Privacy Rule and the Clergy: Exploring the Dilemmas Surrounding HIPAA and Pastoral Care

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On the surface, the HIPAA privacy rule's requirements dealing with disclosures to clergy appear straightforward. Three years after implementation, however, major hurdles still exist and processes need further clarification. Key issues center around how healthcare institutions assess and define the nature of clergy and the rights and privileges of pastoral care.

A Limit on Information Shared with Clergy

The HIPAA privacy rule placed clear limits on information a covered healthcare provider may disclose to clergy (§164.510(a)(1)(ii)(A)). The rule states that patients must have the opportunity to agree or object to the inclusion of their information in the healthcare organization's directory.

When the individual is unable to agree or object to being included in the facility's directory due to emergency circumstances or incapacity, disclosures may still occur. Such disclosures must be consistent with any known prior expressed preference or determined to be in the individual's best interest in the professional judgment of the provider (see 45 CFR 164.510(a)(3)). The emergency circumstances section of HIPAA covers volunteer chaplains who respond to codes, deaths, and special requests. These processes should be covered in the organization's policies and procedures.

When an individual receiving care agrees to be included in the organization's directory, the provider can disclose only four basic elements of information:

- Individual's name
- Location in the facility
- Health condition expressed in general terms that does not communicate specific medical information
- Religious affiliation if the individual chooses to provide it

Only the first three elements are available to the general public, who must inquire for an individual by name. An individual's religious affiliation is available only to the clergy. Individuals may decline to provide the facility with a religious affiliation.

The Office for Civil Rights (OCR) provides additional interpretation not included in the actual regulation or its preamble. According to OCR, "as long as the individual has been informed of this use and disclosure, and does not object… (a facility) may disclose the names of Methodist individuals to a Methodist minister…"

This OCR guidance implies a minimum necessary twist not stated in the rule. In the guidance, clergy are given information only about individuals of the same faith. This limitation partially addresses a major concern expressed by clergy in certain parts of the country regarding "church turf" and the practice of "sheep stealing" from someone else's flock. Prior to HIPAA, some denominations or clergy took advantage of the directory listings to solicit new members or proselytize members of other faiths. Dividing the directory by denomination and defining who has access to the directory helps control this practice.

The Devil in the Details

Historically, visiting clergy enjoyed fairly open access to patient rolls and information. The initial negative reaction to being limited to the four allowed elements is understandable. Three years after implementation, complaints are still being heard from local faith communities as well as from patients relating to organizational barriers they encounter in access to each other.

Much of the confusion is a result of healthcare organizations' different implementations of the rule. To serve their congregants, clergy must learn and abide by the policies and procedures of every provider institution in their areas. Clergy identification

requirements and sign-in procedures vary across institutions. Registration with the facility may be a simple sign-in procedure or a detailed verification and validation process through pastoral services or other department.

To further confuse the issue, HIPAA does not define the term clergy. Based on the implementation of the rule across the country, the nature of clergy varies from region to region. The definition of clergy may also vary with the nature of the healthcare organization. Many religious organizations have a lay visitor force that, in the past, had open access to individuals. In long-term care, these lay visitors provide a valuable service calling on residents who may be far removed from their home congregations.

One hospital defines clergy as someone who has a congregation and has attended a special training program with the covered entity's chaplain. The hospital specifically excludes lay clergy from access to the directory even though directly affiliated with a church. Other facilities verify clergy credentials through their in-house chaplain's office and publish the verified list to the community. To be validated on the list, a person must complete a brief application and then attend required training.

Local procedures vary in many other ways. Badges may or may not be required. If required, an organization may allow clergy to wear badges of their own design, it may issue its own visitor badge, or it may require a photo ID as part of its validation process.

Facilities may have limitations on who and how many people may accompany the authorized clergy representative. The facility policy may require training in privacy and security as part of its registration process. Training may also include general orientation to the healthcare organization. Faith group representatives learned quickly to call ahead to learn the local policies and procedures.

Writing Thorough Policies and Procedures

A provider organization's policies should address external as well as internal clergy. Chaplains, professional pastoral, or spiritual care providers contracted or employed by a healthcare institution should be sure they are covered in the organization's policies and procedures. Employed clergy are considered part of the organization's work force and may be considered part of the treatment team to supply spiritual needs to individuals. With that standing, they may have broader access privileges than the community clergy.

Regardless of whether internal or external, the degree of access to protected health information should be spelled out. Chaplains or pastoral care providers with the rights and privileges of a member of the treatment team must be clearly defined in an organization's policies and procedures.

The past three years of experience with the privacy rule has taught that thinking through the process on how the provider organization will deal with clergy and their access to individuals and their information eliminates a lot of problems up front. Items to include in a provider organization's policies and procedures include:

- Definition of clergy, including external visiting clergy and internal in-house pastoral services
- Rights and privileges (or lack thereof) for external and internal clergy, including access or limitations on access to protected health information and medical records
- Credentialing, certifying, or validation processes as appropriate to the setting
- Procedures for emergency and incapacity situations

These will vary from organization to organization and should be written as appropriate to the organization, community, or regional setting. If accredited, they should also be written to be consistent with accrediting agency requirements.

Communication Is Key

Communication, collaboration, and education among providers, local clergy, and their congregants are key to a successful program. Three years post-implementation, there is still much misinformation on the Internet. The privacy rule information available to the local clergy runs the gamut from excellent to totally incorrect or nonexistent. Provider organizations have assumed the responsibility for educating their patients on the rule, what can be disclosed, and the individual's rights. Providers should also reach out to the local faith communities to promote better understanding of the rule and to reach their future parishioner-patients.

Through better understanding of the regulatory restraints placed on the provider, the parishioner-congregants and their families can gain insight into their need to communicate with their faith representatives as a means of avoiding delays in access in a time of spiritual need. Putting aside competition, providers could work together with the faith communities' representatives within their area to collaborate on common definitions and procedures that would improve community relations for all.

A sample policy and procedure titled "Disclosure of Facility Directory Information to Clergy" has been provided by Rick Bearden, director of privacy and security for St. Vincent Health System in Little Rock, AR. A sample patient brochure may be found at the Lutheran Services in America Web site, www.lutheranservices.org.

This article is an expanded update to "The Clergy and PHI," a basic introduction to the HIPAA privacy rule requirements previously published as part of the HIMSS CPRI Toolkit: Managing Information Privacy and Security in Healthcare.

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