

The HIPAA Privacy Rule, HITECH Act, Social Media, and Protecting Patient Privacy

Definitions

HIPAA Standards govern the portability and privacy of medical information

Healthcare workers and organizations rely heavily on the sharing of patient information. As the rapidly growing trend toward the electronic sharing of that information continues, the healthcare industry needs standards that enable fast and accurate transmission of that information.

However, as patient information becomes more *portable* (easy to share), the more difficult it is to protect the privacy of that information. Therefore healthcare workers, organizations, and consumers are increasingly concerned about patient privacy.

The Health Insurance Portability and Accountability Act of 1996, commonly known as HIPAA (hip' uh), was enacted to address these issues. Still in progress are HIPAA Standards that will establish a format for the fast and accurate exchange of health information data, and for maintaining the security of that information.

One of the HIPAA Standards already in effect, **The Privacy Rule, establishes certain regulations that protect the privacy of patient information**, gives patients greater access to their own health care information, and gives patients more control over how that information is shared.

Covered entities must comply with the HIPAA Privacy Rule

The Privacy Rule is a HIPAA Standard that protects the privacy of patient information. As of April, 2003, all healthcare organizations must be in compliance with the Privacy Rule. As a result, all medical information that is created, used, or disclosed by a *covered entity* must be kept private and secure. A *covered entity* includes any of the following:

- Health Care Provider
A provider of medical services that bills for services or is otherwise paid for health care that it delivers
- Health Plan
An individual or group health plan that provides or pays the cost of medical care
- Healthcare Clearinghouse
A public or private entity, such as a billing service, re-pricing company, community health management information system, or community health information system, that serves as a go-between for the exchange of information between two or more covered entities
- Business Associate
A person or organization who provides services within a Health Care Provider organization, but that is not part of the organization. The Business Associate would have access to Protected Health Information (PHI). Examples include organizations that provide Physical Therapy services for a hospital, or medical transcription services used by a physician's office.

All employees of covered entities must comply with the HIPAA Privacy Rule when they gather, store, and transmit healthcare information. Failure to follow HIPAA regulations can result in punitive fines for health care providers and/or individuals involved.

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Protected Health Information is information that is individually identifiable

The Privacy Rule protects the privacy of all Protected Health Information (PHI). PHI is individually identifiable health information that is gathered, stored, or transmitted on paper, orally, or by electronic or any other media. PHI does not include individually identifiable health information in education records and in employment records held by a covered entity in its role as an employer.

Individually identifiable health information is health information that specifically identifies the individual, or is information that could reasonably be expected to identify an individual, even if the individual is not named.

Example:

Mary Smith is the only 50-year-old patient with a diagnosis of lung cancer at XYZ Hospital.

The following statement DOES NOT provide individually identifiable health information about Mary Smith and is therefore not PHI: *There are presently 7 persons with a diagnosis of lung cancer at XYZ Hospital.*

The following statement DOES provide individually identifiable health information: *There is a 50-year-old woman with lung cancer at XYZ Hospital.*

Though the second statement does not mention Mary Smith by name, it is PHI because Mary Smith is the only person who fits the description.

Compliance

Using and disclosing protected health information

Without a signed or verbal authorization from the patient, Protected Health Information (PHI) can be used and disclosed ONLY:

- To individuals for treatment, payment, or healthcare operations
- To those within the organization who require the information to carry out their job responsibilities
- To other covered entities who need the information to provide treatment or for billing purposes
- To law enforcement agencies when needed for legal purposes. This includes coroners and medical examiners
- to public health officials
- If needed for Workmen's Compensation
- If needed to stop serious threats to health and/or safety
- If needed for charges of fraud or abuse
- With a valid authorization by the individual patient

When providing PHI, use the Minimum Necessary Rule. That is, provide only the least amount of information that is needed.

This Minimum Necessary Rule does NOT apply to:

- Information shared with other health care providers for treatment purposes; healthcare providers may require the entire record for treatment
- Information requested by the individual
- Information required by law

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With a verbal authorization from the patient, PHI can be disclosed to family members and to friends identified by the patient, and it can be included in a facility directory (for example, Patient Information may provide the patient's room number to callers). The patient also has the right to place restrictions on the amount of information to be given out.

