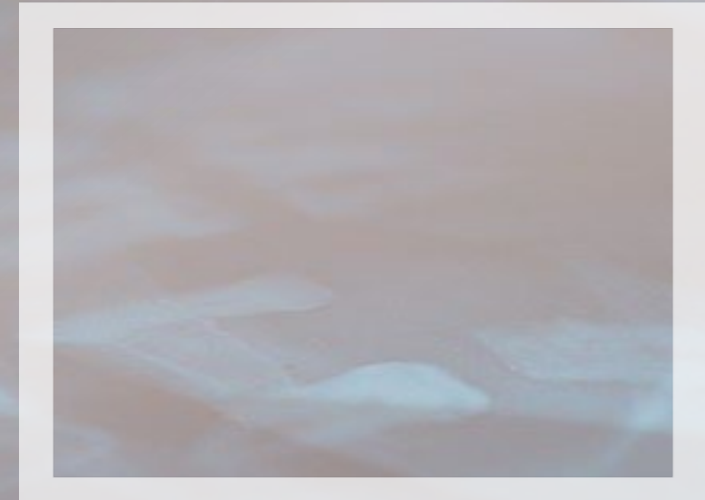
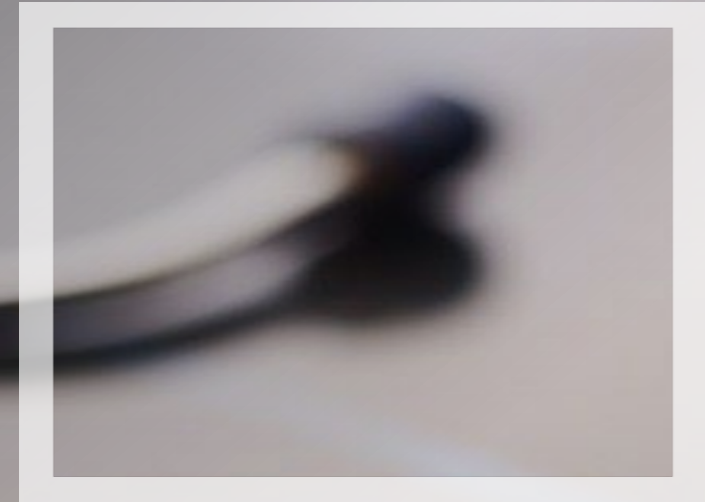


Telehealth 2022 Update: The Legal Landscape of Telehealth

September 23, 2022

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- Not legal advice
- Educational only
- Consult your legal counsel and certified billing and coding staff

Agenda

- Privacy Overview
- The User Experience
- Healthcare Marketing and eCommerce
- In the news...
- Questions



Source: South Central Telehealth Resource Center

What is HIPAA?

- HIPAA = Health Insurance Portability and Accountability Act and its implementing regulations
- Federal law designed to protect the **privacy and security** of individual information



Who is Regulated by HIPAA?

- Covered entities (CEs)
 - Certain health care providers
 - Health plans
 - Health care clearinghouses
- Business associates (BAs) of CEs
 - Provides services to a CE involving the creation, receipt, maintenance, or transmission of PHI
 - Examples: EHRs, cloud service providers, law firms, document storage and shredding companies

What is Regulated by HIPAA?

- Protected Health Information (PHI)
- Any information, in any form, that:
 - Is created or received by (or on behalf of) a health care provider, health plan, or health care clearinghouse;
 - Relates to the past, present, or future
 - Physical or mental health or condition of an individual,
 - Provision of health care to an individual, or
 - Payment for the provision of health care to the individual; and
 - Identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual

