

Agenda

- General discussion of HIPAA compliance issues that arise between a health system and its medical staff
- Case study examining some of these issues and how they play out at a Maryland health system, Frederick Memorial Health System



What compliance issues does HIPAA raise between a health system and its medical staff?



Services provided at the health system's facilities

- Medical staff providing professional services to its patients in health system owned and operated health care facilities –
 - What compliance expectations do patients have about their care and privacy rights?
 - What compliance expectations can or should the health system have about professionals providing care and treatment in its facilities?



Shared patients in a continuum of care

- The notice of privacy practices and other HIPAA compliance forms and processes – do or should medical staff members adopt the same or similar forms and processes (scaled to fit) their unique practices?
- What responsibilities does a health system have to assure that medical staff members have been trained or are aware of the impact HIPAA has on their day to day functions?



Reimbursement for services when the health system sponsors a group health plan

If the health system sponsors a group health plan for its employees, medical staff members may be

- "In network" providing care and treatment to the health system's employees and family members, and
- Billing the health system (or its third party administrator) for care and treatment provided – or otherwise conducting standardized transactions with the health system's group health plan
- Working through the health system's patient accounting department to bill the group plan or other third party payers



Exchanges of information between the health system and medical staff for "payment" or "health care operations" purposes

- Medical staff member sees patient at a health system facility, later follows up to obtain billing information and other demographics
- Medical staff member providing training or other oversight to students, interns or externs – or engaged in peer review or other "health care operations" activities



The <u>Washington University vs. Catalona</u> lawsuit (filed on August 4, 2003)

Research using data or other protected health information from human subjects – conducted at health system by medical staff member(s)

- Who owns research conducted by a surgeon while at the academic medical center?
- What HIPAA rights or obligations do departing surgeon, patient or academic medical center have?
- Who is entitled to use the tissue samples or other PHI?



Getting compliant – how far can the health system go or how far should the health system go to assist medical staff members with their own HIPAA compliance?

HIPAA offers the "organized health care arrangement" or "affiliated covered entity" options – but in light of STARK or state law theories of liability, there are no bright lines regarding what limits there are on a health system participating in an individual medical staff member's compliance efforts.

Turning to our case study...



Frederick Memorial Health System: A case study

- Location: Frederick, Maryland roughly fifty miles
 from each of Baltimore, Maryland and Washington,
 D.C., one of the fastest growing counties in
 Maryland
- FMH is a 200 bed hospital with a transitional care unit consisting of 22 long term care beds. It is the only hospital in Maryland's Frederick County.
- FMH also owns physicians' practices, outpatient centers, and alternative healing centers

FMH's Medical Staff

- 277 active medical staff members
- 56 active, but without admitting privileges
- Total: 333



Composition of FMH's Medical Staff

- Contract medical staff
 - Emergency
 - Anesthesia
 - Radiology
- Physician owned practices
 - Three large family practices in three separate locations
 - Oncology services
 - Immediate care services



FMH Sponsored Physician Education

- The health system regularly sponsors educational
 programs for its medical staff on matters ranging from
 infectious disease updates to bringing in locally or
 nationally regarded experts in response to physicians'
 requests
- The health system receives regular feedback from its professional and medical staff regarding trends, issues and matters of concern – which often do not reflect any distinction between issues faced by medical staff members as part of the health system's professional staff and within their own practices



With open lines of communication, HIPAA issues raised by or in regard to medical staff include

- When will I get a HIPAA compliance solution from the health system? Where's my notebook?
- Am I supposed to adopt the FMH notice of privacy practices in my office?
- Who in my practice is supposed to be a privacy officer? Can I just refer people to FMH's privacy officer?

- Who is going to make us comply with HIPAA? Will DHHS call or visit?
- I am hearing that I can only talk with the patient him or herself about protected health information ("PHI"), so I adopted the following approaches:
 - Only patients themselves can pick up referral paperwork and prescriptions
 - Without a written patient authorization, I will not share any PHI with anyone including other treating providers to be safe
 - I have no means for recording the "accountable" disclosures, so I'll just require patient authorizations each time



- A health plan has its fax numbers mixed up and keeps faxing me the wrong provider's information – I call and advise them, but it keeps happening, so should I contact DHHS?
- HIPAA is too complex for me to understand and I have no budget – but I respect my patients' privacy and have to make do

• Patients of the health system and medical staff using the health system's privacy hotline report alleged privacy concerns to the health system's Privacy Official...



• I heard that even though I bill electronically, there is an exemption from HIPAA if I only have 5 full time employees – so what's all the fuss about authorizations, notices of privacy practices and privacy officers?



- I have to delegate non-care giving responsibilities to my practice manager and cannot afford the time on this
- We purchased a HIPAA kit and deskbook through our professional association and should be okay. A colleague of mine shared his office's forms and we are using them.
- We attended the health system's HIPAA training programs, so we are okay in our own offices.

- It took us a month to pull all the patient names off
 the covers of medical charts and now we have an
 administrative challenge of learning this bar coding
 system which is bogging down our office
- Our patients tend to be older and are very unhappy about the notice of privacy practices and other paperwork, so our patient registration clerk sometimes chooses not to use them to avoid upsetting patients.

...and what about everybody's business associates?

- Challenges distinguishing garden variety vendors from true business associates
 - Flurry of BA agreements sent from one treating provider to another
 - Absence of BA agreements from physicians' individual practices to their true BAs
 - "Forms" of BA agreements scaled to fit?

Having faced many of the privacy compliance issues, what about HIPAA TCS?

• With the October 16, 2003, transactions and code sets deadline approaching, the health system is concerned about whether members of its medical staff in their own practices have "digestible" and practical information about how to assure they are ready to process standard transactions.



Looking ahead to HIPAA Security...

• Within our health system, how will we address ePHI (electronic PHI) storage or exchange issues when one or more of our health care components (medical staff with electronic links) are not as "secure" as are we?



Thank you.

We appreciate your time today and welcome your comments and thoughts.

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