

HIPAA IMPLICATIONS: Patient Rights Under HIPAA



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Overview



- ⌘ A matter of perspective
- ⌘ Mr. Smith's incredible journey

Competing Goals



- ⌘ National standards for medical privacy must recognize the sometimes competing goals of improving individual and public health, advancing scientific knowledge, enforcing the laws of the land, and processing and paying claims for health care services.

Balancing of Interests



- ⌘ This ease of information collection, organization, retention, and exchange made possible by the advances in computer and other electronic technology affords many benefits to individuals and to the health care industry.... At the same time, these advances have reduced or eliminated many of the financial and logistical obstacles that previously served to protect the confidentiality of health information and the privacy interests of individuals.

Trust



- ⌘ More than anything else, the relationship between a patient and a clinician is based on trust. The clinician must trust the patient to give full and truthful information about their health, symptoms, and medical history. The patient must trust the clinician to use that information to improve his or her health and to respect the need to keep such information private.

Breach of Trust



- ⌘ A breach of a person's health privacy can have significant implications well beyond the physical health of that person, including the loss of a job, alienation of family and friends, the loss of health insurance, and public humiliation.

Private matters



- ⌘ The bottom line is clear. If we continually, gratuitously, reveal other people's privacies, we harm them and ourselves, we undermine the richness of the personal life, and we fuel a social atmosphere of mutual exploitation.
- ⌘ Janna Malamud Smith, *Private Matters: In Defense of the Personal Life* (1997).


What makes us civilized



⌘ Privacy also encompasses our right to self-determination and to define who we are. Although we live in a world of noisy self-confession, privacy allows us to keep certain facts to ourselves if we so choose. The right to privacy, it seems, is what makes us civilized.


⌘ *The Right to Privacy*, Ellen Alderman and Caroline Kennedy (1995)

Mr. Smith goes to the
hospital...



HIPAA's impacts and
implications

Mr. Smith, a prominent member of the community, is brought to the ED unresponsive with a gunshot wound to the abdomen. Dr. Goodcare examines the patient and begins resuscitative efforts.




⌘ The hospital is required to:

- ☑ Obtain patient consent for use of PHI in treatment, payment, and healthcare operations
- ☑ Provide a notice of its privacy practices


⌘ Providers are required to obtain consent before treatment except in emergencies, if they are required by law to treat, or if there are barriers to communication and consent is “inferred.”

Mr. Smith's family notes that he has been depressed and is in psychotherapy at another facility. They are concerned the GSW may have been self-inflicted. Dr. Goodcare requests the psychotherapy notes.




- ⌘ HIPAA has special protections for psychotherapy notes. The general consent for treatment, payment, and healthcare operations does not extend to psychotherapy notes. However, HIPAA allows for emergency access which must be invoked since the patient is comatose.
- ⌘ The minimum necessary standard does not apply because the information is requested for patient care.

The family also notes that Mr. Smith maintains a personal health record at MyHealthRecord.com, and Dr. Goodcare requests emergency access to this information.



- ⌘ MyHealthRecord.com is not a covered entity under HIPAA.
- ⌘ Dr. Goodcare does not need to limit his request to the minimum necessary because he needs the information to treat Mr. Smith.

In the meantime, the police, having apprehended a suspect, request information about the gunshot wound to help them with their investigation.



⌘ The information may be disclosed without Mr. Smith's authorization only if:

- ⊞ He is suspected to be a victim of crime
- ⊞ The doctor is unable to obtain his consent because of incapacity
- ⊞ The law enforcement official represents that:
 - ⊞ this is violation of law by a person other than Mr. Smith
 - ⊞ the information will not be used against Mr. Smith
 - ⊞ the information is needed immediately
- ⊞ The doctor, in his professional judgement, determines the disclosure is in Mr. Smith's best interest


Mr. Smith regains consciousness, and his condition stabilizes.



⌘ The hospital must:

- ☑ Obtain his consent for use of his PHI
- ☑ Provide him with a notice of privacy practices
- ☑ Tell him information will be put in the facility directory and allow him an opportunity to object

Mr. Smith's family asks Dr. Goodcare for an update on his condition and prognosis.



- ⌘ Dr. Goodcare must tell Mr. Smith he would like to discuss his condition with his family and give Mr. Smith an opportunity to object or limit the information disclosed to his family.

The press demands to know his condition.




⌘ HIPAA allows release to the public of directory information, including:

- ☒ patient name
- ☒ location in the facility
- ☒ description of the patient's condition in general terms

⌘ Provided that:

- ☒ Mr. Smith was informed about this use and given the opportunity to object
- ☒ The press asks for Mr. Smith by name

ED screening software identifies Mr. Smith as a candidate for a research study on gunshot wounds. Research coordinator arrives in the ED, obtains informed consent, and starts the research protocol.




- ⌘ Clinical research studies can access patient information without authorization provided the research protocol has been approved by an IRB or privacy board
- ⌘ Study design falls under specific new waiver requirements that HIPAA delegates to the IRB or privacy board
- ⌘ Mr. Smith's consent for participation in the research protocol is required under FDA regulations

Patient Accounting contacts Mr. Smith's insurance company online to verify eligibility. The insurance company requests additional information.




