HIPAA PRIVACY RULE IMPLEMENTATION
- WHAT’S UP AFTER 4/14/03?

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Disclaimer

- The presentation and materials are not to be perceived as legal advice.
INTRODUCTION

Discussion topics:

- Pre 4/14/03 – General Comments

- Post 4/14/03
  - Implementation of Patient Rights
  - Investigation of Potential Privacy Breaches
  - Policies and Procedures
  - Training
Pre 4/14/03

HIPAA gave several rights to patients:

- Access to own PHI
- Request for an Accounting
- Request for Amendment
- Request for Confidential Communications
- Request for Restrictions
Pre 4/14/03

- Hospitals identified gaps between current practice and the new rights
- Gaps did not always indicate something was wrong
- They merely reflected the difference between what was ok before 4/14/03 and what would be ok after 4/14/03
Pre 4/14/03

- Closed many gaps by:
  - Revising and writing policies and procedures
  - Conducting training
Post 4/14/03 –
What continues to face hospitals?
Post 4/14/03 – What continues to face hospitals?

- Centralized approach?

- Decentralized approach?

- Combination of both approaches?
Post 4/14/03 –
What continues to face hospitals?

- Centralized approach
  - All processing is handled under the auspices of a designated department
Post 4/14/03 – What continues to face hospitals?

- Decentralized approach
  - All processing is carried out in areas
    - Where medical records are maintained or
    - Where reporting activities occur
Post 4/14/03 –
What continues to face hospitals?

- Designated record set
  - Medical and billing records and any other record used to make decisions about an individual

- Used to define the set of information that the individual can access, copy, and request amendment to
Post 4/14/03 – What continues to face hospitals?

- Implementation of patient rights under HIPAA
Post 4/14/03 – What continues to face hospitals?

- We have decentralized approach to maintaining medical records and to the ROI function

- We have an ongoing process for centralizing the ROI function
  - Requires mechanism to alert entity responsible for implementing the request
Post 4/14/03 –
What continues to face hospitals?

■ Request for Access to DRS
Decentralized medical record maintenance process

Pt must go to several different locations to gain access to all components of the designated record set
Post 4/14/03 – Request for Access to DRS

- Problems with this approach
  - Patient does not know where DRS is maintained
  - Staff across institution may not know that other components exist, or, if so, where they exist
  - Patient has to re-qualify right to access in each department or treatment area
Post 4/14/03 – Request for Access to DRS

- Benefits of centralizing process
  - Greater likelihood policies and procedures will be followed
  - Patient is more confident he/she has been given access to entire DRS
  - Patient only has to go to one location (better customer service)
Post 4/14/03 –
What continues to face hospitals?

- Request for Accounting
Post 4/14/03 – Request for Accounting

- A new patient right
- Had no formalized processes in place
- Had patients before HIPAA wanting to know who had seen their records
Post 4/14/03 – Request for Accounting

- Uses and disclosures that must be included in an Accounting
  - Public interest disclosures
  - Research disclosures under a Waiver of Authorization
  - Disclosures in violation of HIPAA
Post 4/14/03 –
Request for Accounting

- We decided to implement this right on a centralized basis in the HIM Department
Post 4/14/03 – Request for Accounting

- Options for creating an Accounting
  - Central database
  - Accounting on Demand
Post 4/14/03 – Request for Accounting

- Central database – First Approach
- Data entered by one department only
  - Advantage
    - Greater likelihood policies will be followed
  - Disadvantages
    - Must gather all information from source departments
    - No guarantee for obtaining all information
    - Very time consuming
Post 4/14/03 – Request for Accounting

- Central database - Second Approach

- Data entered by source department
  - Advantage
    - Data entry responsibilities spread over several departments
    - Data may be more accurately entered
  - Disadvantages
    - May be more difficult to monitor and hold departments accountable
Post 4/14/03 – Request for Accounting

- Regardless of who enters data into a centralized database
  - Only enter actual ROI activities
  - Do not need to enter “multiple disclosures” (discussed later)
Post 4/14/03 – Request for Accounting

- Accounting on Demand

- Make list of disclosures only when patient requests an accounting
  - May implement as long as process is in place to assure that the HIM department can accurately identify all required disclosures

- The accounting meets the HIPAA mandate
  - (Ref: CHA HIPAA Seminar, Nov 2003)
Post 4/14/03 – Request for Accounting

- Accounting on Demand

- Advantages
  - Less time consuming overall
  - Potentially less costly
Post 4/14/03 – Request for Accounting

Accounting on Demand

Disadvantages

• May be difficult to implement because of decentralized “public interest” reporting
• Hospital does not have specific department or individual responsible for identifying all circumstances that should be included in an accounting
• Hospital must have a system for maintaining all copies of disclosure requests

