5.04 HIPAA Privacy: Handling the HIPAA Complaint Desk - A Trenches View of Unauthorized Disclosures, Incidents, and More

Panel of Presenters:

Leslie C. Bender, Esq.
General Counsel/Compliance Officer
The ROI Companies
Timonium, MD

Cathleen Casagrande
Director, Health Information Policy
Frederick Memorial Healthcare System
Frederick, MD

Diana C. Frew, RN
Chief Privacy Officer
Baptist Health South Florida
Coral Gables, FL
Some common ground ...

- Sources of complaints
- Types of complaints
- What do complaints mean
- What are HIPAA’s rules about handling complaints
- Tracking, trending, retaining, continuous improvement
Sources of Complaints - Can be as varied as the complaints themselves....

• Handling complaints received internally
  - From patients or their family members
  - From employees or other members of workforce
  - From business associates, vendors, others with whom you do business
  - From governmental or other law enforcement agencies, but not OCR

• Handling complaints received from OCR
Is there a right way to handle complaints? Fail safe? Fool proof?

• Depending upon the size and complexity of your organization, the approach to handling things at the complaint desk may differ.

• Defining your objectives and means for handling complaints early will allow you to track, trend, and make consistent and continuous improvement in your compliance program.
Complaints as “Non-Conformities”

Complaints, regardless of the source, may reveal actual, potential or seeming non-conformities between how your organization and its workforce operate and how you are expected to operate to conform to the law or regulations related to the privacy or security of protected health information.
How do you accept complaints?
Pros and cons of each...

• Oral – do you become the scrivener or do you use recording technology of some sort?
• VoiceMail
• Electronic Mail or other computerized submission mechanism
• Snail Mail or other paper submission
• Function outsourced to a third party who handles, logs and tracks complaints, develops background facts and routes to correct party(ies) for follow up
• All or some of the above
How easy is it for somebody to file a complaint with you?

• Do you offer one or more blank forms that prompt the aggrieved party through fields that might be important to you?
• What if you receive a complaint that is not “live” and lacks sufficient information for you to get started on your investigation?
• Remember HIPAA’s prohibitions against retaliation, inherently coercive situations that could be construed as chilling out complaints
Investigating the complaint...

• Screening complaints to separate viable from the non-viable - and prioritizing the extreme high risk complaint
• Hearsay versus original “sourced” complaints
  – How far do you go before you are leaking too much information in order to get information?
  – Who do you tell, and how much?
• Victim becomes wrongdoer
• Evidence - the facts and only the facts - what do you collect? How do you record your findings? Can you retrieve it? With whom do you share?
Communicating Complaints to your Steering Committee

- Complaint statistics
- Sources, status
- Trends
- Alerts regarding compliance non-conformities
- Risk management
Complaints and Continuous Improvement

Shore up any weaknesses, retrain, watch for success/failure

Complaint (early warning)

Document complaint and disposition: was this an isolated incident or is there a weak link in your compliance program?

Investigation, fact finding, root cause analysis

10
Documentation

• With HIPAA’s six year documentation requirement - and the requirement to document complaints and their disposition...
  - What documentation do you retain?
  - Where?
  - In what form?
Consulting with legal counsel...

• Per recent Department of Justice and Office of Inspector General situations, there may be limits to the cloak of the attorney-client privilege, so when should you contact your counsel?

• In-house versus outside? Would it make a difference?
When to re-examine your training and awareness programs?

• Did your training programs “orient” your workforce well to HIPAA concepts but leave them hanging about some now predictable (through complaints) practical challenges? Old dogs learning new tricks?
Business associates

- Handling complaints about business associates
- Handling complaints from business associates that reveal either other business associates’ issues or your own
- Requiring (to do or not to do) your own business associates to self-report, self-assess, and self-certify
- Details of your inquiries ... at what point do inquiries that are too detailed open you to risk for telling your business associates how to scale HIPAA’s requirements to fit their own organizations?
Whistleblowers

• Per HIPAA – to be a complaint driven process meaning, expect whistleblowers

• Wouldn’t you prefer the whistleblowers to complain to your organization first?
Budget

• In your organization, what are your constraints for:
  - Time
  - People - if a provider, do you have a patient relations department or if a plan a member relations department that is trained and equipped to recognize HIPAA complaints and handle and/or screen them?
  - Technology resources
  - Prevention versus correction?
Thank you!

