Complete Medical Record in a Hybrid EHR Environment. Part II: Managing Access and Disclosure

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Background

The transition from a paper-based health record to an electronic health record (EHR) environment must be addressed and managed on many different and complex levels: administratively, financially, culturally, and institutionally. Most organizations will not transition from a paper-based environment to an electronic environment in one quick and easy step. In fact, some organizations may find that their progression to an EHR has been and continues to be an unplanned process, whereas other organizations will have the foresight to plan and determine their steps along the way. The EHR journey is one that will evolve over many years, requiring many change-management dynamics that will challenge each of those involved with the transition process.

Given the complexities involved with the transition to an EHR environment, implementation has been slow. Many healthcare providers today are maintaining a "hybrid" health record.

Definition of Hybrid Health Record

Organizations should define health record content and format at a high level in their organization-wide policies. The health record comprises individually identifiable data, in any medium, that are collected, processed, stored, displayed, and used by healthcare professionals. This information in the health record is collected and/ or directly used to document healthcare delivery or healthcare status.

A hybrid health record is a system with functional components that

- Include both paper and electronic documents
- Use both manual and electronic processes

For example, dictation, lab, and x-ray results might be available electronically, whereas progress notes, ancillary care, provider information, graphic sheets, and doctors' orders remain on paper. Other health information may be maintained on various other media types such as film, video, or an imaging system.

Managing health information in this hybrid environment is challenging, particularly given the transition-management requirements. Nevertheless, there is some risk to any organization that patient quality of care may be adversely affected if the transition from a paper-based environment to an electronic environment is not effectively managed.

This practice brief is intended to provide guidelines and practical steps for managing access to and disclosure of health information as health organizations make the transition from paper-based to fully computerized health records.

Legal and Accreditation Requirements

As organizations develop their vision and accompanying policies and procedures for the EHR, it is important that there be an understanding and address of the many federal, state, accreditation, and other regulatory requirements that affect health information.

Federal

The HIPAA privacy rule requires that covered entities adhere to certain standards when using protected health information (PHI). It provides broad guidance insofar as defining to whom and under what circumstances information may or may not be requested, used, or disclosed.[1]

The HIPAA security rule establishes the administrative, physical, and technical safeguards covered entities must implement in order to protect electronic PHI.[2]

The Confidentiality of Alcohol and Drug Abuse Patient Records Rule establishes requirements for the use and disclosure of information maintained in connection with the performance of a drug abuse prevention function assisted directly or indirectly by the federal government.[3]

The Privacy Act of 1974 grants people the right to find out what information has been collected about them, correct and amend that information, and exercise limited control over disclosure.[4] The provisions of the Privacy Act apply to healthcare organizations operated by the federal government and record systems operated pursuant to a contract with the federal government.

The Federal Rules of Evidence, Article VIII, outlines the criteria necessary for health records to be acceptable as evidence in federal court.[5]

State

Often states have laws or regulations that define the circumstances under which patient health information may be accessed and disclosed. For example, many states have special rules for access and disclosure of sexually transmitted disease and mental health information. States may also have rules that relate to the access and disclosure of business records or materials that may be admitted into evidence. Organizations should examine and consider such rules when designing electronic or hybrid health information systems, policies, and procedures.

Accreditation

Many accreditation organizations such as the Joint Commission, the American Osteopathic Association, and the American Association of Ambulatory Healthcare establish standards aimed at assuring access to needed health information by authorized users and safeguards preventing access by unauthorized individuals. Organizations that are or wish to be accredited must look to their own accreditation standards for additional guidance.

Guidelines for Access and Disclosure in a Hybrid Health Record Environment

Organizations that successfully implement an EHR will have a shared vision with measurable outcomes. Relative to access and disclosure, the EHR vision and to the extent possible the hybrid health record should

1. **Be protected** by a rigorous information security structure consistent with laws and regulations, standards of practice, and available technology

2. **Support** the organization's ability to perform electronic security audits

3. **Allow** the organization to authorize or limit access based on user, record, document, and data element

4. **Provide access** to all relevant information from a patient's hybrid record when needed for use in patient care, regardless of storage medium

5. **Provide for retrieval** of information on a timely basis without compromising the data or the information's confidentiality

6. **Bring together information contained in multiple systems,** applications, or other media so complete information can be retrieved from a single point of access, where feasible

7. **Effectively facilitate retrieval,** display, reporting, and dissemination of data and information individually, comparatively, and collectively

8. **Minimize the need for printing** while at the same time facilitating the delivery of efficient and effective healthcare

9. **Facilitate printing** or copying of concise and easy to use documents that support continuity of care, patient requests, subpoenas, accreditation, legal requirements, and other business needs

10. **Facilitate electronic requests** and disclosures of PHI to authorized external users

11. **Give patients the opportunity to see,** copy, and amend the information contained in their designated record set

12. **Support an electronic tracking** of disclosures that can be made available to the patient

13. **Support a personal health record** that may be utilized for care decisions

14. **Support** not only the delivery of patient care, decision support, and performance improvement, but also the performance of all HIM and other required business functions as well

Practical Discussion for Managing Access and Disclosure in the Hybrid Environment

Access and Retrieval

It is important that organizations know where the components of their hybrid records reside so they can access, use, and disclose the information as necessary, regardless of the information's location or the media on which it is maintained. In order to accomplish this, organizations will need to define and describe the location of information contained in the legal medical record and the designated record set. AHIMA has published practice briefs to assist organizations with these two topics and made them available on its Web site.[6,7] (See Appendix.)

