Restriction Requests Pose New Challenges: HIM Departments Should Prepare Now for Patient Queries

by Rita K. Bowen, MA, RHIA, CHP

Creating a process to handle patients' requests for restrictions on the use or disclosure of their health information may be one of the last items on your HIPAA checklist. Here's how to take care of it.

One of the benefits extended to patients under the HIPAA privacy rule is their right to restrict the use or disclosure of their protected health information (PHI). Accordingly, HIPAA requires covered entities to provide individuals with this right to restrict disclosures, though the covered entity is not required to agree to these restrictions (164.502). In this article, we'll explore ways to address this patient right and the policies that will be need to be in place.

Putting Policies and Procedures in Place

To begin, let's review the groundwork for developing restriction policies and procedures:

- Defining the contents of the designated record set.
- Mapping the flow of PHI within your organization to determine if it can be restricted.
- Determining the required reporting items from your state. Although Congress intended the HIPAA legislation to protect state privacy laws that are more protective of privacy than federal regulations, the federal preemption in each state is difficult to predict and requires a thorough legal analysis.[1]
- Preparing the patient privacy notice. The privacy notice should describe the use and disclosure of patient information and provide an opportunity to agree or object to such disclosures.

Once the above elements are in place, your organization can draft policies and procedures that explain that covered entities must permit individuals the right to request that uses or disclosures of PHI be restricted for treatment, payment, or healthcare operations, and for release to other individuals who may be involved in the patient's care.[2] Additionally, the policies should include information on:

- How the patient can request to restrict information
- Designation of an appropriate person to accept and respond to requests
- The response documentation process
- How to ensure that an accepted restriction is honored
- The restriction termination process

Providers are not required to agree to any requested restriction, especially if it can be proved that such a restriction would interfere with legitimate treatment, payment, or operational processes of the organization. A designated individual may respond to requests for restriction, provided case scenarios have already been developed and tested as to the reasonableness of the patient's request. A team will need to evaluate undocumented request scenarios so that the patient's request receives thorough evaluation for compliance purposes. Further, the entity must be able to support each decision made to deny patients' requests for restriction of their information.

Healthcare providers must also accommodate reasonable requests for alternative means of communications and may not condition the accommodation on the basis of an explanation from the individual (164.522(b)(1)(I) and (2) (iii)). Health plans, in turn, must accommodate reasonable requests if the individual clearly states that the disclosures of all or part of the information could endanger the individual, and the plan may condition the accommodation on the receipt of such a statement in writing.

Responding to Requests

Every request to restrict information will require an easily understood written response that provides the basis for the approval or denial of the request. Covered entities must maintain an electronic or written record of the restriction decision for a minimum of six years from the date of its creation or the last date for which the restriction remains in effect, whichever is later.

If the patient's request is denied, the organization must provide direction to the patient on how to submit a written disagreement with the decision and how the requestor may file a complaint with the Department of Health and Human Services (HHS). When an organization responds negatively to a patient's request for a restriction, it may be best to meet with him or her in person. Patients may not understand why it is important that their health information be shared, but once they understand the need for information flow and their right to an accounting of disclosures, they often are amenable to the organization's use of their information.

If an organization agrees to a patient's request for restriction of PHI, it will need to ensure that the restriction is honored. Because the restriction process may be new to the organization, make sure that the system works, that staff members know who the contact person is, and that they are following the proscribed procedures. Develop checklists to ensure that the components needed to implement the process are in place. Components of your monitoring plan could include:

- Staff education on the rights behind the restriction process
- Availability of needed forms and educational materials
- Routing process for each request
- Documentation processes for request receipt, review, and response
- Thorough testing of critical processes, especially in high-risk, high-volume, problem-prone areas
- HIPAA "sentinel" events

Every member of your work force needs education about recognizing when a patient has been granted a request to restrict information. For example, you might have a special flag applied at the enterprise access level that indicates that a restriction of some type has been requested by the patient. Then, requests for such information could be routed to a central location for authorization or exception approval and notification processes. If your organization uses this method, it's critical that all members of the work force use the enterprise access level query process as their first step in accessing patient information. If the staff often bypass this step and move directly into independent systems such as their own department databases (such as radiology, laboratory, etc.), your facility risks violating the restriction.

Exceptions to the Rule

When a covered entity agrees to a restriction, it must do so in writing and ensure that it follows the restriction requirements. Similarly, the covered entity's business associates must also comply with the restrictions. HHS, in its commentary preceding the privacy rule, encourages covered entities to inform others of restrictions, as long as the communication does not disclose the restricted information itself. If your organization has considered scenarios in which a patient can restrict PHI, the time to test the feasibility of these restrictions is now.