- ⌘ The hospital must have a business associate contract with the insurance company, even though both are covered entities
- ⌘ The minimum necessary standard applies:
 - ☑ As a CE, insurance company is required to request minimum information necessary
 - ☑ Hospital can presume insurance company has requested minimum necessary because the request is coming from a CE

Dr. Goodcare admits the patient and dictates an ED note, which is transcribed by an outside vendor.



- ⌘ The transcription company is a business associate to the hospital. The hospital must have a business associate contract with the transcription company that meets HIPAA requirements.

Following Mr. Smith's recovery and discharge, the hospital foundation contacts his family for a contribution.




- ⌘ The final rules permit this use of PHI, provided that notification of this use was included in its notice of privacy practices.
- ⌘ The request must tell Mr. Smith how he can ask to be removed from the contact list for future solicitations.
- ⌘ If Mr. Smith asks to opt out of future mailings, the hospital must make reasonable efforts to honor his request.

Medical students participating in Mr. Smith's care write up the case for presentation at grand rounds.



- ⌘ HIPAA's definition of "health care operations" includes *conducting training programs in which students, trainees, or practitioners in healthcare learn under supervision to practice or improve their skills as healthcare providers*
- ⌘ No authorization is needed, since this is covered in Mr. Smith's general consent
- ⌘ The minimum necessary information should be used; Mr. Smith should not be identified by name

Mr. Smith, curious about what's documented in his medical record, returns to the hospital and asks to review his record.



- ⌘ Patients have the right to access and copy designated record sets for as long as CE maintains information
- ⌘ No automatic right to access:
 - ☒ psychotherapy notes
 - ☒ information in criminal, civil, or administrative action
 - ☒ PHI exempted by CLIA
- ⌘ CE may deny request under some circumstances
- ⌘ CE must act upon request within 30 days (60 days if information is off-site)

Mr. Smith wants to know to whom the hospital has released information from his record.



⌘ Individuals have the right to request an accounting for disclosures of PHI for 6 years prior to the request

⌘ Exceptions:


- ☑ payment, treatment, or operations
- ☑ to the individual
- ☑ for the facility directory or those involved in care
- ☑ for national security or intelligence purposes
- ☑ to correctional institutions and law enforcement
- ☑ prior to the compliance date

Mr. Smith wants to know to whom the hospital has released information from his record.



- ⌘ CE must act on request within 60 days (possible 30-day extension)
- ⌘ CE must provide one free accounting per year; may charge for subsequent requests
- ⌘ Written accounting of disclosures must include:
 - ☑ Date of disclosure
 - ☑ Person to whom information was disclosed
 - ☑ Brief description of information disclosed
 - ☑ Copy of authorization or request for disclosure
- ⌘ Documentation retained for at least 6 years

In his review of the record, Mr. Smith finds information that he believes is incorrect. He asks to have his record amended.



- ⌘ Individual has right to request amendment:

- ☑ in a designated record set

- ☑ for as long as CE maintains information

- ⌘ CE may require written request with rationale for change

- ⌘ CE has 60 days to act (with possible 30-day extension)

- ⌘ If request is granted, CE must:

- ☑ notify individual that amendment was accepted

- ☑ inform relevant persons identified by individual

What is a designated record set?



⌘ Information used by CE to make decisions about individuals

⌘ For providers, includes:

☑ medical records

☑ billing records

⌘ For health plans, includes:


☑ enrollment records

☑ payment records

☑ claims adjudication records

☑ case management records


The hospital, after reviewing his request for amendment and discussing it with Dr. Goodcare, denies Mr. Smith's request.



⌘ CE may deny request if protected health information:

- ☑ was not created by CE (unless originator no longer available)
- ☑ is not part of designated record set
- ☑ was not available for inspection
- ☑ is accurate and complete

The hospital, after reviewing his request for amendment and discussing it with Dr. Goodcare, denies Mr. Smith's request.



⌘ If request for amendment is denied:

- ☑ CE must provide timely, written notice to individual

- ☑ Notice must explain:

 - ☑ reason for denial

 - ☑ right to submit written statement of disagreement or have request included with future disclosures

 - ☑ individual's right to complain to CE or HHS


⌘ CE may prepare rebuttal statement to individual's statement of disagreement; must give copy to individual

Mr. Smith's attorney requests a copy of his record.



- ⌘ Patient authorization is required
- ⌘ Valid authorization must be in writing and contain:
 - ☑ Statement that CE will not condition treatment, payment, or enrollment on authorization
 - ☑ Purpose of disclosure
 - ☑ Statement that individual may inspect or copy information to be disclosed
 - ☑ Statement that individual may refuse to sign
 - ☑ Disclosure of any payment to CE that will result
- ⌘ Copy of signed authorization to individual

A doctoral student at the local school of public health is conducting research on gunshot wounds. She requests information on all gunshot wounds treated by the hospital in the past year.



- ⌘ This information may be released without patient authorization if it is de-identified.
- ⌘ To be considered “de-identified,” cannot contain any of 18 specific identifiers of individual and his/her relatives, employers, or household members
- ⌘ If any identifiers remain, it may be released if a qualified statistician determines risk of re-identification is very small

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