



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

Panel of Presenters:

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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



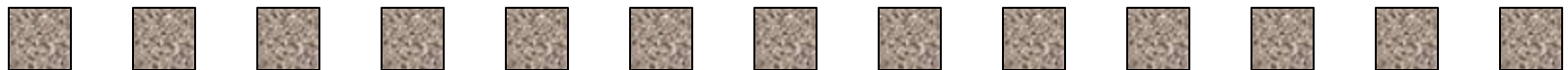
Sources of Complaints – Can be as varied as the complaints themselves

- **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?

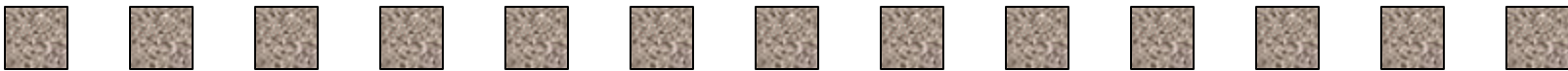
- Depending upon the size and complexity of your organization, the approach to handling things at the complaint desk may differ
- Defining your objectives and means for handling complaints early will allow you to track, trend, and make consistent and continuous improvement in your compliance program





Complaints as “Non-Conformities”

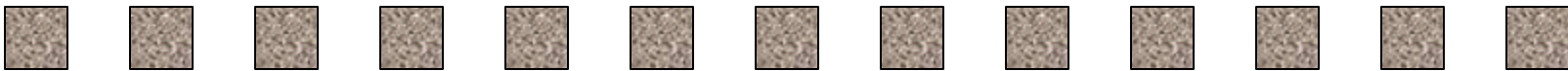
Complaints, regardless of the source, may reveal actual, potential or seeming non-conformities between how your organization and its workforce operate and how you are expected to operate to conform to the law or regulations related to the privacy or security of protected health information.



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 ...

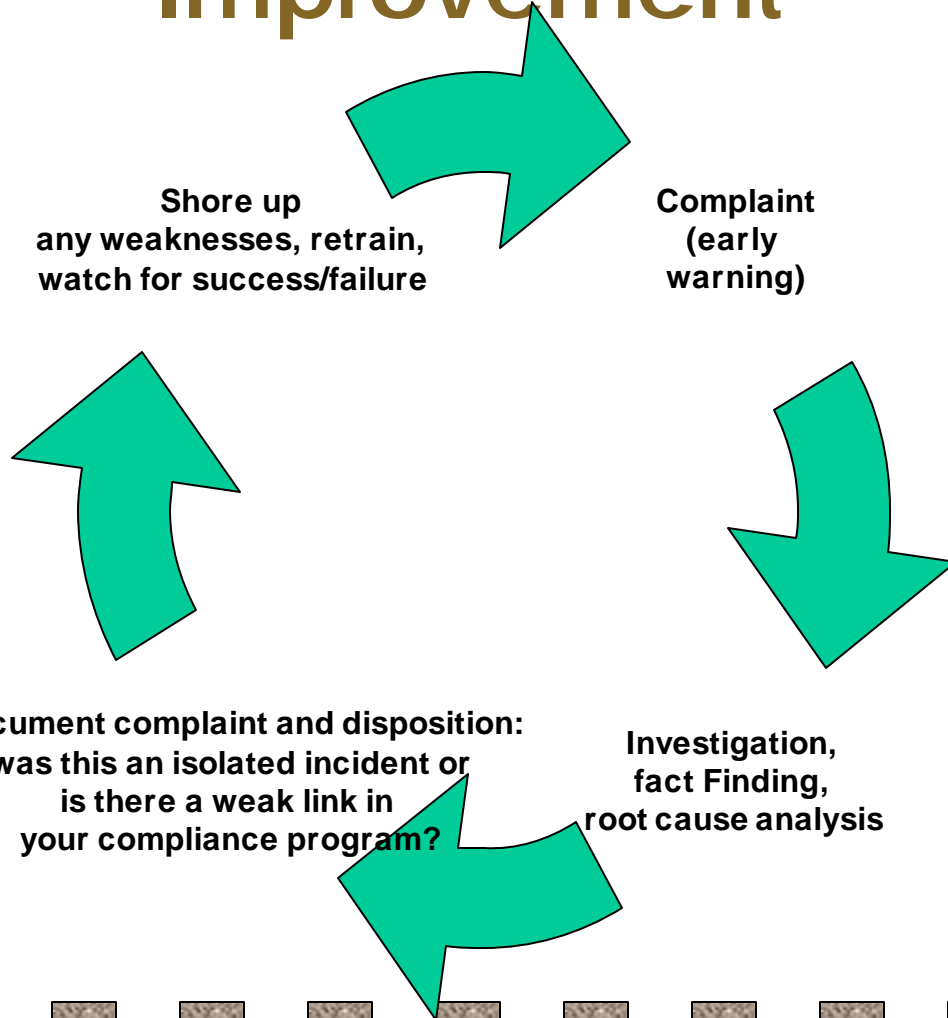
- Screening complaints to separate viable from the non-viable – and prioritizing the extreme high risk complaint
- Hearsay versus original “sourced” complaints
 - How far do you go before you are leaking too much information in order to get information?
 - Who do you tell, and how much?
- Victim becomes 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





