

***Defining Minimum Necessary:
Are You Stretching the Limits
of the Privacy Rule?***

HIM Webinar
November 11, 2008

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Faculty

Katherine Downing, RHIA, CHP, MA

Katherine Downing is director at MedPlus in Mason, OH. Ms. Downing has focused much of her career on HIPAA from the original proposed rule, through creating a privacy program model used in over 200 hospitals. She is also a frequent speaker and author on privacy and privacy-related topics.

Tony Taylor, RHIA, CHP

Tony Taylor is director of health information and privacy officer at Alive Hospice in Nashville, TN, where his responsibilities include implementing an electronic health record (EHR) and developing standardized guidelines for forms design to be utilized in the EHR. Mr. Taylor is also a frequent speaker on EHR implementation.

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Minimum Necessary

HIPAA's minimum necessary standard is flexibly written but HIM staff must be leaders in addressing reasonable limits to help ensure privacy rights are upheld.

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Presentation Objectives

- 1. Review the privacy rule's minimum necessary definitions for Protected Health Information (PHI) uses and disclosures**
- 2. Learn how to assess current HIM policies and practices for appropriate minimum necessary interpretations**
- 3. Learn how to assess other departments' uses and disclosure practices for appropriate interpretation**

(Continued)

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Presentation Objectives (cont'd)

4. Understand the rule's directives to challenge a requestor if necessary, including other CE's
5. Get tips on how to coach staff who are intimidated by a requestors approach

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Understanding our Audience

- ◆ Please help us identify your current role in the facility
 - A. Privacy Official
 - B. Release of Information Professional
 - C. Director /Management / Supervisor
 - D. Department Staff
 - E. Other

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Time in Current Role or Position

- ◆ **How long have you been in your current role or position?**
 - A. Less than 1 year**
 - B. 1 – 3 years**
 - C. 4 – 5 years**
 - D. 5+ years**

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Privacy Officer

- ◆ **Identification, implementation, & maintenance of privacy policies and procedures.**
- ◆ **Investigates complaints and consistent application of sanctions**
- ◆ **Performs periodic privacy risk assessments to ensure compliance.**
- ◆ **Ensures the delivery of privacy training to members of the workforce.**
- ◆ **Monitors business associate agreements.**
- ◆ **Maintains current knowledge of applicable state and federal regulations as it relates to the privacy regulations.**
- ◆ **Promotes activities to foster privacy awareness**

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ROI Professional

- ◆ **Valid Authorization Requirements**
- ◆ **Minimum necessary requirement**
- ◆ **Valid Subpoena**
- ◆ **Required turnaround times for request for information (onsite vs. offsite)**
- ◆ **Definition of Treatment, Payment, Healthcare Operations (TPO)**
- ◆ **Accounting of Disclosures Procedures**

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HIM Director

- ◆ **Privacy Official for organization or shared responsibility with Privacy Official**
- ◆ **Oversees patient rights to inspect, amend, and restrict access to PHI**
- ◆ **Delivers initial and ongoing privacy training as indicated**
- ◆ **Works with key departments**

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Department Staff

- ◆ **Basic understanding of HIPAA – Initial & Annual Training as indicated**
- ◆ **PHI is one of the most valuable assets. Must ensure that written , electronic and oral PHI is safeguarded.**
- ◆ **Know when to question entire record requests.**

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Defining Minimum Necessary

- ◆ **Only individuals with a legitimate need to know may use or disclose PHI.**
- ◆ **Each individual may only use or disclose the minimum information necessary to perform their designated role regardless of the extent of access provided to them.**

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***Exceptions
to the Minimum Necessary Rule***

- ◆ **Disclosures to or requests by other treatment providers for treatment purposes**
- ◆ **Disclosures to the patient**
- ◆ **Disclosures made pursuant to a HIPAA compliant authorization**

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***Exceptions
to the Minimum Necessary Rule***

- ◆ **Disclosures to HHS for a privacy investigation**
- ◆ **Uses and Disclosures required by law**

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Minimum Necessary

- ♦ **A facility covered by the rule (covered entity) must implement policies and procedures to identify persons or classes of persons in their workforce who need access to PHI and what category or categories of PHI is needed**

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Routine Disclosures

- ♦ **For routine and recurring disclosures a facility must implement policies and procedures that limit the PHI disclosed to the amount reasonably necessary to achieve the purpose of the disclosure**

