

***Defining TPO:
Are You Stretching the
Privacy Rule Limits?***



Webinar

September 23, 2008

Practical Tools for Seminar Learning

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Faculty

Nancy A. Davis, MS, RHIA

Nancy Davis is the Director of Privacy/Security Officer for Ministry Health Care, a Catholic health care delivery network of aligned hospitals, clinics, long-term care facilities, home care agencies, dialysis centers and many other programs and services in Wisconsin and Minnesota. Prior to this position, Nancy worked in a variety of positions including HIM, QA, RM, and other related areas in healthcare organizations; has been a part-time educator, teaching healthcare courses for health information management/administration college programs; and has been involved in consulting opportunities.

Nancy is very active in several professional organizations. She is currently the co-chair of AHIMA Privacy and Security Council and co-facilitator of the AHIMA HIPAA Community of Practice. She also serves as a member of the AHIMA Professional Ethics Committee. She has been involved with the HIPAA Collaborative of Wisconsin (HIPAA COW) as a board member since 2002 and is co-chair of the Privacy Workgroup. In 2008, AHIMA will publish a book on Medical Identity Theft for which Nancy assisted as a contributing author.

Aviva Halpert, MA, RHIA, CHPS

Ms. Halpert is the Chief HIPAA Officer at Mount Sinai Medical Center in New York. Ms Halpert has over 25 years experience in health information management (HIM), and has been involved with HIPAA since it became effective in 2003. She is a frequent speaker and author on both HIPAA and HIM topics. During her career, she has served as a Chief HIPAA Officer, Director of Clinical Information Resources, and Director of Special Projects for Mount Sinai. She is a very active member with AHIMA, the Health Information Management Association of New York City and the NYC Metro Infragard Members Alliance.

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Objectives for Presentation

- ◆ **Recognize the impact of TPO scope-creep on compliance with the HIPAA Privacy Rule**
- ◆ **Determine how to fine-tune TPO definitions to better balance patient privacy rights with information availability**
- ◆ **Review what constitutes a complete and compliant accounting of disclosures**

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Objectives for Presentation - Continued

- ◆ **Recognize valid privacy complaints when TPO definition limits are stretched**
- ◆ **Evaluate the impact of the consent for disclosures for those states requiring it and its impact on the TPO definition**

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Treatment

- ◆ **Treatment means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.**

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Polling Question #1

Does your organization redisclose external health records in response to an authorization?

- a) Yes**
- b) No**

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Treatment Discussion Issues

- ◆ **Requirement of a valid authorization before disclosing to another provider**
- ◆ **External records and redisclosure**
- ◆ **Charging for record copies for treatment purposes**
- ◆ **Subpoena – authorization required?**

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Treatment Discussion Issues (Cont.)

- ◆ **Caring for Colleagues – Employees as Patients**
- ◆ **Self-Insured Health Plans – How Much Access to Employee Patient Information**
- ◆ **Employee Health – Overlap**

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Payment

The activities undertaken by a covered entity to obtain or provide reimbursement for the provision of health care; and

The activities related to:

- Determinations of eligibility or coverage;
- Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, and related health care data processing;
- Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;
- Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services.

(Excerpted)

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Payment Discussion Issues

- ♦ **Discussion of payment with guarantor/others involved in the care of the patient**
- ♦ **Anonymous donations for payment purposes**
- ♦ **Auditors working on behalf of health plans**

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Healthcare Operations

Any of the following activities of the covered entity to the extent that the activities are related to covered functions, and any of the following activities of an organized health care arrangement in which the covered entity participates:

- ◆ **Business planning and development**
- ◆ **Business management and general administrative activities**

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Healthcare Operations - Continued

- ◆ **Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners,, accreditation, certification, licensing, or credentialing activities;**
- ◆ **Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;**

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Healthcare Operations - Continued

- ◆ **Conducting quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment.**

Excerpted

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Polling Question #2

Do administrative leaders have access to the facility directory?

- a) Yes**
- b) No**

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Healthcare Operations Issues

- ◆ **Sharing Patient Outcome Information with Transporting Ambulance/Other Providers**
 - **Performance Improvement Activity**
- ◆ **Internal Sharing of Facility Directory Information**
 - **VIP Admissions**
 - **Employee Admissions**

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Other Issues:

- ◆ **Disclosure to law enforcement officials**
- ◆ **Facility directory – minors/confidential patients**
- ◆ **Integrating “external” records with facility records**

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***Breaking Down Interesting
OCR Complaint***

- ◆ **Patient presents to ED following MVA; 2 subsequent clinic visits.**
- ◆ **Patient notified by other party's insurer that coverage would be provided; asked to sign authorization.**
- ◆ **Patient signs and returns authorization; maintaining a copy.**

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***Breaking Down Interesting
OCR Complaint - Continued***

- ◆ **Patient realizes he signed for "any and all" records (not just MVA).**
- ◆ **Patient contacts provider by letter with a statement "revoking" authorization to MVA information only.**
- ◆ **One month later, copy service sends all records in response to valid authorization.**

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Breaking Down Interesting OCR Complaint - Continued

- ◆ **OCR Complaint**
- ◆ **Lessons Learned**
 - **Document of incident very helpful.**
 - **Patient should have been advised to revoke original authorization with health plan.**
 - **Copy service does not review "correspondence" – copies directly from EMR.**
 - **Alert may have been advisable.**

