

Managing Individual Rights Requirements under HIPAA Privacy (HIPAA on the Job)

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by Margret Amatayakul, RHIA, FHIMSS

If your physicians' attitude toward patients requesting to amend their medical record is "I'd tell them to take a hike and then call my attorney," your environment is not unique. These words, in fact, are the verbatim response of a physician upon hearing the HIPAA privacy requirement that individuals have the right to request a covered entity to amend their health information. (This physician would be even more surprised to learn that although a provider may deny an individual's request for amendment, the request and denial must be appended or linked to the record if requested by the individual.)

This is just one example of the HIPAA privacy rule's provisions related to individual rights with respect to protected health information and the paradigm shift necessary to achieve compliance. This article offers suggestions for changing notions about individual rights to health information, defines terms associated with the privacy rights standards, and provides a table of documentation requirements.

Privacy Is Not New, But Rights Vary

The principle of privacy in healthcare dates back to Hippocrates, and all healthcare professionals adopt a form of the Hippocratic oath at the start of their professional life. For many reasons, however, the notion that individuals have rights to their health information has not typically been part of the privacy concept.

Privacy has always meant that health information must be kept confidential. It has generally been established by state statute or courts that a provider owns the physical records created by the provider in delivering care to individuals, subject to the individual's limited interest in the information. Caregivers recognize the need for patients to authorize release of information, but many believe patients have neither the right to access nor the knowledge to understand the content of their medical record.

In recent years, individuals have become much more educated on health issues and have had to play a much greater role in managing the flow of their information among multiple providers. As a result, individuals have demanded greater rights in their health information, and many states have adopted statutes providing for such rights in a variety of ways. Individuals concerned about privacy rights had significant influence over inclusion of privacy standards in HIPAA.

The Privacy Paradigm and the Golden Rule

The very physician who expressed alarm over the idea that patients could amend their records took a step back when it was suggested that the privacy rule is essentially the Golden Rule. John Fanning, HHS' privacy officer, notes "we are all data subjects,"¹ and identifies citations from many of the great religions (Jewish scholar Hillel, the books of Matthew and Luke, and Confucius) that support the notion that "we should treat information about others as we would want others to treat information about us."

Presenting individuals' privacy rights to providers as yet another government regulation will only trigger consternation. While it is obviously necessary to follow the requirements in the regulations, approaching the issue from the perspective of patient care, quality, and communications as part of healthcare accessibility and portability under HIPAA goes a long way in turning around potentially negative attitudes.

Direct caregivers are primarily affected by the exercise of individuals' privacy rights. They need to understand why such rights are important to their patients and how to handle such requests. To do so, they should be involved in establishing privacy rights policies for the organization.

Although this is not a HIPAA mandate, caregivers may also want to review documentation policies and standards as a complement to establishing privacy policies. Many have developed comprehensive and tailored instructions for patients. Others provide encounter or discharge summaries to patients on a routine basis as part of patient education.

We all know it is not a good practice to write demeaning information about the patient or others in medical records-and HIPAA does not preclude use of abbreviations or medical terms. It is important, however, to bear in mind that a patient (or any individual the patient authorizes to receive a copy of the record) will be reading it, so ensuring accuracy, completeness, and appropriate language should remain a priority.

To What Do Individual Privacy Rights Apply?

The final privacy rule broadened the scope of privacy protection from solely individually identifiable health information in electronic form to such information in any form or medium, including paper and oral. Obviously, access can only be granted to information that is recorded in paper or electronic form. Hence, the privacy rule introduces the term "designated record set."

For a covered healthcare provider, this refers to medical records and billing records about individuals. For a health plan, it means the enrollment, payment, claims adjudication, and case or medical management record systems.

Some have suggested that the designated record set does not include "shadow records" or records maintained apart from the "official medical record." Sometimes these are created because a provider has difficulty getting access to records in a large, complex environment, for conducting research, or to achieve special protection such as for psychotherapy notes.

HIPAA, however, applies to any information retained for purposes of making decisions about individuals, although it has exceptions for psychotherapy notes and conditions for research. Any organization that suspects the existence of shadow records used for purposes of making decisions about individuals needs to be vigilant about identifying them and considering them as part of the designated record set for purposes of patients exercising their privacy rights. Most provider settings prefer to correct problems associated with access to records than to encourage maintenance of shadow records.

A careful review of the regulation's privacy rights reveals specific requirements related to informing patients of their rights, accepting and denying requests, and documenting actions. "Patient Rights at a Glance," below, provides a summary of the key elements associated with each of the categories of individual privacy rights as they apply to providers. Some differences for health plans are not included.

