

Job Shadowing and the HIPAA Privacy Rule

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by the AHIMA Privacy and Security Practice Council

Job shadowing is a popular method of providing a work-based learning experience. It allows an individual to follow or “shadow” a healthcare professional during a typical workday. The participant can observe the healthcare professional’s job duties, ask questions, and evaluate his or her potential interest in pursuing a career in that profession.

More often than not, job shadowing participants are middle and high school students actively researching potential healthcare career choices in the acute care setting before solidifying educational plans. However, it is not uncommon for adults who are in the process of assessing career changes to seek job shadowing experiences.

Job shadowing has become part of both the medical school application process and the faculty interview process. In both cases, the shadowing process allows the applicant to get a better sense of the institution to which he or she is applying. It is not considered part of a training process, as the participants are not part of the work force.

Job Shadowing and PHI

Job shadowing in the healthcare environment may involve direct or indirect exposure to patients and their protected health information (PHI). HIPAA requires covered entities (CEs) to safeguard the privacy and security of PHI.¹ The privacy rule states that CEs (healthcare providers or plans) may, without patient consent, use or disclose PHI to carry out treatment, payment, and healthcare operations. The rule further defines healthcare operations to include “conducting training programs in which students, trainees, or practitioners in areas of healthcare learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities.”² In addition, the privacy rule defines work force as “employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.”³

Because job shadowing participants are not directly involved in treatment or payment activities, the only way it would be permissible for participants to have access to PHI is if their activities can properly be described as a healthcare operations activity. Specifically, job shadowing would only be considered healthcare operations if it constitutes training for a member of the CE’s work force.

Following an in-depth review of HIPAA’s privacy rule language addressing healthcare operations and the training component, AHIMA’s Privacy and Security Practice Council concluded that the rule does not support an interpretation of job shadowing as a training activity. Job shadowing participants are not volunteers, employees, or independent contractors. They are not engaged in a formal training process required for a job, nor are they overseen by the covered entity in the same way that employees, volunteers, or independent contractors are. They are, in effect, guests of the covered entity.

In addition, job shadowers do not meet the definition of work force members, as they do not provide services for the covered entity. Consequently, job shadowing experiences that involve patient or PHI exposure are not part of a CE’s healthcare operations and cannot be permitted without the authorization of each involved patient or individual.

Job shadowing participants similarly are not business associates of the CE. In order to be a business associate, the person or entity must perform a service on behalf of the covered entity.⁴ In a job shadowing arrangement, the participant is doing nothing for the CE; conversely the CE is doing something for the participant. Consequently, it would not be permissible for a CE to enter into a business associate agreement with a job shadow participant and permit access to patient PHI.

What Can Young People Do for CEs?

Middle and high school students may still participate in other activities within the healthcare environment, even though they may not be able to participate in traditional job shadowing. As members of the work force, students may participate in work-study programs and volunteer activities involving use of and access to PHI following appropriate orientation and privacy and security training. In addition, the Office for Civil Rights states that “covered entities can shape their policies and procedures for minimum necessary uses and disclosures to permit medical trainees access to medical information, including entire medical records.”⁵ This permits CEs to allow healthcare students to participate in training activities involving use of and access to PHI.

In any type of healthcare setting, organizations are encouraged to re-evaluate their commitment to job shadowing program participation and ensure appropriate processes are in place for privacy compliance. HIPAA-governed organizations should either restrict access to PHI by job shadowing participants or obtain patient authorization prior to the use and disclosure of PHI to those individuals. For additional information on HIPAA and training programs, read AHIMA’s practice brief “Protecting Confidentiality in Healthcare Education Programs” (see “[References](#)”).

Notes

1. Health Insurance Portability and Accountability Act of 1996. Public Law 104-191. August 21, 1996. Available online at <http://aspe.hhs.gov/admsimp>.
2. Ibid, 45 CFR § 164.501.
3. Ibid, 45 CFR § 160.103.
4. Ibid.
5. Department of Health and Human Services. “Health Information Privacy and Civil Rights Questions & Answers, Answer ID 209.” Available online at <http://healthprivacy.answers.hhs.gov>.

References

AHIMA Privacy and Security Officers Community of Practice. Discussion thread, December 2005–April 2006. Available online at <https://www.ahimanet.org/COP>. [web site no longer available]

Hjort, Beth. “Protecting Confidentiality in Healthcare Education Programs.” 2003. Available online in the FORE Library: HIM Body of Knowledge at www.ahima.org.

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