

Release of Information: The Nuts and Bolts

 **Webinar**
June 24, 2008

Practical Tools for Seminar Learning

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Faculty

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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.**



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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

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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?**

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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?**
- ♦ **RAC Requests**

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Health Care Operations

- ◆ **Health Care Operations are certain administrative, financial, and quality improvement activities of an entity bound by HIPAA 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**

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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**



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Disclosures General Overview

- **An authorization is required for all releases of psychotherapy notes**



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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**



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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**



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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**
 - **Head injuries**
 - **Near drownings**



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Other disclosures

- ◆ **Workers' Compensation is exempt from HIPAA – accept their authorization** **Prisoners have limited**
- ◆ ~~Convicted felons do not have~~ [^] **civil rights – no authorization required by prison officials**
- ◆ **PHI may be disclosed to assist in notifying a family member of a soldier in the military's location, general condition, or death**

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Correction:

The presentation erroneously stated that convicted felons do not have civil rights. It should have said that *prisoners have limited civil liberties*, particularly in the context of HIPAA. The rule states:

Inmates: 164.512(k)(5): CE may disclose PHI without authorization to correctional institution or law enforcement personnel if requestor represents that info is necessary for:

- (A) provision of health care to such individuals;
- (B) health, safety, etc...

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**

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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**

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Emergencies

- ♦ **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.**

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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 patients 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**

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Law Enforcement

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



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Polling Question #2

Is an authorization required with a subpoena Duces Tecum?

- *1 Yes**
- *2 No**

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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.**

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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.**

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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.**

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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**

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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.**



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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**

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Releasing Information from The Electronic Health Record

- ◆ **HIPAA/Release of Information rules apply to both the paper record and the Electronic Health Record**
- ◆ **Be careful to always apply minimum necessary**

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General Tips for a Successful ROI Department

- ◆ **Clear Policy and Procedure manual that can be used as a reference guide**
- ◆ **Ongoing training**
- ◆ **Available resources for questions**

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It's Not So simple

- ◆ **The rules are straightforward**
- ◆ **Real life situations are not**



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Sticky Disclosure Issues

- ◆ **Adoption**
 - **Proof of identity**
 - **Access to the mother's record**
 - **Example: "I want to know where my deceased twin was buried"**



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Sticky Disclosure Issues

- ◆ **Access to the chart of a minor**
Example #1
 - **What if the parents are divorced?**
 - **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.**
 - **What if they are separated?**
 - **What if neither parent has custody?**

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Sticky Disclosure Issues

- ◆ **Access to the chart of a minor**

Example #2

- **What if the minor has a child?**
- **What if she wants an abortion?**
- **How do you bill?**



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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.**

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Sticky Disclosure Issues

- ◆ **What if a patient/family attempts to obtain medical care by committing financial fraud?**
- ◆ **May you disclose PHI in order to back up your report?**

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Sticky Disclosure Issues

- ◆ **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?**

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Sticky Disclosure Issues

◆ Cultural Issues

- **End of life decision-making varies by culture**
- **Japanese Americans prefer to have the diagnosis disclosed to the family who would then decide what to tell the patient***
- **This would still be a breach of HIPAA**

* "Acculturation and end-of-life Decision-making"
(Bioethics 21(5), pp. 251-62).

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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**



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Sticky Disclosure Issues

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

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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?**



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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**

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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?**

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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**

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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**

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State Law Preempts HIPAA

- ◆ **State law preempts HIPAA if it is stricter and contrary to HIPAA**
- ◆ **Source: 45 CFR Section 160.23 Privacy Rule**



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State Law Preempts HIPAA

- ◆ **In practice:**
 - **Very complex calculations**
 - **Varies from state to state**
 - **Check on your state website**
 - **Search on references attached**
 - **Check with your legal counsel**

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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: New York State requires consent to disclose PHI for treatment purposes**

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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



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Resource/Reference List (cont'd)

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: www.ahima.org/directory/csa.asp

Search by state for links or information on state regulations

HIPAA 42 CFR 164 Privacy rule: www.hhs.gov/ocr/hipaa/finalreg.html

Security Rule: www.cms.hhs.gov/SecurityStandard

Practice Brief: Hughes, Gwen. "Laws and Regulations Governing the Disclosure of Health Information" (AHIMA Practice Brief, Updated November 2002)

- visit http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_0164

Practice Brief: Rhodes, Harry, and Gwen Hughes. "Redisclosure of Patient Health Information (AHIMA Practice Brief)." *Journal of AHIMA* 74, no.4 (April 2003): 56A-C.

- visit http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_018169.hcsp

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Audience Questions





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Upcoming Webinars

- ♦ **The Legal Health Record:
The Legal Hold Process**
August 12, 2008
- ♦ **Defining TPO:
Are You Stretching the Privacy
Rule Limits?**
September 23, 2008
- ♦ **Defining Minimum Necessary:
Are You Stretching the Limits of
the Privacy Rule?**
November 11, 2008

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Appendix

Resource/Reference List

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

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

HIPAA 42 CFR 164
Privacy rule: www.hhs.gov/ocr/hipaa/finalreg.html
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Practice Brief – Rhodes, Harry, and Gwen Hughes. "Rediscovery of Patient Health Information (AHIMA Practice Brief)." *Journal of AHIMA* 74, no.4 (April 2003): 56A-C.
- visit http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_018169.hcsp
(Note: A further update is expected soon.)



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