• We appreciate the time you have spent with us - feel free to write us at:

• Leslie Bender
  LCB@theROI.com

• Cathy Casagrande
  Ccasagrande@fmh.org

• Diana Frew
  dianafr@baptisthealth.net
Appendix

• Forms
• Excerpts from HIPAA’s Privacy and Security Regulations, an FAQ
Example of Complaint Tracking
Example of Complaint Tracking
# Example of Complaint Reports

Frederick Memorial Hospital

**Issue Category Cross Tab**

**HIPAA Complaints by Department**

Case Receipt Date between 7/1/2003 and 9/30/2003, 'Department' against 'Feedback Category' (Issue Category)

<table>
<thead>
<tr>
<th>Department</th>
<th>Breach</th>
<th>Failure to Rel Med Info</th>
<th>Inapprop Rel of Med Info</th>
<th>NOK/POA</th>
<th>Env</th>
<th>FMH Prob/PHI</th>
<th>General Health Plan</th>
<th>Misc. Privacy</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main Campus</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3-A</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>3B</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Admission Ctr</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Birthplace</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Fam Ctr/L&amp;D</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Care Coord</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Emergency Dept.</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Pharm</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Radiology</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Medical Staff</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>11</td>
<td>0</td>
<td>16</td>
</tr>
</tbody>
</table>
HIPAA Nonconformity Report
Page 1 of 2

Your Name:______________________________________________
Company/Department:____________________________________
Date(s) of Occurrence:__________________

What happened:

When did this happen?
- At work
- Before work
- After work
- Away from work (e.g., lunch or other break)

Who did this happen:
- In the office
- Outside the office
- In the lunch room
- Other

Who was involved?

Any documentation? (please attach):
- Yes
- No

Employee Signature:____________________ Date:___________

Supervisor Signature:____________________ Date:___________

The contents of this form are confidential.

HIPAA Nonconformity Report
Page 2 of 2

Compliance Analyst to complete information below:

Action Taken:
- Investigation
- Interview of those involved
- Disciplinary action taken

Outcome:
- ? Employee satisfied with action and resolution
- ? Further investigation and action to be taken

Compliance Analyst Signature:____________________ Date:___________

The contents of this form are confidential.
What guidance is there for handling HIPAA complaints?

• Privacy
  - Notice of Privacy Practices must state that individuals may complain to OCR or the covered entity. See, 45 CFR Section 164.520(b)(vi)
  - Among Administrative Procedures must be complaint handling and documentation policies and procedures. Covered entity must document all complaints received and their disposition. See, 45 CFR Section 164.530(d)
...guidance for handling HIPAA complaints...

- **Security**
  - “Security incident” - any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system See, 45 CFR Section 164.304
  - Covered entity must adopt a “security management process” that includes “security incident tracking reports” See, 45 CFR Section 164.308(a)(1)
  - Covered entity must adopt policies and procedures to “address security incidents” and documenting security incidents and their outcomes See, 45 CFR Section 164.308(a)(6)
  - Business associates must contract to report “security incidents” See, 45 CFR Section 164.314(a)(2)(i)(C)
Question #352: If I believe that my privacy rights have been violated, when can I submit a complaint?

Answer #352:
By law, health care providers (including doctors and hospitals) who engage in certain electronic transactions, health plans, and health care clearinghouses, (collectively, “covered entities”) have until April 14, 2003, to comply with the HIPAA Privacy Rule. (Small health plans have until April 14, 2004, to comply). Activities occurring before April 14, 2003, are not subject to the Office for Civil Rights (OCR) enforcement actions. After that date, a person who believes a covered entity is not complying with a requirement of the Privacy Rule may file with OCR a written complaint, either on paper or electronically. This complaint must be filed within 180 days of when the complainant knew or should have known that the act had occurred. The Secretary may waive this 180-day time limit if good cause is shown. See 45 CFR 160.306 and 164.534. OCR will provide further information on its web site about how to file a complaint (www.hhs.gov/ocr/hipaa/).

In addition, after the compliance dates above, individuals have a right to file a complaint directly with the covered entity. Individuals should refer to the covered entity’s notice of privacy practices for more information about how to file a complaint with the covered entity.