

# ***RELEASE OF INFORMATION AFTER THE APRIL 14, 2003 COMPLIANCE DATE***



**The Seventh National HIPAA Summit  
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# Agenda

- Patient Rights and Release of Information:
  - Privacy Notice
  - Authorization
  - Access
  - Amendment
  - Right to Request Restrictions on Uses and Disclosures of PHI
  - Right to Confidential Communications
  - Right to Agree or Object
  - Right to an Accounting of Disclosures
  - Right to file Complaint with entity and/or OCR

# Agenda, continued

- Release of Information - Specific Circumstances:
  - Workers Compensation
  - Law Enforcement
  - Psychotherapy Notes
  - Sensitive/Privileged Information
  - Subpoenas
  - Other
- General Considerations:
  - Minimum Necessary
  - Safeguarding PHI
  - Transmitting PHI (fax, e-mail)

# Patient Rights

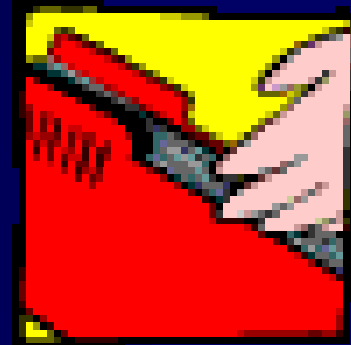
## Right to Receive Privacy Notice

- Privacy Notice describes:
  - Permitted Uses and Disclosures (without authorization)
  - Uses and Disclosures that Require Authorization
  - Patient Rights
- Providers are required to make “good faith effort” to obtain written acknowledgement of receipt of Notice
  - Health Plans – acknowledgement is optional

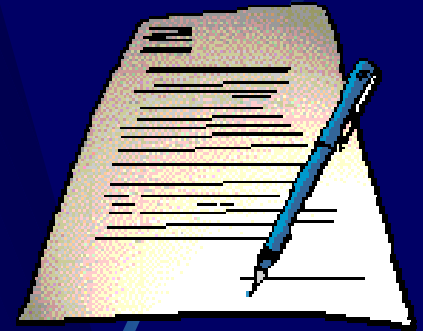


# Use of PHI for Treatment, Payment, Operations

- Patient is informed via Privacy Notice
  - Treatment activities
    - Clinical care
    - Coordinating care among providers
  - Payment activities
    - To obtain insurance pre-approval for services
    - Payment for treatment provided
  - Operations
    - Quality Improvement/Risk Management
    - Infection Control
    - Physician Credentialing



# Patient Rights Authorization



- When is an authorization required?
  - Requested by family member
    - Operationally some entities obtain authorization for release of PHI to the patient, although HIPAA does not require this
  - Requested by an attorney
  - Requested by other users such as life insurance, disability companies
  - As required by state law

# Valid Authorization

- A valid authorization must include:
  - who is releasing the information
  - who is receiving it
  - the specific information being released
  - the purpose for the release
  - expiration date
  - authentication (signed and dated)
    - identity or authority of personal representative as appropriate, with signature and date

# Valid Authorization

- A valid authorization must also include statements that:
  - The authorization can be withdrawn
  - Refusal to sign the authorization will not affect the patient's treatment, payment, or health plan enrollment
  - There is a potential for re-disclosure by the recipient



# Patient Rights

## Access to PHI



- Right to view or request copies

- VIEWING:

- By appointment only
- Staff person present
  - Ensures integrity of record

- COPYING:

- Generally within 30 days of request
  - 30-day extension possible if record located off-site
  - Patient must be notified of this in writing

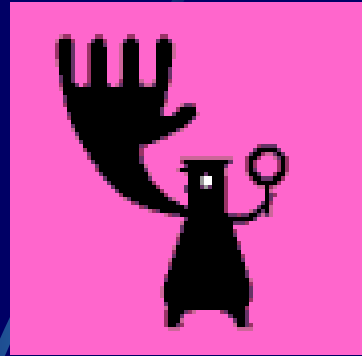
# Patient Rights

## Right to Request Amendment

- Physician makes final determination whether to grant or deny request
- Either way, decision communicated to patient in writing
  - Within 60 days
  - 30 day extension period is allowed if needed

# Patient Rights

## Right to Request Restrictions



- Right to request a restriction in permitted uses and disclosures of PHI (e.g. for TPO)
- Patient put request in writing if possible
- Oral requests must be documented
- Covered entities are not required to agree to a requested restriction

