in order to ensure County contractors apply adequate safeguards to patient health information and to lessen the County's liability for a contractor's disclosure violation. The Department of Facilities Management has performed necessary facility modifications to ensure clinical and administrative space provides adequate privacy and physical security for health care services.

"National Provider Identifier Rule"

The most recent rule to be implemented is the **National Provider Identifier Rule**. It requires all health care providers, whether they are organizations or individuals, to apply for a unique, ten-digit number to replace all other numbers currently used to identify the provider in health care transactions. The previous identifying numbers were assigned by the federal government and insurance companies to those providers that sought to do business with them. If a provider did business with 15 insurance companies, then it would have 15 different numbers to maintain. Under the new rule, each provider has a number that they provide to the insurance companies; so each provider is known by that same number across the nation regardless of who they are dealing with. Compliance with this rule is required by May 2007 or all claims and reimbursements will be denied by the federal government and health insurance companies. The County has applied for and received its required organizational numbers. As a result of this change, one CSB service area that is assigned 14 provider identification numbers by seven different entities will soon use only one number. This will streamline the reimbursement process tremendously. Although applying for the numbers is free, potentially costly billing system modifications, such as the ability to accept a ten-digit number, have not yet been quantified as the modifications are still being developed.

The **Enforcement Rule** codifies the process by which the federal government will enforce compliance with HIPAA's mandates. The Enforcement Rule emphasizes voluntary compliance, corrective action plans, and due diligence from a covered entity. The rule establishes civil monetary penalties and criminal sanctions for non-compliance with any of HIPAA's administrative simplification rules. As a local government leader in its HIPAA compliance efforts, the County has recognized its responsibility to comply with these mandates and has done so without the benefit of additional federal resources.

"Enforcement Rule"

The Federal Unfunded Mandate Reform Act, which in general requires an estimated cost of federal legislation that impacts the public sector, reported HIPAA's compliance costs to initially be higher upon implementation of each rule (due to facility renovations and consultant studies) and decrease in post-compliance years. Fairfax County's initial implementation efforts for HIPAA compliance have averaged approximately $600,000 per year. Any savings offset for ongoing compliance has yet to be realized.

For more information on HIPAA contact the Fairfax County HIPAA Compliance Program at 703-324-4136 or TTY 703-968-0217 or hipaamanager@fairfaxcounty.gov.

Have you ever wondered...

Who closed the swimming pool? It's summer. The thermometer reads 96°. The humidity clings to you like wet static, and the sweat beads on your skin. It's hot, and there's only one place you want to be. You grab your shades, sun block, and oversized towel and head to the community pool, only to find it has been "Closed by Order of the Fairfax County Health Department."

Hopefully, this will remain a fictitious scenario for most, if not all, Fairfax County residents next summer. On the other hand, if you find that your pool has been closed by the County, it is important for you to know why.

Chapter 32 of the Virginia Code mandates that Fairfax County monitor the chlorine and pH levels of all public pools as well as those at hotels/motels, summer camps, campgrounds, and multi-unit residential facilities. Upon arrival, a County Environmental Health Specialist asks the pool operator to perform chlorine and pH tests. The chlorine level must be between 1 and 3 parts per million and the pH must be between 7.2 and 7.8. If the chlorine or pH level is too high or low, the pool is immediately closed and cannot be reopened until all chemicals are in balance. In addition to checking water quality, Fairfax County inspectors evaluate the functionality of the pool's pump and filter, check the height of the pool's fence (it must be at least six feet high), and ensure that the results of the latest water quality test are posted in a clearly visible location for all pool users. Finally, inspectors make sure that the lifeguard on duty is a certified lifeguard and is trained in both first aid and CPR.

The purpose of this and other related inspections is to ensure the safety of Fairfax County residents. Swimming in a pool that is chemically unsafe can have serious consequences on your health and well being, so the County closes the pool to ensure that no residents are exposed to a dangerous swimming environment.

Overall, the Commonwealth requires the County to inspect a wide variety of consumer-use products and services including, but not limited to, milk produced in the County, tattoo parlors, wells and well water, onsite sewage systems, and restaurants and food establishments. These mandates required the County's Health Department to spend an estimated $5 million on Environmental Health Program Services in FY 2006, of which only 34 percent was covered by state and federal revenues.

Flashback

The first and only 'National Unfunded Mandates Day' was held on October 27, 1993.

The Corner on Mandates

Effective January 1, 2011, Fairfax County will be required to withhold three percent of its payments to vendors and contractors who provide goods and services according to Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 signed into law in May of 2006. As outlined in the Act, this funding will be required to be remitted to the federal government.

This law applies to the federal government as well as local and state governments that spend in excess of $100 million annually on goods and services. The withholding provision is expected to raise $7 billion for the federal government within five years of its implementation. According to the U.S. Conference of Mayors, "not only will this requirement drive up local governments' administrative costs relative to collecting, remitting, accounting, recordkeeping and reporting, but it is expected to drive up their costs for goods and services since vendors and contractors will most likely increase the cost of government contracts to offset the three percent withholding. This will also put local governments at a competitive disadvantage with the private sector."

Additionally, the Conference of Mayors reports that the Congressional Budget Office has determined that the provision would impose an unfunded mandate on state and local governments that exceeds the limit established in the Unfunded Mandate Reform Act of 1995.

UPDATE TO THE SPRING 2006 *MANDATE REVIEW*

Program administration of the National Pollutant Discharge Elimination System (NPDES) permit has been reassigned from the Department of Environmental Quality (DEQ) to the Virginia Department of Conservation and Recreation (DCR). The County has submitted the permit renewal application, which complies with the state requirements, to the DCR. The application, as submitted, does not place additional financial burdens on the County in either FY 2007 or subsequent years. The County expects to receive the NPDES renewal approval prior to January 2007.