

# Exploring Permitted Disclosures of Health Information for Treatment and Care Coordination

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In December 2018, the Office for Civil Rights (OCR), the entity that enforces HIPAA, requested public input on ways to modify HIPAA Rules to “facilitate efficient care coordination and/or case management and to promote the transformation to value-based health care.” The key point for many stakeholders was a provision to remove regulatory obstacles and decrease burdens on healthcare entities and patients.<sup>1</sup>

The Centers for Medicare and Medicaid Services (CMS) also introduced the Interoperability and Patient Access Proposed Rule on February 11, 2019, which proposes policies to prevent healthcare providers from inappropriately restricting the flow of information to other healthcare providers and payers and ensure better interoperability to reduce the burden on healthcare providers. Timothy Noonan, OCR’s acting deputy director, also reiterated the issues with sharing records between providers when he spoke at the AHIMA Advocacy Summit on March 25, 2019. In its request, OCR asked for input on whether it should clarify this provision and ways to encourage healthcare entities to share protected health information (PHI) with non-covered entities when it’s needed to coordinate care and support patients. As OCR looks to clarify its current rules, it’s important for health information management (HIM) professionals to understand what is currently permitted under HIPAA in order to best serve patients now and better prepare for regulatory updates.

It has been many years since the HIPAA Privacy Rule was implemented, meaning it is crucial to understand the original regulations as well as the new commentary being produced by OCR and CMS. The comments contained in the request for information (RFI), the proposed rules, and the final rules can give context to many of the more gray areas of regulations such as HIPAA. By reading the recent RFI and CMS proposed rule, HIM professionals gain a better understanding of the current permitted practices of disclosure under HIPAA. They may also provide a preview about where OCR and CMS are headed in the near future with advancing data exchange and care coordination throughout healthcare and beyond. These potential changes to release of information and disclosures to more nontraditional entities could change how HIM professionals conduct business.

## Form Happy

Currently, it seems that healthcare entities require a form for any disclosure outside the brick and mortar establishment, and patient stories of release of information denials and delays in receiving records abound. In January 2017, OCR provided guidance that this should not be the case, noting that organizations must not implement barriers to patient-directed access and disclosure of records. Historically, HIPAA-covered entities prefer to withhold information and require an authorization form to be on the safe side. Yet, as the transformation to provide better care for individuals and better health for populations at reduced costs continues, more nontraditional ways to share PHI are needed, with fewer gaps and less reluctance to share. This slow-moving paradigm shift may be accelerated as OCR and CMS provide future guidance or rulemaking.

## Non-Covered Entities Providing Value-Based Healthcare

As OCR stated in its RFI, disclosures to social service agencies, including not-for-profit housing, adult foster care homes, homeless shelters, schools, churches, and other community-based support programs, are permitted and may be essential to an individual’s healthcare. Multidisciplinary teams come together to assist in coordinating services and care for individuals who may have chronic conditions and need a variety of assistance, not just traditional healthcare activities of a covered entity. It may not be widely known that the HIPAA Privacy Rule permits covered entities to disclose information to those types of programs for coordination or management of treatment. OCR even stated an “expressed reluctance to share this information for fear of violating HIPAA” exists.<sup>2</sup>

## Mandatory Disclosures for Coordinated Care

In the state of Oregon, healthcare providers that participate in a coordinated care organization (CCO) must disclose PHI to other healthcare providers participating in the CCO for treatment, payment, and healthcare operations (TPO). These disclosures may be made without the authorization of the patient or patient's personal representative. CCOs are a network of physical health, addiction, mental health, and dental care providers who work together locally to serve Oregon's Medicaid population. CCOs may connect Medicaid members with healthcare, housing, transportation, employment, social services, and other resources in order to improve health and outcomes.

## Permitted Versus Required

HIPAA and state law do not require an authorization or consent for disclosures to carry out a patient's treatment, to arrange payment, or for healthcare operations. This includes treatment, assessment, coordination or management of services, referrals, and consultation. Bear in mind that disclosures to entities that are not healthcare providers should be subject to minimum necessary requirements. This means covered entities are permitted to share information with a primary care provider, social service agencies, or community-based support programs for these purposes. Covered entities are "permitted, but not required, to use and disclose protected health information, without an individual's authorization," for treatment, payment, and healthcare operations.<sup>3</sup>

Treatment is defined as "the provision, coordination, or management of healthcare 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," according to 45 C.F.R. § 164.501. Obtaining a written consent or permission to disclose PHI for treatment, payment, or healthcare operations is optional and "at the discretion of the covered entity electing to seek consent." Of course, this does not pertain to uses or disclosures that require an authorization.

OCR asked for comments on "whether it should modify or otherwise clarify provisions of the Privacy Rule to encourage covered entities to share PHI [protected health information] with non-covered entities when needed to coordinate care and provide related health care services and support for individuals in these situations."

## Guidelines for Disclosures to Non-Covered Entities

It can be a challenge to find the balance of protecting an individual's confidential health information while not prohibiting a permitted activity by placing burdens on those involved in the treatment of an individual. A key step that HIM professionals can take is to simply ask several important questions about the request, including:

- Is the request for PHI a necessary component of the individual's healthcare?
- Would the request to disclose PHI to a social service entity help further the individual's care?

If those answers are yes, then the minimum necessary PHI may be disclosed without the individual's authorization. An OCR FAQ from January 2018 provides an example of this, stating that "a provider may disclose PHI about a patient needing mental health care supportive housing to a service agency that arranges such services for individuals."<sup>4</sup> Of course, each entity needs to take state disclosure laws into account for any potential specially protected information such as that relating to mental health, HIV status, or genetic information, as well as federal requirements for substance use disorder information.

As OCR reviews comments and discussions continue at the national and state level surrounding disclosures to promote value-based healthcare, it is a good time for HIM professionals to review policies and practices related to these disclosures. For some entities, this may require something of a culture change to permit disclosures for continuum of care, especially to non-covered entities. Shifting from a culture that tends to err on the conservative side of protecting an individual's privacy to one that encourages information sharing and care coordination takes understanding, practice, and integrity in following the spirit of the regulations and those forthcoming.

## Notes

1. Department of Health and Human Services Office for Civil Rights. "Request for Information on Modifying HIPAA Rules to Improve Coordinated Care." *Federal Register*. December 14, 2018.  
[www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care](https://www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care).
2. Ibid.
3. Department of Health and Human Services Office for Civil Rights. "Summary of the HIPAA Privacy Rule: HIPAA Compliance Assistance." May 2003. [www.hhs.gov/sites/default/files/privacysummary.pdf](https://www.hhs.gov/sites/default/files/privacysummary.pdf).
4. Department of Health and Human Services. "HIPAA FAQ: Does HIPAA permit health care providers to share protected health information (PHI) about an individual with mental illness with a third party that is not a health care provider for continuity of care purposes?" [www.hhs.gov/hipaa/for-professionals/faq/3008/does-hipaa-permit-health-care-providers-share-phi-individual-mental-illness-third-party-not-health-care-provider-continuity-care-purposes/index.html](https://www.hhs.gov/hipaa/for-professionals/faq/3008/does-hipaa-permit-health-care-providers-share-phi-individual-mental-illness-third-party-not-health-care-provider-continuity-care-purposes/index.html).

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