

Release of Information under HIPAA (HIPAA on the Job)

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by Margret Amatayakul, RHIA, FHIMSS, and Kathleen A. Frawley, JD, MS, RHIA

With tighter rules and greater penalties, many hospitals are reassessing their disclosure practices, release of information functions, and copy service contracts. What are the issues to be concerned about?

What Rules Apply?

The entire set of privacy standards relates to the appropriate use and disclosure of protected health information. These include issues of:

- consent
- authorization
- opportunity to agree or object
- minimum necessary
- de-identification
- right to request restrictions
- right to an accounting for disclosures

All have important new considerations.

Who's Responsible?

Traditionally, the burden of obtaining consent would fall first on admissions personnel. Many hospitals are concerned that obtaining consent at this point will slow down the process of admissions, which they are trying to speed up. Admissions personnel may also not have adequate background to respond to questions concerning the clinical implications of some of the individuals' rights.

For reasons both related to work flow as well as obtaining informed consent for treatment, some hospitals have started to make significant changes in the admissions area—essentially eliminating patient contact with admissions. Many admissions functions related to information collection, insurance coverage, financial counseling, and preadmissions testing are performed before the patient arrives at the hospital. In other cases, the patient is a direct admit from the emergency department, also bypassing admissions.

What formerly were admissions functions have been taken over by "front end" business office personnel. It has, therefore, become the responsibility of nursing to ensure that appropriate consents exist once the patient arrives at bedside.

One area that remains unclear is the matter of patient-requested restrictions. Although most hospitals are able to admit patients anonymously (as "confidential," "a.k.a.," or VIP patients), this has traditionally been an all-or-nothing process. And, sometimes, it has not worked well between the clinical and financial systems.

Under HIPAA, the patient may request a restriction that is much more granular than in the past. For example, the patient may request that a specific nurse or lab technician not have access to information. While hospitals do not have to accept such restrictions, some hospitals will look to their system vendors for further support for this function. This will also require greater input from clinicians who can evaluate the impact of restrictions on patient care.

Authorization and Accounting for Uses and Disclosures

Because of the privacy rule's specificity with respect to when an authorization is required and when it is not required, many hospitals are cracking down on areas that release information—other than the HIM department. Where in the past radiology may have released a copy of "just the last x-ray report," everyone is becoming much more cognizant of privacy requirements.

Nursing areas are refusing to speak to callers concerning the status of patients, requesting them to contact the patient or his or her personal representative directly. And organizations are beginning to recognize that when an individual presents to an ancillary area, the identity of the individual requesting information must be verified.

All members of the healthcare team are more aware of rules associated with what may and may not be released. They are also more aware of the need to obtain an authorization should a patient later request an accounting of use and disclosure. Many patient care areas that formerly were fairly lax about releasing information have come to realize the associated issues and are directing such requestors routinely to the HIM department.

Minimum Necessary and De-Identification

The final privacy rule requires that organizations limit the personal health information disclosed to the "minimum necessary to accomplish the intended purpose of the use, disclosure, or request." The rule also specifies how health information can be shared without an authorization when it has been properly "de-identified." Determining what the "minimum necessary" is and when to de-identify information requires special expertise. In particular, the jury may still be out on how to determine the minimum necessary.

HIM departments have traditionally been good at gatekeeping for these functions. However, minimum necessary and de-identification require renewed attention in all areas. For example, an HIM department that provides copies of records to a physician for a non-IRB approved research study with patient's name and medical record number removed may not truly remove all identifying information.

The "minimum necessary" standard applies to other areas as well. Some accounting systems dump all accounts receivable files into a collections file, although not all accounts qualify for collections. Further, some of these files contain far more information than is minimally necessary for collections agencies. Many hospitals refuse participation in any surveys requesting patient-identifiable information. However, not all hospitals follow this practice. To respond to such surveys, hospitals will need to negotiate business associate contracts with such requestors or fully de-identify the data according to HIPAA requirements.

How Is Release of Information Affected?

In addition to hospital-wide issues of use and disclosure, the release of information function is specifically coming under increased scrutiny. Many HIM professionals are reassessing their organization's quality of work in this area. Whether outsourced or not, any information released erroneously—always a cause for concern—is now not only an unfortunate incident but could result in penalties for noncompliance with HIPAA.

How Can I Assess Our Release of Information Function?

Traditionally, HIM departments have relied on recipients of incorrect information to report errors in release of information. Under HIPAA, a more proactive stance needs to be taken. There are several activities that can be considered.

