

Understanding Release of Information in Long-Term Care Facilities

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by Carmilla Marsh, RHIA

Release of information is a perennial challenge for HIM professionals in all care settings. However, long-term care offers some special challenges, especially in the light of the HIPAA privacy rule published in December 2000 (with a compliance date of April 2003). This article reviews the basics and takes a look at some special considerations.

One helpful distinction is between the concepts of “consent” and “authorization.” According to the privacy rule, covered entities under HIPAA are required to obtain a general “consent” to use or disclose protected health information (PHI) to carry out treatment, payment, and healthcare operations as defined by the regulation. For specific disclosures not otherwise addressed by law, a written “authorization” is required.

A challenging issue for long-term care facilities is determining who can sign the consent or authorization. Often the resident is incapacitated or incompetent but there is not an established legal representative. If state laws do not provide direction, facilities are left trying to determine the best person to represent the resident’s interest although they do not have legal authority.

Content of the Authorization

First, we’ll look at authorization. According to the privacy regulations, a valid general authorization must contain all of the following:

- description of the information to be used or disclosed
- name of the person authorized to make the disclosure
- name of the person to whom disclosure may be made
- expiration date
- statement of individual’s right to revoke
 - statement about exceptions to the right to revoke
 - statement about how the individual may revoke the authorization
- statement about redisclosure and loss of protection
- signature of individual and date
 - if the authorization is signed by the individual’s representative, a description of that person’s authority

The privacy rule provides specific information explaining what constitutes a defective authorization, how a resident or patient can revoke the authorization, and situations when an authorization does not have to be obtained.

Clearly, long-term care facilities need to review their existing policies and procedures and make appropriate modifications to address the new requirements found under the final privacy rules. (Disclosure of health information may also be protected by other regulations including the Privacy Act of 1974, the Confidentiality of Alcohol and Drug Abuse Patient Records rule, Medicare Conditions of Participation, and, in some cases, state law.) In addition, facilities need to review their existing authorization and modify as needed to reflect the required elements of an authorization under the privacy rules. Staff need to be trained concerning the appropriate procedures for release of information.

Many long-term care facilities have the resident sign an authorization form when requesting copies of their medical record. HIPAA allows a facility 30 days to respond to the authorization. It is important to remember that federal regulations require a facility to act on the resident’s request for copies within two working days, overriding the 30 days allowed by HIPAA.

What About Consent?

Now we'll look at "consent." In general, consent is required before protected health information is used or disclosed to carry out treatment, payment, and healthcare operations. However, long-term care facilities may condition treatment on the provision of initial consent by the resident or patient, and the rule allows a long-term care facility to carry out treatment, payment, or other healthcare operations without consent in special situations. (In contrast, the authorization generally cannot be a condition for treatment, payment, or healthcare operations.)

In certain situations, the rule allows the opportunity for an individual to agree or object to the disclosure of PHI. Long-term care facilities may use or disclose PHI without written authorization, provided the individual is informed in advance of the disclosure and has the opportunity to agree to, prohibit, or restrict the disclosure. One of the challenges with the consent is obtaining the signature upon admission. If the resident is incompetent or incapacitated and the family is unable to accompany a resident, the consent may not be signed at the time of admission. If the representative does not agree with the consent or requests a restriction after admission, the facility may have a difficult time honoring the request or, if necessary, discharging. However, PHI can be used or disclosed without consent, authorization, or opportunity to agree or object to organizations such as:

- public health authorities for purposes such as controlling or preventing disease or collecting vital statistics
- public health or government authorities for law enforcement purposes, such as reporting on victims of abuse, neglect, or domestic violence
- health oversight agencies for activities authorized by law
- judicial and administrative proceedings, such as compliance with a court order or subpoena
- law enforcement officials seeking information for the purpose of identifying a suspect, witness, or victim of a crime
- coroners, medical examiners, and funeral directors to identify a deceased person or determine a cause of death
- organ procurement organizations or other entities facilitating donation of organs, eyes, or tissues
- employers responsible for workplace medical surveillance

Prior to any disclosure permitted by the rule, the long-term care facility must verify the identity of the person requesting PHI and the authority of the person to access the PHI.

Accounting of Disclosures

Under the privacy rules, long-term care facilities are required to maintain an accounting of disclosures of PHI made during the prior six years. Disclosures that do not have to be included on the accounting log include those necessary to carry out treatment, payment, or healthcare operations; those made for the facility's directory; or those made to the individual, as well as for national security or law enforcement purposes.

The accounting of disclosures of PHI must be in writing and identify for each disclosure:

- date of disclosure
- name and address of entity/person receiving the PHI
- brief description of the PHI disclosed
- brief statement of the purpose of the disclosure

Long-term care facilities will need to determine which disclosures require tracking. A good place to start is the list of disclosures that do not require a consent or authorization (see section on consent). For example, disclosures made during a health department survey should be tracked because it is considered a health oversight activity. Because it is not always clear what resident information was obtained, it is a good rule of thumb to document in every resident's disclosure log when a survey is conducted.

In many instances, the existing policies and procedures in a long-term care facility will require only minor modifications to bring the facility into compliance with this portion of the privacy rule. For long-term care facilities that do not have a copy of the final privacy rule or the guidance that was issued in July 2001, this information can be accessed at <http://aspe.hhs.gov/admsimp/Index.htm>.

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