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

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- Cathy Casagrande

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- Diana Frew

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Appendix

- Forms
- Excerpts from HIPAA's Privacy and Security Regulations, an FAQ

Example of Complaint Tracking

Respond CenterPoint - FMH

File Edit Insert Tools Commands Window Help

Contact Patient Details Case Issue Activity Cost

FMH/09845-01
 Active

Title: Liz, Mr. Sample
 Description: A description of specific events including statements made by the persons involved are detailed here.
 Resolution: Follow-up and actions taken by the Privacy Office and Patient Relations Department are communicated here.

Ref: FMH/09845-01 (Active)
 Receipt Date: 8/23/2004 13:00
 Done Date:
 Age: 0 Days (0 Working Days)
 Logged By: whuzzy (8/23/2004 13:00)
 Last Modified By: whuzzy (8/23/2004 13:30)
 Done By:
 Owned By: whuzzy (HIPAA)

Contact	Issue	Complainant ?
Sample, Ms. Liz		Yes

New... View... Delete

FMH whuzzy

Example of Complaint Tracking

The screenshot displays the Respond CenterPoint - FMH application window. The interface includes a menu bar (File, Edit, Insert, Tools, Commands, Window, Help) and a toolbar with various icons. The main content area is divided into tabs: Contact, Patient Details, Case, Issue, Activity, and Cost. The 'Issue' tab is currently selected, showing a form for tracking a complaint.

Form Fields:

- Issue:** Issue1
- Feedback Category:** General Privacy (Complaint, HIPAA)
- Department:** Admission Center (Main Campus)
- Physician/P.A.:**
- Risk Management:** No
- Date of Incident:** 8/23/2004
- Through Date:** 8/23/2004
- Investigation:** Details of any investigation that took place.

Metadata:

- Created By:** whuzzy
- Last Modified By:**
- Title:** Issue1
- Receipt Date:** 8/23/2004 13:00
- Done Date:**

Buttons: New, Delete

Taskbar: Respond CenterPoint - ..., Inbox - Microsoft Outlook, Casagrande, Cathleen - ..., Microsoft PowerPoint - [P...]

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)

Department	Breach	Failure to Rel Med Info	Inapprop Rel of Med Info	NOK/POA	Env	FMH Prob/PHI	General Health Plan	Misc. Privacy	Total
Main Campus	0	0	0	0	0	0	0	0	0
3-A	0	0	0	0	0	0	1	0	1
3B	0	0	1	0	0	0	0	0	1
Admission Ctr	0	0	0	0	0	0	1	0	1
Birthplace	0	0	0	0	0	0	0	0	0
Fam Ctr/L&D	0	0	1	0	0	0	0	0	1
Care Coord	0	0	0	0	0	0	1	0	1
Emergency Dept.	0	0	0	1	0	1	1	5	0
Pharm	0	0	0	0	0	0	1	0	1
Radiology	0	0	0	0	0	0	1	0	1
Medical Staff	0	0	0	0	0	0	1	0	1
Total	0	0	3	0	1	1	11	0	16

HIPAA Nonconformity Report
Page 1 of 2

Your Name: _____

Company/Department: _____
Date(s) of Grievance: _____

What happened?

When did this happen?

At work
 Before work
 After work
 Away from work (e.g. lunch or other break)

Where 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 by BQI:

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**

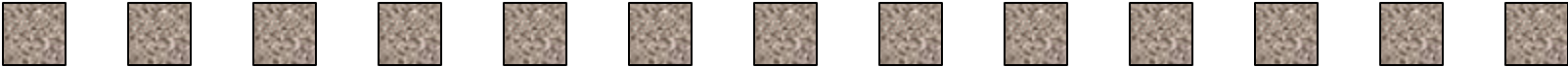
- **Notice of Privacy Practices must state that individuals may complain to OCR or the covered entity See, 45 CFR Section 164.520(b)(vi)**
- **Among Administrative Procedures must be complaint handling and documentation policies and procedures. Covered entity must document all complaints received and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