Patient Rights at a Glance

Right	Request	Acceptance	Termination
Right to request restriction of uses and disclosures	Provider must permit request, but does not have to be in writing	Provider not required to agree, but if accepted, must not violate restriction except for emergency care.	Provider may terminate if individual agrees or requests in writing, oral agreement is documented, or written notice for information created after.
Right to receive confidential communications	Provider may require written request for receiving communications by alternative means or locations.	Provider must accommodate reasonable requests and may condition on how payment will be handled, but may not require explanation.	There is no provision for termination.

Right of access to information	Provider must permit request for copying and inspection and may, upon notice, require requests in writing. Provider may supply a summary or explanation of information instead if individual agrees in advance.	Provider may deny access without opportunity for review if information is: psychotherapy notes, compiled for legal proceeding, subject to CLIA, about inmate and could cause harm, subject of research to which denial of access has been agreed, subject to Privacy Act, or obtained from someone else in confidence. Provider may deny access with opportunity to review if: licensed professional determines access may endanger life or safety, there is reference to another person and access could cause harm, or request made by personal representative who may cause harm.	Individuals have right of access for as long as information is maintained in designated record set.
Right to amend information	Provider must permit requests to amend a designated record set and may, upon notice, require request in writing and a reason.	If amendment is accepted, provider must append or link to record set and obtain and document identification and agreement to have provider notify relevant persons with which amendment needs to be shared. Provider may deny amendment if information: was not created by the provider unless individual provides reasonable basis that originator is no longer available to act on request, is not part of designated record set, would not be available for access, or is accurate and complete.	Amendment applies for as long as information is maintained in designated record set.
Right to accounting of disclosures	Provider must provide individual with written accounting including date of disclosure, name and address of recipient, description of information disclosed, purpose of disclosure or copy of individual's written authorization or other request for disclosure.	Provider must provide individual and retain documentation of written accounting of disclosures of protected health information made in six years prior to date of request, except for disclosures to carry out treatment, payment, and healthcare operations; individuals about themselves; facility's directory or persons involved in care; national security; and correctional institutions or certain law enforcement situations that occurred prior to compliance date.	Not applicable

Patient Rights at a Glance (continued)

Right	Timeliness	Fee	Denial
Right to request restriction of uses and disclosures	There is no provision for addressing timeliness.	There is no provision for a fee.	There are no requirements associated with denying restriction.
Right to receive confidential communications	There is no provision for addressing timeliness.	There is no provision for a fee.	Not applicable
Right of access to information	Provider must act upon a request within 30 days. If information is not maintained on site, provider may extend by no more than 30 days if individual is notified of reasons for delay and given date for access.	Provider may impose reasonable, cost-based fee for copying, postage, and preparing an explanation or summary	If access is denied, provider must provide timely written explanation in plain language, containing basis for denial, review rights if applicable, description of how to file a complaint, and source of information not maintained by provider if known. Provider must also give individual access to any part of information not covered under grounds for denial.
Right to amend information	Provider must act upon a request within 60 days of receipt. If unable to act on request within 60 days, provider may extend time by no more than 30 days provided individual is notified of reasons for delay and given date to amend.	There is no provision for a fee.	If amendment is denied, provider must provide timely written explanation in plain language, containing basis for denial, right to submit written statement of disagreement, right to request provider include request and denial with any future disclosures of information that is subject of amendment, and description of how to file a complaint.
Right to accounting of disclosures	Provider must act upon request within 60 days of receipt. If unable to provide accounting, provider may extend time by no more than 30 days provided individual is notified of reasons for delay.	First accounting in any 12-month period must be provided without charge. A reasonable, cost-based fee may be charged for subsequent accountings in 12-month period if	Provider must temporarily suspend right to receive an accounting of disclosures to health oversight agency or law enforcement official if agency or official provides written statement that accounting would impede their activities.

individual is notified in
advance.

Patient Rights at a Glance (continued)

Right	Review
Right to request restriction of uses and disclosures	Not applicable
Right to receive confidential communications	Not applicable
Right of access to information	An individual may request a review of a denial by a different healthcare professional.
Right to amend information	Provider must accept written statement of disagreement (of limited length). Provider may prepare written rebuttal and must copy individual. Provider must append or link request, denial, disagreement, and rebuttal to record and include such or accurate summary with any subsequent disclosure. If no written disagreement, provider must include request and denial, or summary, in subsequent disclosures only if individual has requested such action.
Right to accounting of disclosures	There is no provision for review of temporary suspension.

Note

1. John Fanning, conversation with author, March 2, 2001.

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