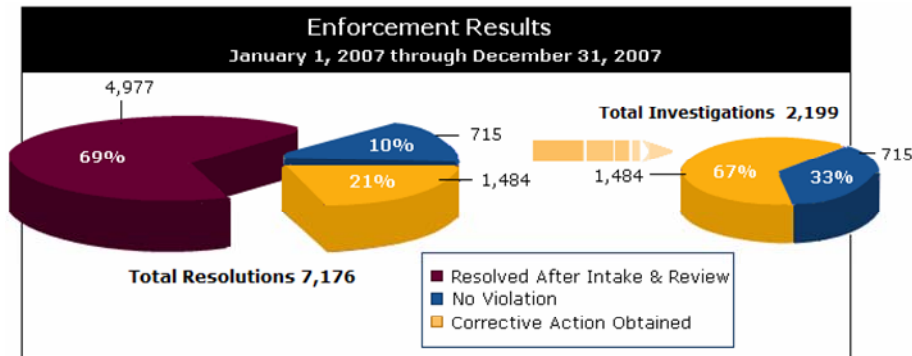
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OCR Privacy Rule Enforcement

- ◆ **No Civil Monetary Penalties – Focus on Educating Covered Entities**
- ◆ **April 14, 2003 – June 30, 2008**
 - **30,582 Complaints Resolved**
 - **6,641 Complaints Remain Open**
- ◆ **Referrals**
 - **436 to DOJ**
 - **250 to CMS**

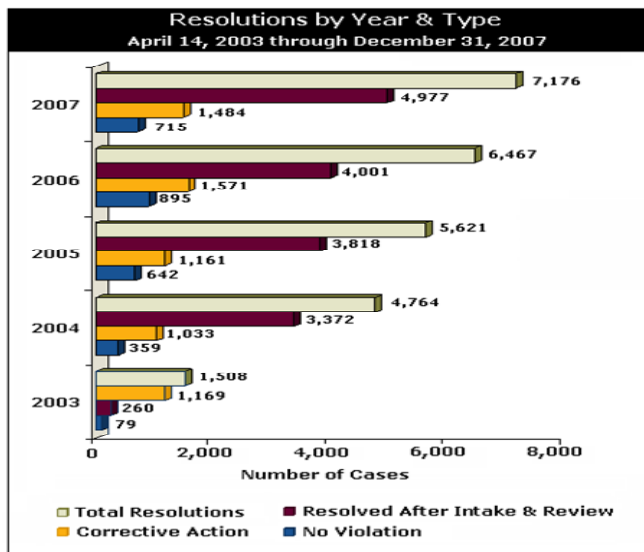
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OCR Privacy Rule Enforcement —2007



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OCR Privacy Rule Enforcement



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OCR: Top Five Issues in Investigated

- ◆ **Impermissible Uses & Disclosures**
- ◆ **Lack of Safeguards**
- ◆ **Lack of patient access to their protected health information**
- ◆ **Uses or Disclosures of more than the minimum necessary**
- ◆ **Lack of or invalid authorization**

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Other Key Privacy Issues for Discussion

- ◆ **Disclosures to Law Enforcement**
 - **Drug-seeking Behavior**
- ◆ **Sharing of Pain Management Contracts**
- ◆ **Minors and Facility Directory Disclosures**
- ◆ **Other...**

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Policy and Procedure Maintenance

- ◆ **Last Updates?**
- ◆ **Include Clarifications from OCR (FAQs)?**
- ◆ **Preemption Issues Up to Date?**
- ◆ **Stakeholders Involved?**
- ◆ **Defining Designated Record Set/Legal Health Record?**

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Compliance and Enforcement

HHS, Providence Health & Services Agree on Corrective Action Plan to Protect Health Information

- ◆ **On July 16, 2008, the U.S. Department of Health & Human Services (HHS) entered into a Resolution Agreement with Seattle-based Providence Health & Services (Providence) to settle potential violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules.**
- ◆ <http://www.hhs.gov/ocr/privacy/enforcement/resolution.html>

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Resource/Reference List

Office of Civil Rights is our enforcement agency for the Privacy Rule.

www.hhs.gov/ocr/hipaa

- **Get the rules from their web site.**
- **FAQs on the web site are regularly updated.**
- **Official guidance is available on the web site.**
- **What's new section on web site.**

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Resource/Reference List

- ♦ **CMS Web site**
 - **www.cms.hhs.gov/SecurityStandard/02_Regulations.asp**
- ♦ **American Hospital Association Web site**
 - **http://www.aha.org/aha_app/issues/HIPAA**
- ♦ **NIH web site and training resources**
 - **www.nih.gov**
 - **<http://irtsectraining.nih.gov/>**

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Resource/Reference List (cont.)

- ♦ **American Health Information Management Association (AHIMA)**
www.ahima.org
- ♦ **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.)

- ♦ **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):**
library.ahima.org/xpedio/groups/public/documents/ahima/bok1_0164

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Audience Questions



Audio Seminar Discussion



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Upcoming Webinars

- ◆ **Defining Minimum Necessary:
Are You Stretching the Limits of
the Privacy Rule?**
November 11, 2008

- ◆ **Managing External Health
Information Inside Your
Organization**
December 16, 2008

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Appendix

Resource/Reference List

CMS Web site

www.cms.hhs.gov/SecurityStandard/02_Regulations.asp

American Hospital Association Web site

www.aha.org/aha_app/issues/HIPAA/

NIH web site and training resources

www.nih.gov

irtsectraining.nih.gov

American Health Information Management Association (AHIMA)

www.ahima.org

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

www.hhs.gov/ocr/privacy/enforcement

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/

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