HIPAA -- General Information

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Who must follow the HIPAA Rules?

Every physician who transmits any “protected health information” (PHI) electronically must comply. The names of patients, treatment information, billing records, and more are considered PHI.

Every physician on whose behalf someone else transmits PHI electronically, such as the physician’s billing service, must comply.

Sending hard copy through a fax machine is not considered an electronic transmission. Faxing through a computer, however, is electronic.

Note! Under a separate set of regulations, physicians who bill Medicare will soon be required to file claims electronically, unless they work in a practice or clinic with fewer than 10 full-time equivalent employees (FTEs). Thus, even if you don’t meet the HIPAA threshold now, you may meet it soon.

Many experts are advising physicians to comply with the HIPAA regulations even if they aren’t required to do so, because the HIPAA regulations may well be viewed by the public and the courts as setting a minimum standard for all practitioners to follow.

Does HIPAA replace the existing laws and regulations that I follow to protect my patients’ confidentiality?

No. In some respects it imposes new requirements, but it does NOT replace more stringent state and federal laws (such as federal drug and alcohol regulations) that you are already following. HIPAA standards for protecting patient confidentiality set a minimum standard. More stringent state laws take precedence over HIPAA. For the most part, in Pennsylvania, general medical and Mental Health Procedures Act (MHPA) regulations are more stringent than HIPAA rules. Thus, if you are currently following Pennsylvania laws and regulations to protect your patients’ confidentiality, you will find that the greatest change to your current practices relates to new paperwork requirements.

When HIPAA allows a disclosure without the patient’s consent, but Pennsylvania requires one, you need to get the consent. For example, HIPAA allows providers to release patient information for broadly defined treatment, payment, and health care operations (TPO) without the patient’s consent. In most instances, Pennsylvania law (particularly the MHPA regulations) would prevent psychiatrists from releasing information without a consent form. The Pennsylvania law would take precedence.

Ethical principles also count. If HIPAA allows the release of information without patient consent, but the “best practices and guidelines” of the profession do not, you should get a consent before releasing the information.

What is the difference, under HIPAA, between a "consent" and an "authorization"?

A "consent," which is optional under HIPAA but generally NOT optional under Pennsylvania's mental health laws, applies to the release of patient information for treatment, payment, and health care operations. Such releases are between treatment providers, between providers and health care payers, between providers and their billing agents, and the like.

"Authorizations" under HIPAA are for releases authorized by the patient for purposes other than treatment, payment, and health care operations. For example, a patient may ask you to release information to a prospective life insurer or to an attorney. You would need to follow the HIPAA requirements specific to authorizations.

Can an insurer request a copy of the entire medical record for TPO purposes, without a consent?

Yes, they can request it – but with only a few exceptions, HIPAA doesn't compel the production of information. It generally allows rather than requires the release of information. Thus HIPAA allows an insurer to request a medical record, without a consent, for purposes of making a coverage or medical necessity decision, but providers must obtain consents regardless if required by other laws, such as the MHPA, or by the policies they have established and provided to their patients.

Furthermore, HIPAA limits disclosures for TPO purposes to that which is minimally necessary for the purpose at hand. The full medical record may not be necessary, and HIPAA requires health plans to limit requests to information reasonably necessary to adjudicate a claim.

HIPAA recognizes the role of professional societies in establishing "minimal necessary" guidelines. The APA has published such guidelines for psychiatrists.

Does HIPAA change the requirements for documentation in the medical record?

HIPAA provides additional protection for what it calls "psychotherapy notes." By definition, to be eligible for the special protection, they must be kept separate from other material in the medical record.

Also by definition, the "psychotherapy notes" that are eligible for this special protection must be created by the treatment provider, for his or her use only.

Patients may authorize the release of psychotherapy notes to others, such as to other treatment providers, in which case psychiatrists should follow the HIPAA requirements for authorizations and any more stringent, applicable standards.

The APA has produced two related resource documents on the topic of psychotherapy notes under HIPAA.

What are some of the new administrative requirements?

You must have a written agreement with all your business associates, spelling out the ways in which all of you will comply with HIPAA. Business associates include others with whom you will be sharing patient information for such purposes as billing, fee collections, and the like.

You must provide every patient with a written notice of your privacy polices and practices at the time of the first professional service. HIPAA imposes specific requirements for these notices.

You must make a good-faith effort to obtain the patient's signed statement attesting to receipt of your notice.

You must keep copies of all authorizations for at least six years.

You must keep a record of releases of information, and provide it to the patient upon request.

You must appoint a privacy officer for the practice and establish specific office procedures for complying with HIPAA requirements.