Redisclosure of Patient Health Information (2003 update)

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Editor's note: The following information replaces information contained in the September 2001 "Redisclosure of Patient Health Information" Practice Brief.

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. Information received from another or previous provider is then incorporated in the patient's health record at the receiving facility.

Although redisclosure of protected health information (PHI) is necessary for patient care across the healthcare continuum, the practice of redisclosure leads to questions about the appropriateness of disclosing information contained in one's record but originated at another healthcare facility.

Guidelines for the proper redisclosure of health information created by another or previous provider and made apart from one's designated record set exist at both the federal and state level. These redisclosure guidelines are applicable regardless of the form or medium of the health information.

Keep in mind that the transition to the electronic storage and management of PHI allows for the ready transfer of specific information as opposed to an entire report or record. The practice of disclosing specific information or "cutting and pasting" specific information can make identification of the author and origin of health information difficult to track, especially in electronic health record systems with weak audit trail functionality.

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 government, 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 prohibit redisclosure:

- to medical personnel to the extent necessary to address a genuine 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

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.

The privacy rule generally requires covered entities to take reasonable steps to limit the use and disclosure of and requests for PHI to the minimum necessary to accomplish the intended purpose. The minimum necessary standard is addressed in section 164.502 of the rule. However, the minimum necessary standard does not apply to:

- the individual when requested and required under 164.524
- disclosures required by the secretary of Health and Human Services (HHS) to investigate or determine the covered entities' compliance
- disclosures to or requests by a healthcare provider for treatment uses
- disclosures made to the secretary in accordance with subpart C of 160 (page 82805) for enforcement purposes
- uses or disclosures made pursuant to an individual's authorization
- disclosures and uses that are required by other state or federal laws
- uses or disclosures required to comply with the HIPAA administrative simplification rules

OCR HIPAA Privacy Guidance

The following Office for Civil Rights (OCR) HIPAA privacy guidance was published on December 3, 2002, and addresses redisclosure of patient information (available at www.hhs.gov/ocr/ hipaa/):

> **Q:**
>
> A provider might have a patient's medical record that contains older portions of a medical record that were created by another or previous provider. Will the HIPAA privacy rule permit a provider who is a covered entity to disclose a complete medical record even though portions of the record were created by other providers?
>
> **A:** Yes, the privacy rule permits a provider who is a covered entity to disclose a complete medical record, including portions that were created by another provider, assuming that the disclosure is for a purpose permitted by the privacy rule, such as treatment.[1]

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's designated record set the health information generated by other healthcare providers needed for patient diagnosis and treatment.
2. Become knowledgeable about and implement organizational compliance with federal and state laws and regulations that address redisclosure. Any redisclosure must comply with federal and state laws and regulations.
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. In general, healthcare providers should:
    - redisclose to other healthcare providers PHI 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 PHI when necessary to comply with a valid authorization
    - redisclose PHI when necessary to comply with a legal process. Only redisclose PHI located within your legal health record (the designated record set). Note that you may be compelled by the legal discovery process to release additional individually identifiable health information if access to the information is deemed necessary for the stated purpose [2]
7. Ask legal counsel to review draft policies and procedures prior to implementation.
8. Educate staff on new or revised policies and procedures relative to redisclosure.
9. Implement policies and procedures and monitor compliance.
10. When in doubt about a potential redisclosure, consult legal counsel.
11. 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 business practices, your facility received the information in good faith, and that you cannot knowledgeably speak about the record-keeping practices of the originating organization.
12. Modify existing certification forms when indicated.

Note: See also AHIMA Practice Briefs on "Notice of Information Practices" and "Patient Access and Amendment to Health Records" available in the May 2001 Journal of AHIMA (72, no. 5) or in the FORE Library: HIM Body of Knowledge at www.ahima.org.

When Is Disclosure Appropriate?

The following scenarios highlight when it is and is not appropriate to disclose PHI in the event of a subpoena.

A Specialist's Input

A patient with degenerative disc disease is under the care of a pain management specialist. The patient's pain is becoming increasingly difficult to manage, so the pain management specialist orders x-rays and magnetic resonance imaging (MRI). It is discovered that the patient has worsening spinal stenosis. The pain management specialist refers the patient to an orthopedic surgeon and sends the x-rays and the MRI along with the patient. Upon reviewing the x-rays and MRI, the surgeon determines surgery is necessary. The surgeon also decides that re-doing the x-rays and MRI is not necessary. These results become part of the surgeon's medical record, supporting his decision to perform the surgery.

Months later the surgeon receives a subpoena requesting the patient's medical record. In response to the subpoena, the surgeon includes the x-ray and MRI reports received from the pain management specialist, as he used the reports to further diagnose and treat the patient and incorporated them into the medical record. This type of redisclosure of PHI is appropriate.

Patient Transfer

While out of town visiting relatives, a patient is involved in a car accident. She is taken to a local hospital and treated for injuries. Because the patient is unknown to the local doctors and her injuries are extensive, she receives a complete evaluation. Once stabilized, the patient wishes to be transferred to a local rehabilitation hospital to recover from her injuries.

The hospital that provided her with her primary care sends along a copy of the patient's entire record when transferring her to the rehabilitation hospital. In addition, the rehabilitation hospital asks the patient to authorize her family physician to provide information on her past and current healthcare. The family physician opts to send the entire medical record. Upon receiving both medical records, staff members at the rehabilitation hospital choose to use only select information from the two medical records in providing rehabilitation treatment to the patient. The remaining information is kept on file in the medical record but is never used by the rehabilitation hospital to treat the patient.

A lawsuit is filed against the other driver in the car accident. The rehabilitation hospital receives a subpoena to release the medical record. In responding to the subpoena, the rehabilitation hospital chooses to only disclose the information received in the patient transfer that was actually used to treat the patient. Because the patient is attempting to prove that her injuries were the result of the accident and not some preexisting condition, records from the primary care hospital and family physician are also subpoenaed. In this situation, it is appropriate for the rehabilitation hospital to only redisclose the information that was actually used to treat the patient. However, it should be noted that circumstances could exist that would require the rehabilitation hospital to redisclose all the records received from the transferring hospital and family physician.

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Notes

1. Office for Civil Rights, Department of Health and Human Services. "OCR Guidance Explaining Significant Aspects of the Privacy Rule." December 4, 2002. Available at www.hhs.gov/ ocr/hipaa/privacy.html.

2. Hughes, Gwen. "Practice Brief: Defining the Designated Record Set." *Journal of AHIMA* 74, no.1 (2003): 64A-D.

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