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Non-Routine Disclosures

- ◆ **When the disclosure doesn't fit into the routine disclosure process the facility must develop criteria designed to limit the PHI disclosed to the information reasonably necessary to accomplish the purpose of the request**

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Non-Routine Disclosures

- ◆ **We may reasonably rely on other covered entities (e.g., physicians, insurance companies) requests to be the minimum amount of information necessary for the purpose**

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Routine Requests

- ◆ **Covered entities (physicians, hospitals) must also make reasonable efforts to request only what is necessary from another covered entity**

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Disclosing PHI

to other covered entities or health care providers for Treatment, Payment or Operations

- ◆ **PHI may be disclosed for treatment activities of another provider**
- ◆ **PHI may be disclosed to another health care provider or covered entity for payment activities**
- ◆ **PHI may be disclosed to another covered entity for limited health care operations (quality assessment and improvement, reviewing the competence of health care providers, health care fraud detection)**

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A Note from HHS (in the rule)

- ◆ The “minimum necessary” standard is intended to reflect and be consistent with, not override, professional judgment and standards.
- ◆ For example, “we” expect that covered entities will implement policies that allow persons involved in treatment to have access to the entire record, as needed.

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Potential Violation?

- ◆ Is it a violation if Pharmacy faxes a patients’ order to materials management (within the same facility)?

A. Yes
B. No

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Potential Violation?

- ♦ **Is it a violation if a physician leaves his rounds report at the nursing unit?**

A. Yes

B. No

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Potential Violation?

- ♦ **Is it a violation if Lab prints cumulative summary reports to IS by accident?**

A. Yes

B. No

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Potential Violation?

- ♦ **Is it a violation if a nurse accesses a co-worker's PHI (they are not the patient's nurse)?**

- A. Yes**
- B. No**

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Assessing your Current Policies

- ♦ **Auditing Privacy Program Policies**
Does your facility have a minimum necessary policy? (written down!)

- A. Yes**
- B. No**

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Centralized Release of Information

- ◆ **Has your facility or organization centralized (HIM Department) the release of information function?**

A. Yes

B. No

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De-centralized Release of Information

- ◆ **Does your facility or organization allow Medical Imaging, Oncology, Sleep Lab, etc. to release information?**

A. Yes

B. No

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Signed Authorization

- ◆ **Do you need a signed authorization for the patient or representative when their health information is used for purposes other than treatment, payment or healthcare operations?**

A. Yes

B. No

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Case Management

- ◆ **Does Case Management need the patient's authorization to coordinate patient care related services for the patient?**

A. Yes

B. No

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Payment

- ♦ **Do you need the patient's authorization or financial agreement sign statement to seek reimbursement for healthcare services provided?**

A. Yes

B. No

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Q&A Session...

To ask a question:

- Click the "Q&A" button near the upper-left
- Click "NEW"
- Type your question in the white box
- Click "SEND"

(For LIVE seminar only)

Assessing your Current Policies

- ◆ **Employee Training for HIM staff needs to include privacy rule definitions and restrictions in addition to general confidentiality training**
- ◆ **All HIM staff are in a position that they may have to apply the minimum necessary rule at some point (or for ROI every day)**

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Requests for PHI from Law Enforcement

- ◆ **Required by law – wounds other physical injuries**
- ◆ **Court order, Court-ordered warrant, a subpoena or summons signed by a judicial officer, a grand jury subpoena or an administrative request**
- ◆ **Administrative request must be relevant to the law enforcement inquiry, specific & limited to the extent practical, & de-identified information cannot be used**

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For identifying or locating suspect, fugitive, material witness, missing person

- ◆ Name and address
- ◆ Date and place of birth
- ◆ Social Security Number
- ◆ ABO blood type and Rh factor
- ◆ Type of injury
- ◆ Date and time of treatment
- ◆ Date and time of death
- ◆ Distinguishing physical characteristics – height, weight, gender, race, hair color
- ◆ Disclosures for this purpose may not include DNA, DNA analysis, dental records, or analysis of body fluids

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*Correction Institution
– Custody of an Inmate*

- ◆ Provision of health care to the individual
- ◆ Health & safety of the individual or other inmates
- ◆ Health & safety of the officers, employees, or others at the correctional institution
- ◆ Health & safety for those responsible for transport of inmates

