

Practical Implementation of HIPAA-Compliant Consents and Authorizations

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Overview

- Determine if you qualify as an OHCA.
- Develop Notice of Privacy Practices.
- Develop the consent form.
- Develop authorization forms.
- Identify all “ports of entry”.
- Develop policies and procedures.
- Train the staff.

Organized Health Care Arrangements

- Is your organization part of an Organized Health Care Arrangement (OHCA)?
 - HHS recognized there are arrangements in which legally separate, covered entities (CEs) need to share protected health information (PHI).
 - While the focus of this presentation is on hospitals, CEs that may need to share PHI include hospitals, IPAs, HMOs and other group health plans.

OHCAs Defined §164.501

- OHCAs include:
 - clinically integrated care settings in which individuals typically receive health care from more than one provider; or
 - systems in which several covered entities participate and they participate in joint activities such as UR, QA and/or payment; or
 - group health plans/insurers/HMOs.

Notice of Privacy Practices §164.520

- A Joint Notice of Privacy Practices may be issued by an OHCA if:
 - participants agree to abide by the terms of the notice with respect to PHI created or received as part of their participation in the OHCA;
 - the joint notice reflects that it covers more than one covered entity;
 - it describes with reasonable specificity the CEs or class of entities to which the notice applies;

Notice of Privacy Practices (con't.)

- it describes with reasonable specificity the service delivery sites to which the joint notice applies; and
- (if applicable) it states that the CEs in the OHCA will share PHI with each other to carry out TPO.
- The header for all notices of privacy practices *must* prominently display the following information:

Notice Elements (con't)

- THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

Notice Elements (con't.)

- Notices must be written in plain language and must contain:
 - a description , including at least one example, of the types of uses/disclosures that the CE is permitted to make for TPO;
 - a description of each of the other purposes for which the CE is permitted or required to use PHI with out individual's consent or authorization;

Notice Elements (con't.)

- sufficient details of the uses and disclosures that are permitted or required by law;
 - a statement that other uses and disclosures will be made only with the individual's written authorization, and that such authorization may be revoked.
- Separate statements are needed for certain uses/disclosures such as:
 - appointment reminders;

Notice Elements (con't.)

- or that CE may contact individuals to raise funds for the CE.
- Individual rights must be documented in the notice, including but not limited to:
 - requesting restrictions on uses of PHI;
 - receiving confidential communications of PHI;
 - receiving an accounting of disclosures of PHI;
 - obtaining a paper copy of the notice.

Notice Elements (con't.)

- Notices must include a description of the CE's duties, such as maintaining the privacy of PHI and reserving the right to change the terms of the notice.
- Notices must also state:
 - how to file a complaint if rights have been violated;
 - who to contact for further information;
 - the effective date of the notice.

Notice Elements (con't.)

- Other important information:
 - Notice is to be provided no later than date of “first delivery of services” on/after 4/14/03,
 - and should be posted in a clear and prominent location where it can reasonably be seen.
- There are specific provisions for electronic notices.
- See the actual rule for specific details.

Consent Forms § 164.506

- An individual's consent must be obtained prior to using or disclosing PHI to carry out TPO.
- Consents must be in plain language and:
 - inform the individual that PHI may be used or disclosed to carry out TPO;
 - refer the individual to the Notice for additional information.

Consent Forms § 164.506

- The consent must:
 - state individual has right to review the Notice of Privacy Practices before signing it;
 - indicate that the individual has the right to request restrictions on how PHI is used/ disclosed to carry out TPO;
 - indicate the CE is not required to agree to restrictions, though if they do, the restrictions are binding.

Consent Forms (con't.)

- Consents also:
 - must state that the individual has the right to revoke the consent in writing, except to the extent that the CE has taken action in reliance thereon;
 - should state the CE reserves right to change its Notice , and must state how a revised Notice may be obtained.
- Consents must be signed and dated.

Consent Forms (con't.)

- Consents may not be combined with the Notice of Privacy Practices.
- They may be combined with other legal permissions (e.g. conditions of admission.)
 - Combined consents must be visually and organizationally separate from other written legal permission, and must be separately signed by the individual and dated.

Consent Forms (con't.)

- Consents to use PHI for TPO are not required if:
 - there is an indirect treatment relationship; or
 - if the PHI was created/received in course of treating an inmate.
- Treatment may be conditioned on the individual's signing the consent, unless treatment is required by law (EMTALA.)

Consent Forms (con't.)

- PHI may be used for TPO without consent in emergency treatment situations if:
 - attempts are made to obtain consent when reasonably practicable;
 - treatment is required by law and CE attempts to gain consent but is unable to do so;
 - attempts are made to gain consent but substantial barrier to communication exists and consent is inferred from circumstances.

Consent Forms (con't.)

- Attempts and failures to obtain consent must be documented.
- There is no consent if the consent form is defective.
- Consents are considered defective if they lack any of the required elements, or have been revoked in writing.

Authorizations §164.508

- Authorization is required to use or disclose psychotherapy notes for TPO, except when:
 - used by the originator for treatment;
 - used to train mental health students, trainees, or practitioners in group, joint, family, or individual counseling;
 - defending a CE in a legal action brought by the individual (subject) of the notes.
 - used for oversight of the originator.