Marketing/Sale of PHI

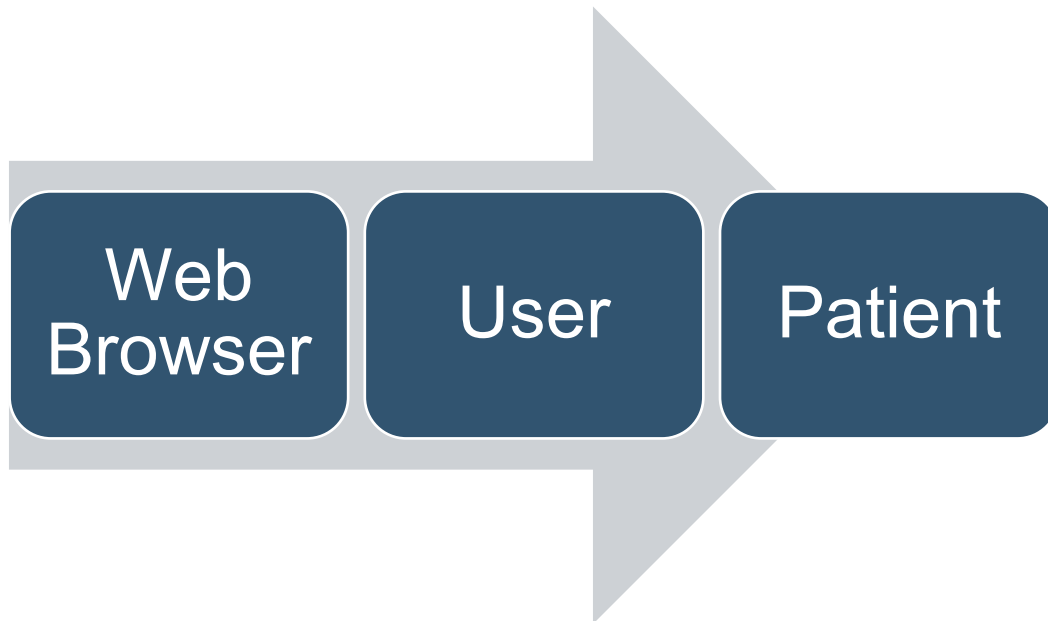
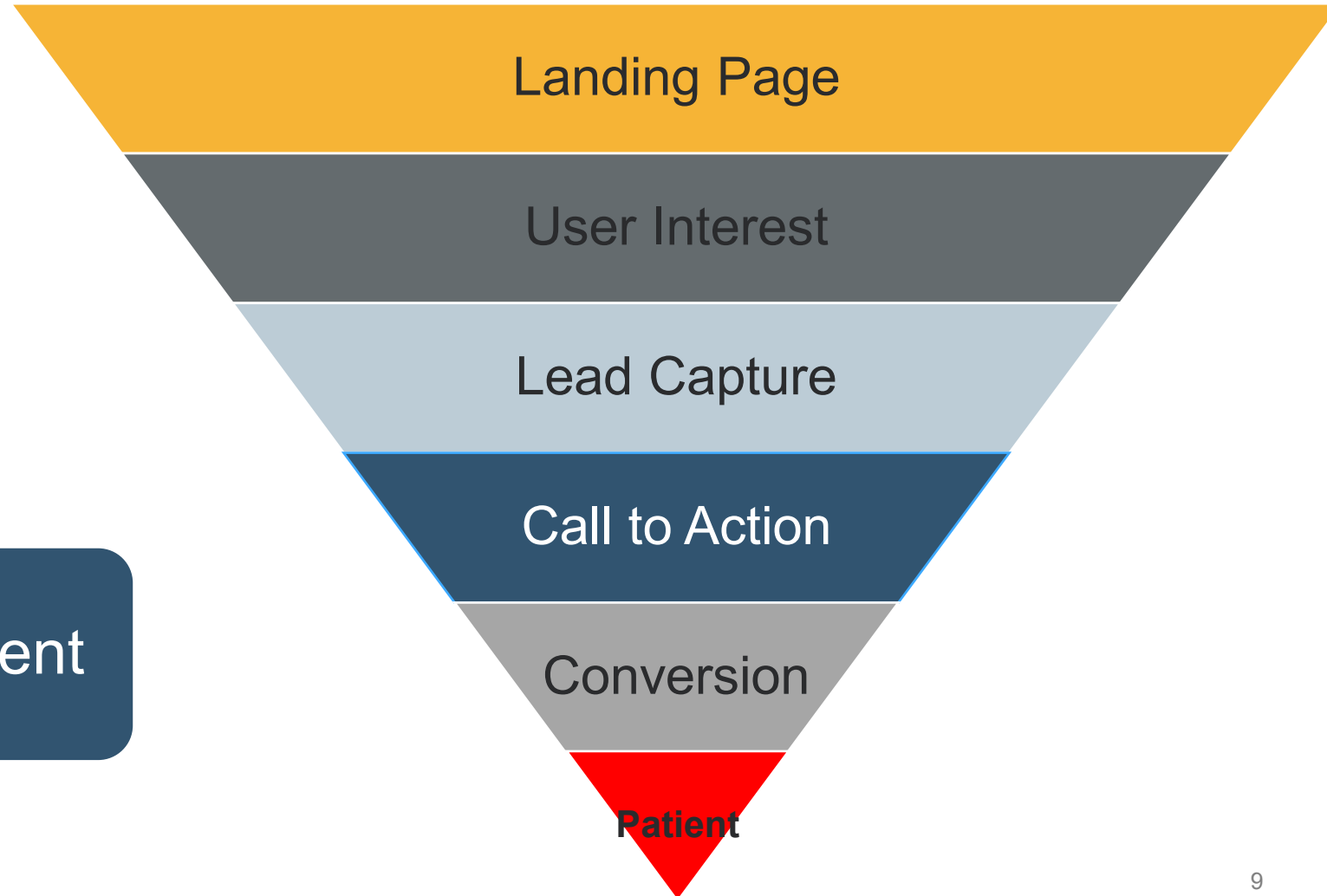
- Need individual authorization to use PHI for “marketing” purposes (but certain activities are not considered marketing)
- Cannot “sell” PHI without individual authorization (but numerous exceptions to the definition of “sell”)

OCR's Notice of Enforcement Discretion

- March 18, 2020: OCR will not impose penalties for non-compliance with HIPAA in connection with the good faith provision of telehealth during the PHE.
- OCR says that health care providers can use FaceTime, Facebook Messenger, and Google Hangouts.
- Implications:
 - Less Secure Platforms
 - Rise of Patient as a Consumer
 - Data, Data, and more Data

The User Experience

- Advertising
- Data Analytics
- Recreating the waiting room experience
- Onboarding Experience



When does user data become PHI?

- Cliff or Opportunity?
- Renewed Enforcement Environment?
- Proliferation of AI-Driven Applications
- Emphasis on Privacy
- Prepare Now
 - Audit your user business model and user workflow
 - Make privacy and security a priority
 - Vendors/Supply Chain



Questions?

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Thank you

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