# Patient Rights

## Right to Confidential Communications

- Providers must permit individuals to request and must accommodate reasonable requests by individuals:
  - To receive PHI by **alternative means** or **alternative locations**
- Health Plans must permit individuals to request and must accommodate reasonable requests for confidential communications, *if the individual clearly states that disclosure of the PHI could endanger them.*

# Patient Rights

## Right to Agree or Object

- Covered entities may use or disclose PHI without authorization, provided that the individual is informed in advance and has the opportunity to agree or prohibit the disclosures related to:
  - Hospital Directories
  - Involvement in the individual's care and notification purposes

# Patient Rights

## Right to Agree or Object - Directories



- Information that can be released to visitors that inquire about a patient by name:
  - Location
  - Condition
- Clergy can be given information on religious affiliation without asking for patient by name.

# Patient Rights

## Accounting of Disclosures

- Patients have the right to obtain a listing of all disclosures EXCEPT those:
  - For treatment, payment, or “operations” (TPO)
  - That the patient has authorized
  - Disclosures made directly to the patient
  - For national security and/or to correctional institutions
  - As part of a limited data set, or
  - Those that occurred prior to April 14, 2003

# Patient Rights

## Accounting of Disclosures

Disclosures that DO need to be included in report:

- Public health reporting
  - Communicable diseases, suspected child or elder abuse
  - Vital statistics reporting, such as births and/or deaths
- FDA reporting/surveillance/as required by law
  - Cancer registry,
  - Food and drug interactions,
  - Implant device tracking
- Health Oversight agencies
  - Medicare conditions of participation
- Judicial and administrative proceedings



# Patient Rights

## Accounting of Disclosures, cont'd.

Disclosures that DO need to be included in report:

- Employers/Workers Compensation
- Law enforcement
- Coroner or medical examiners
- Tissue or organ procurement agencies
- Research disclosures based on IRB waiver of authorization

# Patient Rights

## Accounting of Disclosures

- The accounting must include for each disclosure:
  - Date of the disclosure
  - Name of entity receiving the PHI
  - Description of PHI disclosed
  - Purpose of the disclosure

*Streamlined tracking is available when multiple disclosures are made for the same purpose*

# Release of Information Specific Circumstances

- Redisclosing other Provider Records
- Worker's Compensation
- Deceased Individuals
- Law Enforcement
- Psychotherapy Notes
- Privileged/Sensitive Information
- Subpoenas
- Other Conditions

# Re-disclosing Other Provider Records

- When records from another provider or covered entity are contained in your records, you may include them in the disclosure if:
  - The patient asks for them
  - To comply with a valid authorization
  - To comply with legal process

# Certifying Records From Another Provider

- Certification form may have to be modified to state:
  - The information was received from another healthcare provider or facility
  - You received it in good faith
  - You cannot certify or testify as to the completeness, accuracy, or record-keeping practices of the original provider

# Worker's Compensation – Without Authorization

- May disclose to worker's compensation insurers, state administrative agency, or employers:
  - As necessary to comply with applicable federal and State law (see 45 CFR 164.512(a) and 45 CFR 164.512(I))
  - To obtain payment for healthcare provided to the injured or ill worker (see 45 CFR 164.502(a)(1)(ii))
  - Limited to that needed for claim

# Worker's Compensation – With Authorization

- ONLY if authorized by the patient
  - Records related to pre-existing conditions
  - Records related to co-existent conditions
  - Records privileged under State law requiring specific release (HIV test results for instance)

# Deceased Individuals

- Authorization must be given by decedent's personal representative
  - Executor, administrator, or other person with authority to act on behalf of a deceased individual or their estate
    - Proof of authority needed
- Exceptions:
  - Funeral directors, coroner or medical examiner
  - To healthcare providers for treatment of other family members as required (infectious disease)
  - Potentially to law enforcement



# Law Enforcement Requests

- To identify or locate a suspect, fugitive, material witness or missing person. Limited to:
  - Name and address
  - Date and place of birth
  - SSN
  - Blood type and rh factor (but not DNA, dental records, or analysis of body fluids or tissues)
  - Type of injury
  - Date and time of treatment or death
  - Distinguishing characteristics (tattoos, scars)



# Law Enforcement Requests

- If patient is a crime victim:
  - Patient has to agree to the disclosure, if able.
  - If not, staff may disclose:
    - If needed to determine whether another person committed a crime
    - The PHI will not be used against the patient
    - An immediate law enforcement attempt (arrest) will be adversely affected if they wait for the patient to authorize
    - In staff professional judgment, the disclosure is in the patient's best interests

# Psychotherapy Notes – HIPAA

- HIPAA's Definition:
  - For the originator's own use
  - Kept separately from the medical record
  - Patient may be given access at therapist discretion
  - Authorization from patient required for uses and disclosures, including for TPO except for limited uses.

