HIPAA: Disclosure and Redisclosure

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Practical Tools for Seminar Learning
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# Table of Contents

Disclaimer .................................................................................................................... .i  
Faculty ....................................................................................................................... ..ii  
What is a Disclosure ....................................................................................................... 1  
Patient Rights ................................................................................................................ 1  
Disclosure General Overview ........................................................................................... 2  
Treatment ................................................................................................................... 3  
Payment ................................................................................................................... 4  
Health Care Operations................................................................................................. 4  
Statutory Requirements/Public Health .............................................................................. 5  
Emergencies ................................................................................................................ 6  
Polling Question #1 ...................................................................................................... 6  
Law Enforcement ........................................................................................................... 8  
Polling Question #2 ...................................................................................................... 8  
Business Associates ....................................................................................................... 9  
Minimum Necessary .....................................................................................................10  
Accounting of Disclosures .............................................................................................. 11  
Redisclosure .................................................................................................................12  
It’s Not So Simple .........................................................................................................13  
Sticky Disclosure Issues .................................................................................................14  
Polling Question #3 ......................................................................................................19  
Polling Question #4 ......................................................................................................20  
State Law Preempts HIPAA ............................................................................................21  
Resource/Reference List .................................................................................................22  
Appendix ..................................................................................................................26  

CE Certificate Instructions
What is a Disclosure

- A Disclosure occurs when a covered entity releases, transfers or divulges information to anyone who is not part of that entity.

Patient Rights

- Patient has the right to access his/her own medical record for inspection and/or copies upon written request
- Patient has the right to request an amendment or a correction to his/her own PHI
Disclosure General Overview

Authorizations
- An authorization is required for all uses or disclosures of health information except:
  - treatment
  - payment
  - health care operations (TPO)
  
  45 CFR §164.508

Disclosure General Overview

• Exceptions
  - Statutory Requirements
  - Public Health
  - Education
  - IRB-approved waiver for research
  - Emergencies
  - Limited Law Enforcement
  - Identification of Deceased or Cause of Death
Disclosures General Overview

- An authorization is required for all releases of psychotherapy notes

Treatment

The coordination, or management of health care and any related services among health care providers.

Can you fax patient information to a specialist upon physician office request without a patient authorization?
**Payment**

- Payment encompasses the various activities of health care providers to obtain payment or reimbursement for their services.
  - Examples of Payment include:
    - Determining eligibility and coverage under a plan
    - Billing and Collection activities
- Can you release information to an insurance company that is not listed as the payor without an authorization.

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**Health Care Operations**

- Health Care Operations are certain administrative, financial, and quality improvement activities of an entity bound by HI PAA rules, that are needed to run its business and to support the ability to treat patients and receive payment for care provided.
  - Examples Include
    - Audits
    - Quality Assurance
    - Risk Management
Statutory Requirements/Public Health

- Releases required by law
  - Is the Emergency Room allowed to call Child Protective Services if they suspect child abuse?

- Reporting applicable cases to the Centers for Disease Control.

Statutory Requirements/Public Health

- Registry Activities
- Different States have different registry reporting requirements, e.g.,
  - Cancer Registry
  - Alzheimer
  - Congenital Malformations
  - Gun Shot Wounds
  - Animal Bites
**Emergencies**

- Exercise Best Judgment
- Ensure that it would be in the best interest of the patient
- Require patient or personal representative to send the authorization after the fact

**Polling Question #1**

Can a health care provider located at a disaster site release information without an authorization to the American Red Cross to assist in locating family members?

*1 Yes
*2 No
Emergencies

- Hurricane Katrina
  - The privacy rule permits the use and disclosure of PHI to:
    - Treat Patients
    - Identify, locate, and notify family members and certain other individuals of a patient's location, general condition or death
    - Obtain the services of disaster relief agencies such as the American Red Cross
    - Carry out public health activities
    - Prevent or lessen serious and imminent threats to health or safety

The privacy rule was NOT designed to interfere with the provision of health care or the coordination of disaster relief efforts that are needed to respond to Hurricane Katrina or like disasters
Law Enforcement

- Court Ordered Subpoenas
- Family Court
- Grand Jury Subpoenas
- Law Enforcement Inquiry
  - Minimum Necessary
  - De-identified Information

Polling Question #2

Is an authorization required with a subpoena Duces Tecum?

* 1  Yes
* 2  No
Business Associates

- A business associate (BA) is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of a covered entity.
- This can include software vendors, medical reviewers, contract attorneys, auditors, etc.

Business Associates

- A business associate agreement (BAA) is a document that is signed by both parties to obtain satisfactory assurances that the BA will appropriately safeguard the protected health information (PHI) of the covered entity.
- A BAA must be signed any time a business or individual handles PHI on behalf of the covered entity.
Business Associates

- A member of the healthcare provider's workforce (employee) is not a business associate.

- Another healthcare provider handling PHI in order to take care of its patient is not a Business Associate.

Minimum Necessary

- When using or disclosing protected health information (PHI) a covered entity must make reasonable efforts to limit the use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
Minimum Necessary

- Minimum necessary rule does not apply to:
  - Disclosures for Treatment
  - Disclosures to the patient or individual to whom the PHI belongs
  - Uses or disclosures made pursuant to an individual’s authorization
  - Disclosures to the Department of Health and Human Services (HHS) in order to comply with HIPAA
  - Uses or disclosures required for compliance with the standardized (HIPAA) transactions.
  - Uses or disclosures that are required by law.