Once the restriction is accepted, it is legally binding and covered entities are bound to those restrictions for as long as the individual requests except when superseded by mandatory or permitted disclosures for public purpose (164.512). Additional exceptions include:

- emergencies
- public health authority (such as collection of information for controlling disease, injury or disability, exposure to communicable disease, report of abuse or neglect)
- Food and Drug Administration (to track products or conduct postmarketing surveillance or to report adverse events associated with product defects)
- treating the employee as part of workplace surveillance
- work-related illness or injury or workplace-related medical surveillance
- OSHA compliance

When restricted information has been released due to emergency need or other allowable exception, the covered entity is responsible for requesting that the information not be further disclosed. Consider creating a form letter for this purpose and keeping a copy in the patient's file. Part of your testing should ensure that the emergency exceptions for the release of restricted information are appropriately reported and documented.

If information is not handled appropriately, consider using the Joint Commission's sentinel event process.[3] When applied in the HIPAA privacy context, a sentinel event might be defined as an unexpected occurrence involving restricted information. These events are sentinel because they signal the need for immediate investigation and response. HHS recognized this when it included the requirement to take action to mitigate harmful effects of use or disclosure in violation of the policy (164.530(f)). The analysis should focus on systems and processes that require improvement. Try asking the following questions:

- What: Which steps of the process were not followed?
- Where: Is this a problem at one site or in all sites?
- When: Is the problem related to time of day or day of the week?
- Who: Is the problem related to positions or persons?
- Why: Are there factors that impede staff members from carrying out their responsibilities in the program?

Are You Ready for Requests for Restrictions?

Consider using the following implementation plan:

- Defining your designated record sets
- Mapping PHI within and outside of your organization
- Defining the use of PHI within your notice of privacy practice
- Considering adding a provision to the consent-to-treat form that briefly describes the use of PHI and refers the patient to the privacy notice for more detailed information
- Developing restriction request forms
- Establishing a centralized process for routing restriction requests
- Establishing a response process for restriction requests and assigning appropriate personnel to administer the process
- Developing a workgroup that anticipates the types of restrictions requested, develops scenarios to determine "reasonableness," and has scenario responses ready
- Determining workflow for response to restriction requests to ensure review and decision within the rule's time frame
- Developing information materials that will inform the individual of the internal process and time frames for response
- Developing a standard communication format to inform the individual of the decision and any recourse he or she may have
- Ensuring the personnel who handle patient information are aware that restrictions exist
- Educating personnel on how to respond when the restriction flag is applied to the patient's information
- Ensuring that requests and documented response regarding restrictions on use and disclosure is retained for six years

Terminating the Agreement

A provider or covered entity may terminate its agreement to a restriction of PHI if one of the following three conditions is met:

- the individual agrees to or requests the termination in writing
- the individual orally agrees to the termination and the oral agreement is witnessed and documented
- the covered entity informs the individual of the termination, indicating that the termination is effective only in respect to PHI created or received after the individual has been informed

According to the rule's preamble (65 FR 82462, App. V), a note in the patient's medical record is sufficient documentation regarding the termination of patient restrictions. As the patient's request was legally binding, consider requiring that documentation to discontinue any restriction of PHI be witnessed or notarized.[4]

Consistency will be vital to ensuring patients' rights are upheld and facilities' needs are met when your organization responds to requests for restrictions. The more thoroughly you document your plan of action now, the more successful your organization will be.

Have You Held a Privacy Drill Lately?

Wondering if your policies and procedures are effective? Public health licensing agencies require fire and disaster drills, so consider holding a privacy drill. For example, you could use the "secret shopper" concept to determine if employees understand privacy policies and how to respond to a customer's request. When you conduct these drills, don't forget to test a variety of sites on different shifts and days. All your resources might be available Monday through Friday, but what would happen at midnight on Saturday? Drills can be monitored through direct observation or by asking staff members to document the steps they would take. The goal of the drills is to raise staff awareness. If you can make this fun for staff members they will be more likely to retain the knowledge.

Notes

1. Consider using legal counsel to assist with the preemption analysis. Additional legal resources include the Health Privacy Project Web site at www.healthprivacy.org/info-url_nocat2304/info-url_nocat.htm or AllLaw.com state resources at www.alllaw.com/state_resources/.

2. Gue, D'Arcy Guerin and Steven J. Fox. Guide to Medical Privacy and HIPAA. Washington, DC: Thompson Publishing Group, 2002.

3. For more information, go to the Joint Commission Web site at www.jcaho.org.

4. Guide to Medical Privacy and HIPAA.

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Article citation:
Bowen, Rita K. "Restriction Requests Pose New Challenges: HIM Departments Should Prepare Now for Patient Queries." *Journal of AHIMA* 74, no.2 (2003): 32ff.