

Redisclosure of Patient Health Information (2001)

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A healthcare provider's records may contain patient information originated by another healthcare provider. For example, copies of selected reports are often sent by an attending physician to the hospital where a patient is admitted. Similarly, reports compiled during the patient's hospitalization are sent to the attending physician to assist in continued patient care. These types of reports are then incorporated in the patient's health record at the receiving facility.

From time to time, this practice leads to questions about whether a healthcare facility can or should disclose information contained in its record but originated at another healthcare facility.

Federal Laws

Substance Abuse Patient Records

The Confidentiality of Alcohol and Drug Abuse Patient Records rules, which apply to records of the identity, diagnosis, prognosis, or treatment of patients maintained in connection with the performance of drug abuse prevention functions conducted, regulated, or directly or indirectly assisted by any department or agency of the US, generally prohibit redisclosure of health information. In fact, these rules require that a notice accompany each disclosure made with a patient's written consent. The notice must state:

"The information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is not sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient."

The rules do not appear to prohibit redisclosure:

- to medical personnel to the extent necessary to meet a bona fide medical emergency
 - if authorized by an appropriate court order of competent jurisdiction granted after an application showing good cause.
- However, the court is expected to impose appropriate safeguards against unauthorized disclosure

HIPAA Final Privacy Rule

The HIPAA final privacy rule as published on December 28, 2000, defines health information as any information, whether oral or recorded, in any form or medium, that:

- is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse and
- relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual (page 82799)

The final rule goes on to state that a valid authorization must include a statement that information used or disclosed pursuant to an authorization may be subject to redisclosure by the recipient and no longer be protected by the rule (page 82812).

The HIPAA privacy rule requires a covered entity to disclose protected health information:

- to the individual when requested and required under 164.524 and

- when required by the Secretary to investigate or determine the covered entities compliance

Further, a minimum necessary standard is addressed in section 164.502 of the rule. The minimum necessary standard does not apply, however, to:

- disclosures to or requests by a healthcare provider for treatment
- uses or disclosures made to the individual, or pursuant to an authorization, except for authorizations requested by a covered entity
- disclosures made to the Secretary in accordance with subpart C of 160 (page 82805)

State Laws

Individual states may have their own laws or regulations relative to redisclosure for all or some particularly sensitive types of health information.

State laws are not preempted where they give more confidentiality protection than the HIPAA final privacy regulations except where state laws make it more difficult for patients to access their own health information.

Recommendations

1. Unless otherwise required by state law, incorporate in your own facility records the health information generated by other healthcare providers needed for patient diagnosis and treatment.
2. Become knowledgeable about federal and state laws and regulations that address redisclosure.
3. Consult with legal counsel when federal and state redisclosure requirements differ and it's unclear which should prevail.
4. Develop facility policies and procedures that address redisclosure. Be sure to include the requirement that prior to disclosure, the disclosing staff member verify the authority of the person to receive the information.
5. Modify existing authorization forms to incorporate required language in the HIPAA final privacy rule.
6. Any redisclosure must comply with federal and state laws and regulations.
7. In general, healthcare providers should:
 - redisclose to other healthcare providers protected health information when it is necessary to ensure the health and safety of the patient
 - redisclose requested health information to patients when necessary, but after first encouraging the patient to obtain the most complete and accurate copies from the originating healthcare provider
 - redisclose protected health information when necessary to comply with a valid consent and notice of privacy practices
 - redisclose protected health information when necessary to comply with a valid authorization or legal process
8. Ask legal counsel to review draft policies and procedures prior to implementation.
9. Educate staff relative to new or revised policies and procedures relative to redisclosure.
10. Implement policies and procedures and monitor compliance.
11. When in doubt about a potential redisclosure, consult legal counsel.
12. When asked to certify or testify about the authenticity of redisclosed health information, state that the information was received from another healthcare facility's medical record through normal redisclosure procedures and that you cannot knowledgeably speak to the record-keeping practices of that organization.
13. Modify existing certification forms if/when indicated.

Note: See also related AHIMA Practice Briefs on Laws and Regulations Governing the Disclosure of Health Information, Consent for the Use or Disclosure of Individually Identifiable Health Information, Notice of Information Practices, and Patient Access and Amendment to Health Records available in the Journal of AHIMA 72, no. 5 (May 2001) or on the AHIMA Web site at www.ahima.org under "Ready Resources."

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