Authorizations (con't.)

- A valid authorization must:
 - be written in plain language;
 - describe the information that is to be used or disclosed in a meaningful and specific fashion (No more “Any and all information”);
 - specify the person/ class of persons authorized to make the requested disclosure;
 - name the person/class of persons to whom the information is to be released.;

Authorizations (con't.)

- contain an expiration date or event;
- state the individual's right to revoke the authorization in writing, along with a description of how it may be revoked.;
- state that the information to be used/disclosed may be subject to redisclosure by recipient and no longer protected by HIPAA. ;
- be signed and dated; and
- if signed by a personal representative, indicate his/her authority to act for the individual.

Authorizations (con't.)

- Authorizations requested a CE to use/ disclose information for its own purposes:
 - must include all previously noted elements;
 - must contain a statement that the CE will not condition treatment or payment (enrollment, etc.) on the individual signing the authorization;
 - must describe each purpose of requested use;
 - must state individual may inspect and copy the information;

Authorizations (con't.)

- state that the individual may refuse to sign the authorization.
- specify if the CE will receive remuneration from a third party;
- receive a copy of the signed authorization.
- Authorizations requested by a CE for disclosure by others must:
 - include previously noted elements;
 - describe each purpose of requested disclosure.

Authorizations (con't.)

- state that the individual may refuse to sign the authorization;
- state that the CE may not condition treatment, or payment (except as allowed) on signing the authorization.
- Individuals must receive a copy of the signed authorization.
- See rules for additional requirements.

Authorizations (con't.)

- Authorizations are considered defective if:
 - the expiration date /event is known to have passed;
 - the authorization is not complete;
 - the CE knows the authorization was revoked;
 - the authorization lacks any required element; and/or
 - the CE knows any material information is false.

Authorizations (con't)

- COMPOUND AUTHORIZATIONS

- Authorizations for use/disclosure of PHI may not be combined with any other document except:
 - to use/disclose PHI created in research that includes treatment of the individual.
- There are special rules for combining authorizations for psychotherapy notes. See the rules for specific information.

Authorizations (con't.)

- Prohibition on Conditioning of Authorizations
 - CE may not condition treatment, payment, enrollment in health plan (etc.) on the provision of authorization except;
 - research related treatment can require authorization; or
 - when the provision of health care is solely for the purpose of creating PHI for a third party.

Authorizations (con't.)

- REVOCATION OF AUTHORIZATIONS:
 - Authorizations may be revoked except to the extent that the CE has taken action in reliance thereon.
 - The revocation must be in writing.
 - There are special conditions pertaining to authorizations obtained for obtaining insurance coverage.
- Authorizations must be kept for 6 years.

Identify “Ports of Entry” to Care

- Identify each and every place within your organization through which patients can enter and receive care.
 - Patient registration;
 - Emergency department;
 - Endoscopy;
 - OHS;
 - Labor and delivery;

“Ports of Entry” to Care (con’t.)

- Lab;
- Radiology;
- OB Clinic;
- Other clinics or satellite facilities;
- Rehab (PT, OT, Cardiac, etc.);
- DSU;
- Newborns;
- SNF or other specialty units.

Ports of Entry to Care (con't.)

- Identify the many places that individuals may access care, as staff in those areas may be responsible for obtaining consent.
- Notice of Privacy Practices must be posted in these areas.
- Notice of Privacy Practices must also be made available to individuals receiving treatment in these areas.

Policies and Procedures

- Determine what policies and procedures will be required for your organization.
- Identify any that may involve more than one department.
- Name Privacy Officer.
- Identify who will be responsible for obtaining consents.

Policies and Procedures (con't.)

- Determine who will be responsible for obtaining authorizations.
 - should be just one department, if possible, to reduce confusion and possibility of mistakes.
 - Give strong consideration to giving the HIM Department this responsibility.
- Consider writing a formalized privacy plan.

Policies and Procedures (con't.)

- Obtain Administrative and/or Board approval for p/p, privacy plan.
- Incorporate all HIPAA requirements, such as minimum necessary, in policies/procedures, privacy plans, etc.
- Expect this to take time, but do not reinvent the wheel. Look to hospital and other professional associations for help.

Train Your Staff

- Incorporate HIPAA training in new-employee orientation.
- Consider department-specific training.
 - Awareness training vs. specific training.
- Document all educational and/or training activities.
- Train the medical staff and their office staff, especially if your are an OHCA.

Training (con't.)

- Training should be on-going..
- Provide additional training when changes are made to Notice of Privacy Practices.

Other Important Thoughts

- Post any new changes to Notice of Privacy Practices, taking down old notices.
- Find a way to dispose of “old” copies of the Notice.
- Remember to track uses/disclosures of PHI where patient authorization and/or consent is not required.

Conclusion

- Determine if you qualify as an OHCA.
- Develop Notice of Privacy Practices, consent form, and authorization forms.
- Identify each place individuals can access care within organization.
- Develop HIPAA policies and procedures.
- Train staff, and keep training staff.

Resources

- AHIMA (www.ahima.org)
- AHA (www.aha.org)
- State Hospital Association
- Surf the Web
- Attend workshops judiciously
- List Serves