# Psychotherapy Notes – HIPAA

- EXCEPTIONS TO AUTHORIZATION REQUIREMENT
  - Used by originator for treatment purposes
  - Used or disclosed by CE in training programs for students, trainees, or practitioners in mental health under supervision
  - To defend legal action brought by the subject
  - If required for enforcement of HHS regulations
  - When mandated by law or needed by oversight agency
  - If needed by coroner or medical examiner, or
  - When needed to avert serious or imminent threat to health or safety

# Sensitive/Privileged Information

- May require specific authorization or Court Order in accordance with Federal or State law
- Federal and State law may apply to
  - Drug and Alcohol Abuse Records
  - Social Workers', Psychotherapist, Psychologists
  - Domestic Violence and Sexual Assault Counseling
  - Sexually Transmitted Disease
  - HIV Test Results
  - Blood Alcohol Test Results

# Subpoena Processing

- HIPAA has specific requirements
- State law may have specific requirements
- Both must be met

# Subpoena Processing - HIPAA



- Satisfactory Assurance of Notice
  - Patient or counsel has been notified
  - Attests written notice included sufficient information to raise objection
  - Assures deadline for objection has passed
  - Patient/counsel has made no objection
- OR
  - Patient authorization
  - Court Order

# Subpoena Processing - HIPAA

- Response limited to Minimum Necessary
  - “any and all” requests
- Substance abuse treatment records cannot be released (42 U.S.C. S 290)
  - Without specific authorization OR
  - Court order ordering production



# Invalid Subpoena

- Subpoena contains inaccurate patient name, date of admission, etc.
- Subpoenas from Court with no jurisdiction (another State)
- Date of hearing, deposition, etc. has already passed

# Court Orders

- If criminal case, and record requested by defendant (patient is victim or witness)
  - Privilege for sensitive information has to be asserted by hospital
  - Judge may review records to determine what has to be released

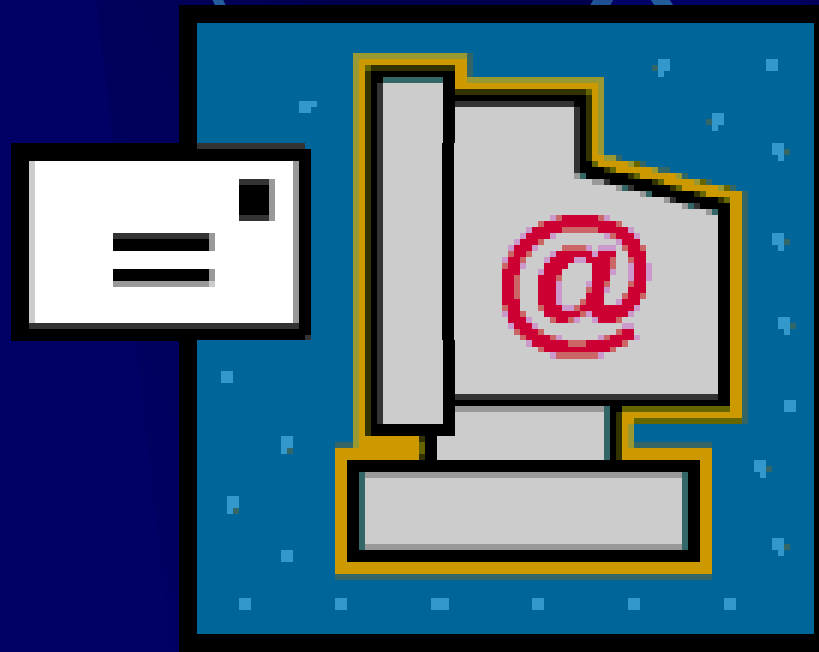
**Note:** Specific to MA – other state laws may differ

# Other Conditions May Apply

- Minor's Rights to Limit Release of PHI in some States or circumstances
- Mentally Retarded Persons Right to Access or Release Health Records
- State laws may require hospital to assert privilege on behalf of patient

# Release of Information

## General Considerations



# Minimum Necessary Standard

- Limit information for PHI needed for payment and healthcare operations
- Institutional practice may also limit to that needed for the intended purpose
  - Emergency room record
  - Discharge summary
  - Abstract vs. complete medical record
  - Worker's compensation (limit to that related to the claim and only as required by law)