(Ref: CHA HIPAA Seminar, Nov 2003)
Post 4/14/03 – Request for Accounting

- Cost of maintaining database vs accounting on demand
  - Number of requests for accounting
  - Potential size of database
  - Confidence in decentralized data entry
  - Confidence in centralized data entry
Post 4/14/03 – Request for Accounting

- Regardless of option selected, should include monitoring the process in the ongoing HIPAA Program monitoring plan
Difficult Accounting Problems

- Accounting for multiple disclosures
- Accounting for research under a Waiver of Authorization
- Residents collecting information
Post 4/14/03 – Request for Accounting

- Accounting for multiple disclosures of:
  - A particular patient to the same person or entity
  - Multiple patients to the same person or entity
Multiple disclosures to a third party for review constitutes a disclosure even if third party does not review any particular record

(Ref: CHA HIPAA Seminar, Nov 2003)
Post 4/14/03 –
Request for Accounting

- Accounting for multiple disclosures
  - Must maintain documentation of all records included in the universal set of records provided to the third party
  - May be too time consuming to enter into centralized database
  - May be better to use the accounting on demand approach

(Ref: CHA HPAA Seminar, Nov 2003)
May be easier to check documentation of multiple disclosures whether creating the accounting using a centralized database or the accounting on demand approach.
Post 4/14/03 – Request for Accounting

- Approach taken may also depend on whether interfaces exist between the source system and the accounting system
Post 4/14/03 – Request for Accounting

- What about JCAHO record reviews?
  - Some say:
    - Don’t include because this is HCO
    - Don’t include because JCAHO is a BA
    - Include in accounting
Post 4/14/03 – Request for Accounting

- 2nd difficult accounting issue – research
  - Not required to include PHI disclosed pursuant to an authorization, in Limited Data Sets, and as de-identified data
  - Must account for research under a Waiver of Authorization
Post 4/14/03 – Request for Accounting

- Accounting for research under a Waiver of Authorization

- Modified accounting procedure if protocol involves 50 or more individuals, and the individual’s PHI may have been disclosed
Post 4/14/03 – Request for Accounting

- May find it better to track specific protocols
- May find it better to do accounting on demand
- May encourage researchers to use Limited Data Sets
Post 4/14/03 –
Request for Accounting

- 3rd difficult accounting issue – residents
  
  - Need information to take boards
  - Collect information on patients they have treated to start their practice
Post 4/14/03 –
What continues to face hospitals?

- Request for Confidential Communications
Post 4/14/03 – Request for Confidential Communications

- Patients are requesting hospitals to provide information by alternative methods
Post 4/14/03 – Request for Confidential Communications

- We implemented on decentralized basis
- We are applying our ongoing ROI centralization process
Post 4/14/03 – Request for Confidential Communications

- Patients are requesting information via e-mail
  - Current options
  - Issues with current options
  - Alternative option – content scanner
Post 4/14/03 – What continues to face hospitals?

- Request for Restrictions
Post 4/14/03 – Request for Restrictions

- Opting out of directory
- Identifying who is or is not permitted to receive information as a participant in care
- Opting out of marketing, fundraising, and research
- Identifying any entity who is not permitted to receive information
Post 4/14/03 – Request for Restrictions

- We implemented on decentralized basis
- We are applying our ongoing ROI centralization process
  - Requires mechanism to notify those responsible for implementing request
Post 4/14/03 –
What continues to face hospitals?

- Investigating potential breaches
Post 4/14/03 – Investigating Potential Breaches

- Have policy and procedure in place
- Work with IT Department
- Work with HR Department
- Work with Medical Staff Leadership
- Work with Educational Program Leadership
Post 4/14/03 – Investigating Potential Breaches

- Examples:
  - Volunteers looking up patients
  - Deliver flowers to patient opting out of directory
  - Conversations in areas with multiple patients present
  - Employee believes record accessed by another employee without need to know
Post 4/14/03 –
What continues to face hospitals?

- Policies and Procedures
Policies and Procedures

- Ongoing process
  - Still identifying new policies needed
  - Still identifying existing policies needing revision
Examples:

- Department/specialty name in return address
- Visitors and observers
Post 4/14/03 –
What continues to face hospitals?

- Training
Post 4/14/03 – Training

- It didn’t end on 4/14/03
- Have policy in place
  - Various categories of workforce
  - Persons not part of workforce
Post 4/14/03 – References

- HIPAA Privacy Regulations, Section 164.501 et seq.
Post 4/14/03 –

What continues to face hospitals?

- Q & A
- Thank you