Accounting of Disclosures

- Individuals have a right to receive a list of all disclosures (accounting of disclosures) of PHI made by a covered entity in the six years prior to the date on which the accounting is requested.
Accounting of Disclosures

Exceptions:
- Disclosures for TPO purposes
- Disclosures to the patient
- Disclosures to persons involved in the patient’s care or notices to family members or friends of the patient’s location, general condition and/or death,
- Disclosures for national security and intelligence purposes
- Disclosures that occurred prior to the April 14, 2003 compliance date

Redisclosure

- Is Redisclosure of information allowed?
  - All valid authorizations must include a statement that the “information may be redisclosed if the recipient(s) as described on this form is not required by law to protect the privacy of the information, and such information is no longer protected by federal health information privacy regulations”
**Redisclosure**

- The redisclosure of Drug and Alcohol abuse is generally prohibited in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records rules

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**It’s Not So simple**

- The Rules are Straightforward

- Real life situations are not
Sticky Disclosure Issues

• Adoption
  • Proof of identity
  • Access to the mother’s record
    • Example: “I want to know where my deceased twin was buried”

Sticky Disclosure Issues

• Access to the chart of a minor #1
  • What if the parents are divorced?
  • What if they are separated?
  • What if neither parent has custody?
Sticky Disclosure Issues

- **Access to the chart of a minor (cont.)**
  - Both parents have equal access rights even if they are divorced unless it is deemed that giving access to one or both of them would be harmful to the minor.
  - Example: Child who threatened to harm herself if she had to go back to her father.

Sticky Disclosure Issues

- **Access to the chart of a minor #2**
  - What if the minor has a child?
  - What if she wants an abortion?
  - How do you bill?
Sticky Disclosure Issues

In most states:
- a minor who is pregnant, has a child, or had an abortion is an emancipated minor and his/her PHI may not be disclosed (even to a parent) without authorization
- you may not disclose any sexually related PHI without the patient's authorization.

Psychiatric Patients
- Difference between lacking capacity and having a psychiatric diagnosis.
- Who may authorize disclosure?
  - The Patient?
  - The Personal Representative?
  - The Next of Kin?
  - The Physician?
Sticky Disclosure Issues

- **Patient Advocates - What is their role?**
  - Who called them in?
  - What other access do they have once they are in the door?
  - **Example:** Legal representatives in a psychiatric unit

- **Business Associate (BA)**
  - Who is a BA?
    - Anyone who handles PHI on behalf of the covered Entity (CE)
  - Who is not a BA?
    - Other provider treating patient
    - Vendor who needs PHI to bill
Sticky Disclosure Issues

- Business Associate (BA) - cont.
  - Beware slick operators
  - Minimum Necessary applies
  - Example:
    Vendor-Durable Medical Equipment (DME)

Sticky Disclosure Issues

- Is a VIP’s information protected?
  - Is s/he listed in the directory?
  - What kind of information is requested?
  - What is your source?
Polling Question #3

Do you disclose records of deceased patients in the absence of the authorization from an executor of the estate?

*1 Yes
*2 No

Sticky Disclosure Issues

- Records of Deceased Patients
  - Is there a personal representative?
  - Does your state have regulations regarding release?
  - What is the purpose of the information?
    - To obtain life insurance?
    - To obtain genetic information?
    - To initiate litigation?
Sticky Disclosure Issues

- Records of Deceased Patients (cont.)
  - Does a research consent extend beyond death?
  - Anticipating the problem with a properly executed authorization
  - Example: Alzheimer’s Brain Bank

Polling Question #4

Do you get many out of state requests and do they pose problems?

* 1 yes, and they pose no problem
* 2 yes, but they create some problems
* 3 we do not get out of state requests
State Law Preempts HI PAA

- State law preempts HI PAA if it is stricter and contrary to HI PAA

- Source: 45 CFR Section 160.23 privacy rule

State Law Preempts HI PAA

- In practice:
  - Very complex calculations
  - Check with your legal counsel
  - Varies from state to state
  - Check on your state website
  - Search on references attached
  - Check with your legal counsel
State Law Preempts HIPAA

- Areas that are generally the province of the state:
  - Public health reporting
  - DOH access to medical records
  - Patient access laws
- Example: NYS requires consent to disclose PHI for treatment purposes

Resource/Reference List

Websites:
American Health Information Management Association (AHIMA)
www.ahima.org
Centers for Medicare and Medicaid Services (CMS)
www.cms.hhs.gov/hipaa/hipaa2
Code of Federal Regulations (CFR)
www.gpoaccess.gov/cfr/index.html
Electronic Privacy Organization (EPIC)
www.epic.org/
National Council on Vital Health Statistics (NCVHS)
www.ncvhs.hhs.gov/
Office of Civil Rights (OCR)
www.hhs.gov/ocr/hipaa/
**Websites (cont.)**

**Regulations: E Signature**
- Federal: Medicare Conditions of Participation - §482.24,c,1

**Employer Identifier:**
- www.cms.hhs.gov/EmployerIdentifierStand/
- www.healthprivacy.org

State privacy law summaries maintained on the Health Privacy Project Web site:
- www.alllaw.com/state_resources

AHIMA State Associations: http://www.ahima.org/directory/csa.asp
Search by state for links or information on state regulations

**HI PAA 42 CFR 164**
- Privacy rule: www.hhs.gov/ocr/hipaa/finalreg.html.

**Practice Brief** - Hughes, Gwen. “Laws and Regulations Governing the Disclosure of Health Information” (AHIMA Practice Brief, Updated November 2002)
Link: http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_0164

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