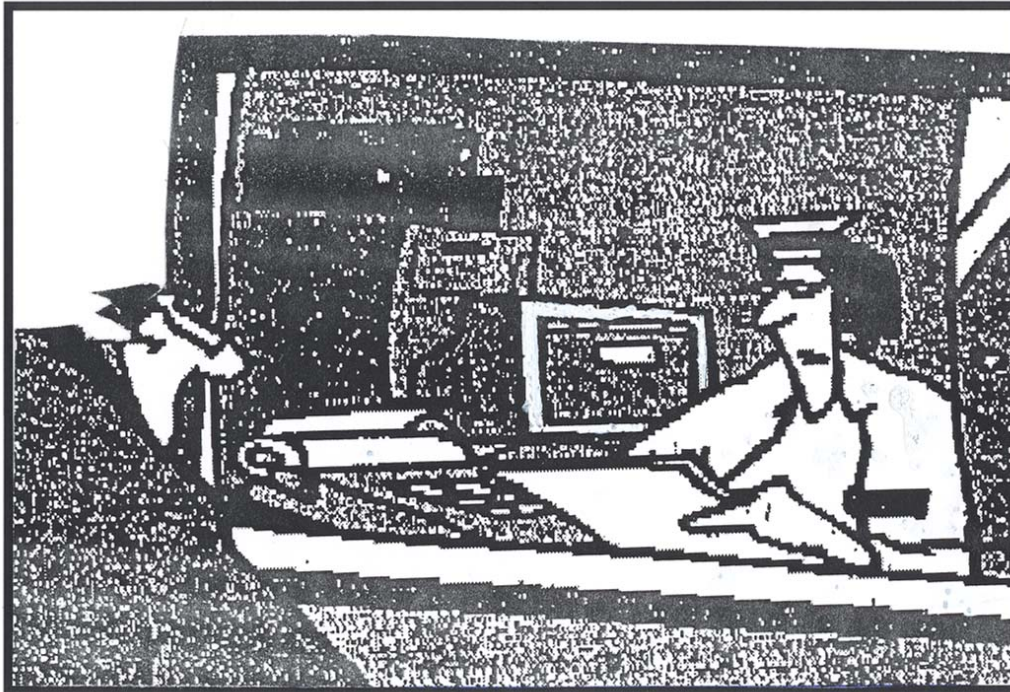
# Safeguarding PHI



- Access only as needed to do the job
- Follow minimum necessary guidance
- Understand State laws on retention and destruction of health information records
- Be careful of transmittal methods (faxing, e-mail)
- Secure work areas

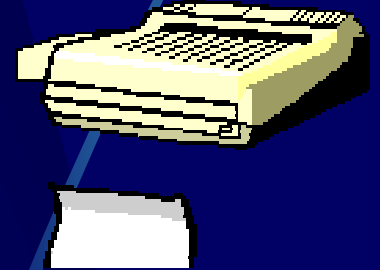
# Fax Guidelines

**CORNERED** by Baldwin



“Somehow your Medical Record got faxed to a complete stranger. He has no idea what’s wrong with you either.”

# Sending PHI via Fax



- When faxing information:
  - Verify the sender has the correct fax number, and
  - That the fax machine is in a secure location, and/or *the receiver is available immediately to receive the fax*

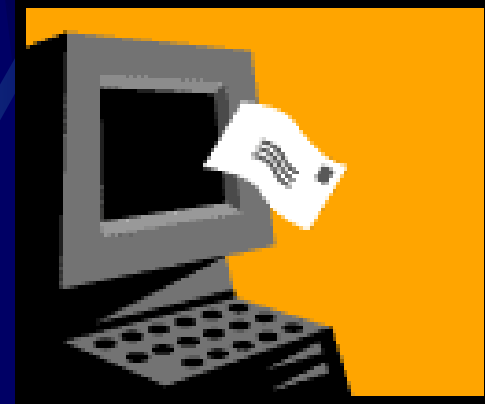


# Receiving PHI via Fax



- Immediately remove the fax, and deliver it to the recipient
- If the information has been sent in error, immediately inform the sender and destroy the faxed information via proper PHI disposal method

# E-Mail



- E-Mail containing patient identifiable information should not be transmitted over the open internet, as security cannot be guaranteed
- Use of e-mail disclaimer

**Questions???**

Thank you!!