Release of Information: the Basics

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by Elaine Yaggie, RHIA

Whether you're new to the HIM profession or a long-time expert, release of information presents perennial challenges-especially in light of HIPAA. This article brings you the basics and the latest updates.

Release of health information has been a hot topic for years. Today, more than ever, it is fast becoming a global issue as specialized areas of practice, multitudes of release destinations, and the complexities of medical records complicate the scenario.

In an increasingly diverse and complex healthcare environment, HIM professionals find themselves confronting a myriad of circumstances and issues. We also need to keep up with developing issues like HIPAA, which will require us to reassess our existing policies to ensure compliance with new requirements like the new privacy rule. At the same time, protecting the confidentiality and quality of healthcare is still a priority. As the HIM world explodes with demands for information, how do we balance confidentiality and the dissemination of the information requested? This article will address these issues.

It's a Jungle of Information Out There

Release of information (ROI) comes in all shapes and sizes these days. Every time you think that you've seen or heard it all, a new type of request appears. While in the past we were releasing to insurance companies, attorneys, and regulatory agencies, we are now releasing to business offices of all types for reimbursement of claims, the patients themselves for their own personal files, ombudsmen, social service agencies, law enforcement, research, and more.

What's more, along with the different types of requests, we are dealing with numerous types of records in many specialized areas of practice. These types of records include those related to alcohol and drug abuse, mental health, HIV/AIDS, correctional facility inmate records, independent medical evaluations, Social Security disability evaluations, and photographs, audio tapes, videotapes, and diagnostic tracings.

To make matters more complicated, we're working in a new spectrum of settings-from hospitals to ambulatory clinics, urgent care, physician offices, long-term care, home health, hospice, occupational health, and sports medicine. Some of these practices are free standing and others are affiliated with a hospital or health system.

Some commonly asked questions are:

- how do I know what to release?
- how do I balance the patient's right to privacy with the legitimate need to know by various requesters?
- how do I handle the demanding requester, be it a patient or someone else?
- what medium can I use to release the information?

Each facility should have policies and procedures that define what it can and cannot release. These policies and procedures should be based on federal and state law and standards of practice. AHIMA practice briefs, published monthly in the Journal of AHIMA and available at www.ahima.org, are good places to start in designing these policies. Other important sources to reference include HIPAA's final privacy rule, the federal confidentiality of alcohol and substance abuse rule, the federal privacy act, and state laws.

HIM directors should reevaluate every aspect of their ROI processes to assure compliance with the HIPAA final privacy rule by April 2003. This process will need to include:

- establishment of a notice of privacy practices
- development of a consent for treatment, payment, and healthcare operations
- reevaluation of existing authorization forms
- reevaluation of all ROI-related processes
- reevaluation of disclosure tracking
- modification of charges
- formalization of the patient health information complaint process
- establishment of a system for processing patient amendments
- evaluation and action related to the minimum necessary standard
- consultation with legal counsel about where state versus federal law will prevail

In the meantime, HIM professionals may want to start moving to the HIPAA requirements for a valid authorization detailed in "Authorization Requirements".

Another cardinal rule for release of information is to always document what you have released. The HIPAA final privacy rule requires that covered entities be able to provide an accounting of disclosures for six years prior to the date on which the accounting is requested (with certain exceptions). HIPAA requires the following information be included and provided in such an accounting:

- the date of disclosure
- the name of the entity or person who received the protected health information and, if known, the address of such entity or person
- a brief description of the protected health information disclosed and a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or in lieu of such statement, a copy of the individual's written authorization

One way to adhere to the standards is to document disclosure of protected health information on the authorization form. In addition to the items required by HIPAA, the name of the individual processing the disclosure is also advised.

Some organizations may choose to maintain some type of automated log in place of or in addition to making a notation on the authorization form. Because HIPAA requires providers to track disclosures of patient information, an automated log may be an asset.

Dealing with Difficult People

How many times has your department been the recipient of an uninvited visitor who has asked you to comply with a request immediately? These people can be forceful and intimidating. A good practice is to ask the requester to please take a seat while you check on the availability of the records. This gives you time to review the authorization and the chart and make a decision about whether or not you can accommodate the requester.

Have you ever had a requester who quotes state law when asking you to fill a request? To handle these requests, first make sure the law being quoted is for your state-state laws do not cross state lines. Next, make sure the authorization is valid, that it is signed by an individual authorized by law, and that it meets the elements required by federal and state law. When a request is not covered by facility policy and procedure, consult your supervisor and, if necessary, legal counsel.

Most requesters will respect and appreciate your diligence when you ask that the authorization be completely filled in to comply with your policy or state guidelines. Of course, there will always be the requester who states, "You are the only facility who is demanding this of me." Know that this same requester is making that statement everywhere he conducts business. Calmly listen, but don't back down.