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Health & Safety of Individual or General Public

- ◆ **Acceptable to release minimum necessary to law enforcement:**

To prevent or lessen imminent threat to health or safety to the individual or general public

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Expired Patients

- ◆ **Just because a patient has expired does not mean their privacy rights go away.**
- ◆ **Determine the validity of an authorization or request for PHI for an expired patient.**
- ◆ **Review the Durable Power of Attorney document**
- ◆ **Next of Kin**
- ◆ **Any applicable state laws**

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Example of threat to well-being of individual or general public

- ♦ Patient presents to ER with a migraine and receives a shot of morphine and phenergan and is discharged from the ER. Patient instructed to not drive for the next 24 to 48 hours. The ER Nurse notices the patient leaves the ER parking lot. Is it acceptable for her to contact law enforcement with minimum necessary out of concern for the patient and general public?
 - A. Yes
 - B. No

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Minimum Necessary - TPO

- ♦ ...as long as you release the minimum necessary to meet the intent or to receive approval for healthcare services or reimbursement of services provided...
- ♦ ...and must be limited to the specific scope of the specific request and the disclosure should be the minimum necessary to fulfill the request.

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Assessing your Current Policies

- ◆ **Annual Privacy refresher training via flyers, emails and presentations is necessary to keep the privacy program at the front of people's minds**

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Assessing your Current Policies

- ◆ **Be your own external consultant**
- ◆ **Take a fresh look at your policies and procedures for minimum necessary. Do they apply the rule by job class?**
- ◆ **Look not only in your department but in Lab, Radiology, ED and on the nursing units**

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Auditing outside of HIM – A Checklist

- ♦ **Are there sign-in sheets used? Are they used appropriately?**
- ♦ **Where are records stored?**
- ♦ **Are there computer screens that can be viewed by the public?**
- ♦ **Are employees signing out of computers when they leave their station?**

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Auditing outside of HIM – A Checklist

- ♦ **Auditing user access (by user group) to ensure their access is appropriate to apply minimum necessary. This can be a joint effort with IS / HIPAA Security Rule Compliance.**
- ♦ **Are audits for minimum necessary access being done?**

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Auditing outside of HIM – A Checklist

- ◆ **Take your current Privacy and Confidentiality Policies and create a checklist you can use to audit ancillary departments.**

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Audit Process

- ◆ **Access electronic audit report**
- ◆ **Self-assignments**
- ◆ **Same last names**
- ◆ **Personal knowledge of relationships**
- ◆ **Information sent to HIPAA compliance hotline**
- ◆ **Staff concerns**

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CMS Privacy & Security Audits

- www.cms.hhs.gov
- CMS began conducting compliance reviews for covered entities in January 2008
- Examples of sample findings and lessons learned

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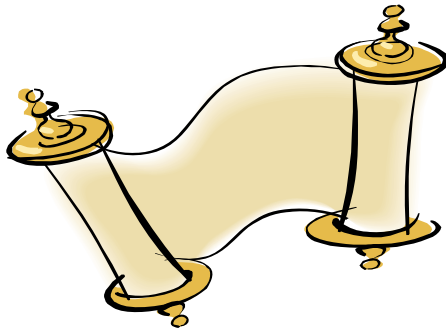
Items Requested During Privacy & Security Audits

- ◆ Organization chart with privacy official
- ◆ Job description for privacy official
- ◆ Privacy training content
- ◆ Listing of all employees hired within past year
- ◆ Policies & procedures governing password management

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The Golden Rule

- ♦ **Do unto the PHI of others as you would have them do unto yours... follow the minimum necessary rule**



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Audience Questions





Audio Seminar Discussion

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Upcoming Webinars

- ♦ **Managing External Health Information Inside Your Organization**
December 16, 2008
- ♦ **The Legal Health Record: Managing in a Decentralized Environment**
January 13, 2009

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**Each person seeking CE credit must complete
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AHIMA CEUs.**



Appendix

CE Certificate Instructions



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CE Certificate

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click on the link to

“Sign In and Complete Online Evaluation”
listed for this seminar.

You will be automatically linked to the
CE certificate for this seminar after completing
the evaluation.

Each participant expecting to receive continuing education credit must complete the online evaluation and sign-in information after the seminar, in order to view and print the CE certificate.