A written patient authorization is required to use or disclose PHI for any other purpose, such as marketing or research.

Protected Health Information that can be disclosed does NOT include psychotherapy notes. The patient must give specific authorization for psychotherapy notes to be disclosed except:

- To carry out treatment, payment, or healthcare operations
- To the originator of the notes so that treatment can be provided
- To students who are training within the facility, to improve counseling skills
- To use as a defense if the individual has brought a suit against the agency

A Note about Psychotherapy Notes:

The first bullet item above seems to indicate that psychotherapy notes may be addressed the same as any other PHI. However, in practical application, psychotherapy notes are held to a higher standard of privacy and employees must be aware of their organization's specific policies regarding the privacy of these notes. As a rule of thumb, without the patient's written authorization, the notes cannot be used by, or shared with, anyone other than the attending physician.

Healthcare organizations inform patients about the Privacy Rule

HIPAA requires that a notice of the organization's privacy practices be given to each individual receiving services. The purpose of the notice is to inform the individuals how their health information may be used and shared, and how they may review this information.

This Notice of Privacy Practices needs to be prominently posted in public areas and also needs to be available for patients to take with them. If the organization has a website, there must be a copy of this notice on the website, as well as a copy available for downloading.

Patients sign that they have received the information. Explanatory documentation is provided if it is not possible to get the patient's written acknowledgement that the information was received.

Some of the required sections of the Notice of Privacy Practices include:

- A detailed description of how the information may be used for treatment, payment, and healthcare operations
- A description of circumstances in which protected health information may be disclosed without the individual's written permission
- A statement that other uses and disclosures will only be made with written authorization from the individual, and that the authorization can be withdrawn
- A statement of the individual's rights with respect to protected health information, as well as an explanation of how the individual can exercise those rights.
- A statement that the organization is required by law to maintain the privacy of protected health information and to provide individuals with notice of its legal duties and privacy practices with respect to protected health information
- A statement that individuals have the right to complain to the organization and to the Secretary of Health and Human Services (HHS) or any officer or employee of HHS to whom the authority involved has been delegated if they believe their privacy rights have been violated
- A brief description as to how the complaint may be filed

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- A statement that there will be no retaliation towards the individual for filing a complaint
- The name, title, and telephone number of the person or office to contact for further information. It must also contain the effective date of the notice

Rights of patients

HIPAA allows individuals certain rights as to how their Personal Health Information is used and accessed.

Individuals have the right to restrict the use and disclosure of their information. They can request that information be restricted in some manner when disclosed to others for the purpose of treatment, payment, or healthcare operations.

However, the health care organization, or other covered entity, does have the right to not agree to this restriction.

Example: The patient could request that the organization not share his diagnosis with his health insurance agency. Since this would affect the way in which the organization will be reimbursed for services, the organization does not have to agree to this.

Individuals have the right to access their own Personal Health Information

Individuals have the right to inspect and receive a copy of their PHI with the exceptions of psychotherapy notes and information that has been gathered in anticipation of civil, criminal, or administrative action.

Individuals have the right to amend their Personal Health Information

Individuals can request that the organization change any PHI that it maintains in record sets. The organization can require that these requests for change be in writing and that the individual explain the reason for the change.

Individuals have a right to have an account of access to their PHI

Individuals have a right to know the identities of those persons or agencies (Including Business Associates) that have accessed their PHI for 6 years PRIOR to the request.

The Health Information Technology for Economic and Clinical Health Act of 2010

The American Recovery and Reinvestment Act of 2009 became Federal law on February 17, 2009. Part of this law, called the Health Information Technology for Economic and Clinical Health Act, or the HITECH Act was created to accelerate implementation of Electronic Health Records (EHR).

Incentives are provided to healthcare entities and practitioners in the form of Medicare and Medicaid reimbursement for the purchase, modernization, integration, and meaningful use of HER.

Social Media and Patient Privacy

Patients enter the healthcare system with the right and the expectation of privacy. The HIPPA Privacy rule holds you to an extremely high standard in protecting patient privacy. Please ensure that you adhere to this high standard in your use of blogs and social media. It is just as easy, and just as wrong, to violate patient privacy in a blog or Facebook post, as it is in a casual discussion in the cafeteria or an elevator.

End of HIPAA Lesson