Special Situations

In this day of informed consumers, requests for information are multiplying. Here are some other situations that may occur:

Releasing records of deceased patients

When asked to release the record of a deceased person, check your state laws. Usually the personal representative of a deceased person (for example, the executor of an estate) may exercise all of the deceased patient's rights relative to the disclosure of health information. If there is no executor, the patient's next of kin can be consulted, usually in the following order:

- spouse
- adult child
- parent
- adult brothers or sisters

Orders of consents may vary between states, so be familiar with the laws in your state. Also, determine if a durable power of attorney exists and know whether it expires upon the death of the patient.[1] Be aware that when a patient is divorced at the time of death, the former spouse does not have the right to the patient's records, nor do stepchildren.

Adoption

Many adopted persons are searching for their roots and biological parents. As part of their search, they will ask for their birth record. Again, familiarizing yourself with state law is key, because regulations vary from state to state. Although birth records are sealed, most states allow adoptees to receive information about their birth parents but prohibit access to data that identifies the parents. Some states allow access through a court order or through an adoption registry.

In general, requests from biological parents should be referred to the agency that handled the adoption. Likewise, adopted children trying to trace their biological parents should be referred to the agency that handled the adoption. In states without adoption history programs, children seeking medical history information should consult an attorney to obtain a court order for disclosure of this information. An adopted child should not be permitted to review a parent's record without the parent's written authorization.[2]

Multimedia elements of the record

Multimedia elements of the record, such as photographs, videotapes, audio tapes, and diagnostic tracings, are becoming more and more common. Unless otherwise required by state law, photographs, videos, scans, and other images should not be released to outside requestors without specific written authorization from the patient or his or her legal representative. The authorization should state that the patient agrees to have the photographs released to the requestor and the purpose for which they will be used. This may be incorporated into the facility's standard authorization for release of information form.[3]

Prison inmates

Not everyone lives near a federal prison. However, we should all be aware that federal laws apply to release of health information concerning federal prison inmates.

For instance, the HIPAA privacy rule states that covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate protected health information about the individual, if such information is necessary for the provision of healthcare. And inmates do not have a right to the usual notice of uses and disclosures that the rule mandates for other patients.

Faxing health information

Everyone wants their information immediately, and the most commonly asked question by a requester is: "Will you fax it to me?" Faxing has become commonplace in healthcare organizations, but HIM professionals should take the necessary steps to ensure the security of the information. It's recommended that organizations obtain a written authorization for any use or disclosure of individually identifiable health information made via fax machine when it is not otherwise authorized by the individual's consent to treatment or federal law or regulation.

When transmitting identifiable health information, a confidentiality statement should be included in the cover page stating that the documents "contain health information that is legally privileged and intended only for the use of the individual or entity named above." Should the sender become aware that a fax was misdirected, he or she should contact the receiver and ask that the material be returned or destroyed.[4] (For the complete text of the confidentiality statement, see AHIMA's practice brief

"Facsimile Transmission of Health Information". An updated version is scheduled to be published in the June 2001 *Journal of AHIMA*.)

Each day, HIM professionals are asked to release information that could potentially change the lives of many people. It's an important responsibility, but we are well equipped to design the right policies and procedures to ensure that it is carried out correctly.

Notes

1. Hughes, Gwen. "Last Rites: ROI and the Deceased." In Confidence 8, no. 2 (March/April 2000): 7-11.
2. Hughes, Gwen. "The Ins and Outs of Adoption Information Provision." In Confidence 8, no. 1 (Jan/Feb 2000): 6-7.
3. Carpenter, Jennifer. "Patient Photography, Videotaping, and Other Imaging (Updated)." Journal of AHIMA 70, no 1 (1999): insert.
4. Hughes, Gwen. "Facsimile Transmission of Health Information." Journal of AHIMA, forthcoming.

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Frequently Asked ROI Questions

by **Gwen Hughes**, RHIA

Q: Who can authorize the disclosure of patient health information for a normally competent adult when that individual is unable to make informed decisions for himself?

A: The individual authorized to consent to the release of patient health information on behalf of a critically ill, comatose, or incapacitated adult patient who is unable to make informed decisions would be the same individual authorized to consent to treatment. The order varies by state, but it is often as follows:

1. the appointed guardian of the patient
2. the individual to whom the patient gave a durable power of attorney that encompassed the authority to make healthcare decisions
3. the patient's spouse from a marriage recognized by law
4. adult children of the patient
5. parents of the patient
6. adult brothers and sisters of the patient

No person may authorize release of health information on behalf of the patient when a person of higher priority refused to give such authorization. The order of consent may differ between states. Some states make provisions for domestic partners.

Q: Who can consent when the patient is incapacitated and a patient representative is not available?