The location of components of the legal medical record and designated record set may need to be cross-referenced to alert users of the health record of what information exists across both the paper-based and electronic health record, particularly as new or revised computer systems are implemented or updated. Additionally, organizations will need to consider reviewing and updating their policies and procedures on access, disclosure, and printing for both the legal medical record and designated record set at least annually. Consideration should also be given to information stored on legacy systems that use old or no longer supported technology and how this information will be retrieved as the EHR evolves.

Organizations will also need to consider the access afforded to hybrid health records by affiliates and business associates and formalize these decisions in their policies. Although it may be expedient to provide affiliates and business associates with access, organizations must carefully consider such access or disclosure in the context of the HIPAA privacy rule's "minimum necessary" standard.

Patient Access

During the transition to an electronic record, information available to the patient electronically may be a subset of the patient's designated record set. In such cases, the EHR should indicate where the primary or complete information resides and how it can be accessed.

Because EHRs will contain many abbreviations and words with which patients may be unfamiliar, organizations will find it advisable to provide patients with links to abbreviation lists, references, medical dictionaries, and information about diseases and illnesses. They will also want to provide patients with information on how to contact their physicians should they have questions.

Additionally, organizations will want to discuss disposition of clinician-to-clinician and patient-to-provider e-mail messages as it pertains to the hybrid health record. Any organization contemplating e-mail communications should review AHIMA's practice brief on the subject.[8]

In an ambulatory care situation, patients may document various types of clinical information themselves. For example, diabetic patients may track their blood sugar levels over time. Organizations should consider allowing patients to access and record

such information electronically. Organizations should also determine whether such information will be part of the legal medical record and designated record set, to whom access will be granted, and under what circumstances.

Dissemination and Disclosure

In a hybrid environment, it is important that organizations develop and implement policies and procedures that describe the circumstances under which electronic documents may be printed. This is important because

- The electronic copy will likely contain the most current information.
- Printing documents prevents the organization from optimizing its return on investment. The organization will be spending money on printers, toners, paper, retention, and destruction. These resources could be better applied towards making sure that there are adequate points of access to the electronic information wherever needed.
- Users may be inclined to make notes on the printed copies, further complicating operational management of these documents since these notated copies would need to be retained as part of the legal health record.
- It is difficult to manage and secure printed copies.
- Once users are given permission to print, it is difficult to teach them to stop.

In particular, organizations must address the handling and disposition of printed interim reports, weighing the risk to the organization of the performance of the following options

- Maintaining *all* interim results reports within the health record
- Maintaining only the interim reports when the final results are different

Maintaining all interim results reports provides the greatest measure of security for the organization but does result in a high volume of duplicate reports within the health record, particularly in a paper-based environment. This can also lead to confusion regarding which report to use, especially for future access and disclosure.

The hybrid health record should also reflect who received disclosed information and whether it was paper-based or electronic. As organizations work toward tracking disclosures electronically, they should build interfaces between programs that allow disclosure of information electronically along with any disclosure-tracking log. The accounting should be available for review by the patient upon request.

Notes

1. "Standards for Privacy of Individually Identifiable Health Information; Final Rule." 45 CFR, subtitle A, subchapter C, parts 160 and 162. *Federal Register* 67, no. 157 (August 14, 2002). Available at http://aspe.hhs.gov/admnsimp.

2. "Health Insurance Reform: Security Standards, Final Rule." 45 CFR, subtitle A, subchapter C, parts 160 and 164. *Federal Register* 68, no. 34 (February 20, 2003). Available at http://aspe.hhs.gov/admnsimp.

3. Public Health Service, Department of Health and Human Services. "Confidentiality of Alcohol and Drug Abuse Patient Records." *Code of Federal Regulations,* 2000. 42 CFR, chapter 1, part 2. Available at http://www.access.gpo.gov/nara/cfr/waisidx_00/42cfr2_00.html.

4. Section 5 U. S. C. § 552a. Available at http://www.usdoj.gov/04foia/privstat.htm.

5. Federal Rules of Evidence, article VIII, rule 803. Available at http://expertpages.com/federal/a8.htm or www.house.gov/judiciary/Evid2002.pdf.

6. Hughes, Gwen. "Defining the Designated Record Set (AHIMA Practice Brief)." *Journal of AHIMA* 74, no. 1 (2003): 64A-D. Available in the FORE Library: HIM Body of Knowledge at www.ahima.org

7. Amatayakul, Margret et al. "Definition of the Health Record for Legal Purposes (AHIMA Practice Brief)." *Journal of AHIMA* 72, no. 9 (2001): 88A-H. Available in the FORE Library: HIM Body of Knowledge at www.ahima.org

8. Burrington-Brown, Jill, and Gwen Hughes. "AHIMA Practice Brief: Provider-Patient E-mail Security." (Up-dated June 2003.) Available in the FORE Library: HIM Body of Knowledge at www.ahima.org.

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