Start with policies and procedures:

- Have policies and procedures for release of information been **updated with HIPAA requirements**?
- Do policies and procedures for release of information also reflect more stringent **state requirements**?
- Are policies and procedures for release of information **circulated to all applicable areas** (for example, nursing, admissions/registration)?
- Do all personnel in the facility know how to **obtain copies** of policies and procedures on release of information?
- Do policies and procedures reflect **revision dates** to ensure changes are made when there are changes in rules?

Review the authorization form and process. Does the authorization form:

- request sufficient identifying information to be able to positively select the **correct patient's medical record** for copying? (If the hospital's population has a lot of common names, more information than simply the name and address of patient should be obtained.)
- contain checkboxes for the patient to check off what **specific information**, by type and date, is to be released to meet the minimum necessary requirement?
- ask for the **name or class of person** to whom the information is to be released?
- contain an **expiration date** or event that relates to the individual or purpose of the use and disclosure? (This will require obtaining the purpose of the request.)
- contain a **statement** that information used or disclosed may be subject to redisclosure by the recipient and no longer be protected by the privacy rule?
- contain a checkbox to indicate the identity of the requestor has been **verified** and how (for example, by reviewing a photo identification or matching a signature)?
- are patients given a **copy** of the authorization form?
- are staff thoroughly **trained** in this process? (If "checks and balances" are needed, this could be part of the overall QI function.)
- **include**, if the authorization is for the hospital to request information for its own uses or disclosures or for others, statements as to:
 - purpose of use or disclosure?
 - that the individual has the right to inspect or copy the information to be used or disclosed?
 - that the individual has the right to refuse to sign the authorization?
 - whether there is any direct or indirect remuneration associated with the use or disclosure?

Audit the copying function:

- Is there a **system to review** at least a sample of all information copied before it is released on a regular basis, and if outsourced, that this audit is shared with the provider?
- Does the audit process **check** the copied material against the name and other identifying information as well as the requested content on the authorization form?
- Does the audit process include verification that any material relating to **amendment** from the patient (including a request for amendment that has been denied) that relates to the requested content to be released is also released?
- Does the audit process check that a **copy of the authorization** has been filed in the chart?
- Are **records of the audit** kept in order to provide personnel counseling and to increase the size of the sample as necessary?
- Is there a way to **trend results** and, if necessary, prove oversight of the process?

Audit for releases made without authorization:

- Is there documentation of any release of information made for other than treatment, payment, or operations that does not require an authorization?
- Do release of information personnel know when an authorization is required and when an authorization is not required?
- Is release of information occurring elsewhere in the facility? (Consider using an external audit service to test this.)
- Are records of the audit kept in order to provide personnel counseling and to increase the size of the sample as necessary?

Track complaints:

- Is there a log of callers or other correspondence to the release of information desk concerning any indications that information was:
 - not received?
 - received erroneously?
 - not received in a timely manner?
- Is there a facility-wide information privacy incident reporting mechanism from which release of information complaints can also be identified?

- Is every incident on the log investigated? (Does the HIM department have the authority to investigate and remediate release of information incidents outside the department?
If not, who does? Is there coordination between this individual and the HIM department?)
- Are records of the investigations kept in order to provide personnel counseling?

Train:

- Do all personnel in the HIM department receive training on handling requests for release of information (if only to refer them to designated personnel)?
- Are other personnel from key areas periodically provided training on release of information (if only to refer them to designated personnel in the HIM department)?
- Is a log kept of all release of information training, including who attended and what training was provided?
- Is training accompanied by a certification process?
- Do release of information contract service personnel obtain training from the vendor that is equivalent to the training provided by the facility, or does the contract with the vendor include time for the facility to train and retrain contract service personnel?
- Is there a system of awareness building that keeps release of information requirements in the forefront of the minds of all members of the facility's work force?

Finally, remember that any release of information function that is outsourced must have a business associate contract. (See "HIPAA Compliance Questions for Business Partner Agreements" by Michael Roach in the February 2001 *Journal of AHIMA*.)

For a hospital to be fully compliant with HIPAA's privacy rule, much attention needs to be paid to permitted and required uses and disclosures of all kinds—including the function typically considered "release of information."

Margret Amatayakul, RHIA, FHIMSS, is president of Margret\A Consulting, LLC, an independent consulting firm based in Schaumburg, IL. She can be reached at margretcpr@aol. com. Kathleen A. Frawley is president of Frawley and Associates, LLC, in Montclair, NJ.

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