A: In the case of urgent or continuing care, disclosure of health information to another healthcare provider can be made without consent. Often, such a provision is part of a state's health information disclosure law. Where no state disclosure law exists, HIM professionals must refer to professional standards of practice. AHIMA's practice brief on disclosure states, "Information may be disclosed without patient authorization as required for continued care."[1] Additionally, in the case of an emergency, an exception to consent is well recognized in case law.

The standards for privacy of individually identifiable health information also allow for the disclosure of an individual's health information without authorization for treatment, payment, and healthcare operations.[2]

Q: When can a minor authorize the disclosure of his or her own records?

A: A minor is an individual who has not attained the age of majority specified in applicable state law, or, when no age of majority is specified in state law, the age of 18. A minor may authorize the disclosure of his or her records when the minor is emancipated. Some states declare minors "emancipated" when they are:

- married
- living away from home and self-supporting
- declared legally emancipated by a court of law
- pregnant and unmarried
- on active duty with the United States Armed Forces
- at least 16 years old and living independently from parents or guardians[3]

A minor may also authorize the disclosure of his or her records when the minor patient, acting alone, has the legal capacity under state law to apply for and obtain alcohol or drug abuse treatment. In this case, any written consent for disclosure may be given only by the minor patient. This restriction includes any disclosure of patient identifying information to the parent or guardian of the minor for the purpose of obtaining financial reimbursement.

Where state law requires consent of a parent, guardian, or other person for a minor to obtain alcohol or drug abuse treatment, any written consent for disclosure must be given by both the minor and his or her parent, guardian, or other person authorized under state law to act in the minor's behalf.[4]

A minor may also consent when the minor, acting alone, has the legal capacity under state law to apply for and obtain specific types of medical care and treatment. For example, in some states, a minor might be able to consent independently to family planning and treatment, or outpatient mental health or substance abuse treatment. If state law allows a minor to consent independently to such treatment, disclosure may be given only by the minor patient.

As state laws vary, it is important to check consent and disclosure law relative to family planning and mental health treatment.

Q: Where can I obtain copies of my state laws relative to who may consent?

A:

1. Your state hospital association may publish a book on informed consent that addresses who may consent and may include copies of your state's laws. To inquire, phone your state hospital association.
2. See the Web site www.alllaw.com/state_resources to search for state law relative to consent.
3. Ask your facility's legal counsel to provide you with copies of applicable state consent law.
4. Some facilities have strong working relationships with their malpractice insurer, who may be able to provide copies of applicable state law.
5. Depending upon the size of your facility or community library, it may contain a copy of your state's statutes and administrative code. If it does, you can research these books yourself, or ask the librarian for assistance.
6. In communities with a law school, the reference desk at the law school library may research and provide copies of applicable state law for a minimal fee.

It is important that HIM professionals are familiar with state and federal law, and that healthcare organizations consult these regulations when formulating their policy on consent.

Notes

1. Brandt, Mary. "Practice Brief: Disclosure of Health Information." Journal of AHIMA 67, no. 9: (1996).
2. CFR, Parts 160-164, Standards for Privacy of Individually Identifiable Health Information; proposed rule.
3. Brandt, Mary. Release and Disclosure: Guidelines Regarding Maintenance and Disclosure of Health Information. Chicago: American Health Information Management Association. 1997.
4. Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Chapter 2, Part 2, Subpart B, Section 2.14

(Excerpted from *In Confidence*, AHIMA's newsletter on healthcare privacy. For subscription information, go to http://www.ahima.org/.)

Authorization Requirements

- HIM professionals should be aware of the requirements of the HIPAA privacy rule regarding valid authorizations. It's not too early to move toward implementing these requirements. According to the rule, an authorization includes:
- "A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion
- The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure
- The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure
- An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure
- A statement of the individual's right to revoke the authorization in writing and the exception to the right to revoke, together with a description of how the individual may revoke the authorization
- A statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and can no longer be protected by this rule
- Signature of the individual and date
- If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual."

Read the text of the final privacy rule online at http://aspe.os.dhhs.gov/admnsimp.

Release of Information in Brief

Check out these AHIMA resources on release of information:

This issue includes a number of updated and new practice briefs on this topic:

- Consent for the Use or Disclosure of Individually Identifiable Health Information
- Laws and Regulations Governing the Disclosure of Health Information
- Notice of Information Practices
- Patient Anonymity (Updated)
- Release of Information for Marketing or Fund-raising Purposes (Updated)

Other AHIMA practice briefs are available at http://www.ahima.org/:

- Destruction of Patient Health Information (Updated)
- Information Security: A Checklist for Healthcare Professionals (Updated)

- Managing Health Information Relating to Infection with the Human Immunodeficiency Virus (HIV) (Updated) (scheduled to be updated in June 2001)
- Release of Information Laws and Regulations
- Patient Photography, Videotaping, and Other Imaging (Updated) (scheduled to be updated in June 2001)

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