

# HIPAA in the Emergency Department

Getting it done while keeping it quiet

# Agenda

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- Understanding the ED
- Privacy in the ED
- Security in the ED
- Transaction Standards in the ED
- HIPAA in the Disaster Scenario



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# Understanding the ED

# Emergency Department Facts

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- Over the past 3 years, patient volume has increased 14% to 108 million ED visits annually.
- Number of U.S. hospitals providing emergency care declined from 4,005 in 1997 to 3,934 in 2000 (1.8%).
- Average ED patient volume increased from 24,000 to 27,000.
- Waiting time for non-urgent patient visits increased 33%.
- Nationally, average patient throughput time has increased to 3.2 hours, up from 2.5 hours over the past three years.
- Average patient wait from arrival to physician medical screening is 68 minutes
- Average increase in patient volume for 2005 is projected at 5%.

# Emergency Department Facts

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- Number of rural EDs declined 11.3% while patient volume increased 23.8%.
- Patient visits averaged 26.3% emergent, 42% urgent, 12.3% non-urgent, 18.8% semi-urgent.
- Admissions from the ED totaled an estimated 40% of inpatient volume.

*The ED is the front door to the entire healthcare system.*

# In other words

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Unscheduled

Unscripted

Unplanned

**Chaotic**



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# HIPAA and Privacy in the ED

Keeping information flow orderly in  
the face of chaos

# A sad state of affairs

- In the 15 hospital EDs I've visited most recently
  - 8 have had obvious violations of the privacy rule
    - 2 were staff violations of existing policy
    - 2 were violations of trained, but undocumented behavior
    - Only one was the result of a deliberate look for violations beyond that a patient would experience



# What's special in the ED?

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- A: Nothing.
- B: The attitudes of the staff.
- C: More likely application of some aspects of the rule.
- D: Nothing on the day shift, but as soon as the privacy officer goes home, watch out.

# Choice A: Nothing

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- The ED is just like L&D, Dietary, and the acute care nursing unit ... they are a part of the covered entity, and all the rules of HIPAA apply.
- Approach: Train your staff on this point.

## B: The attitudes of the staff.

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- ED staff tend to believe that the care they provide is different – which is true.
- The ED staff tend to believe that they can do anything they want, because “It’s an emergency”
- Approach: Train your staff on the HIPAA reasons for doing what they need to do – and let’s call it Treatment, Payment, and Healthcare Operations.

## C: More likely application of some aspects of the rule.

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- Ask 100 physical therapists how many times they are questioned about a patient where the patient is a potential suspect or victim in a crime, then ask 100 ED nurses.

D: Nothing on the day shift,  
but as soon as the privacy  
officer goes home, watch out.

- Privacy Officer on site less than 1/3 of the time and typically for 1/4 of the patients
  - Makes challenges of many rules that require consulting the Privacy Officer
- Particularly, crime victims are more likely to arrive at the ED in the evening and night hours.

# Disclosures to Law Enforcement

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- Three Questions tell the story
  - 1: Is the disclosure required by law?
  - 2: Is law enforcement asking for help identifying or locating a suspect, fugitive, material witness, or missing person?
  - 3: Is my patient the victim of a crime?

# Disclosures to Law Enforcement

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Is the disclosure required by law?

If so, disclose as required by law.

Example: Reporting of suspected child abuse

See 164.512(a)(1)

# Disclosures to Law Enforcement

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Is law enforcement asking for help identifying or locating a suspect, fugitive, material witness, or missing person?

If so, you may release only:

- Name and address;                      Date and place of birth;
- Social security number;              ABO blood type and rh factor;
- Type of injury;                          Date and time of treatment;
- Date and time of death, if applicable
- A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos



# Disclosures to Law Enforcement

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Example: Police are reporting a missing 12 year old girl. You've got a girl in your ED that matches the description. You can respond to a LEO request with the information on the previous page.

See 164.512(f)(2)

# Disclosures to Law Enforcement

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Is my patient the apparent victim of a crime?

- If the patient agrees to the disclosure;
- **or** -
- If you can't obtain the patient's agreement because of incapacity or other emergency circumstance, provided that:
  - The law enforcement official represents that such information is needed to determine whether a violation of law by a person **other than the victim** has occurred, and such information is not intended to be used against the victim;
  - The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
  - The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

# Disclosures to Law Enforcement

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Example: An unconscious patient who is the apparent victim of a rape is brought to your ED. You can share information with the police if they represent the circumstances on the previous page. (Of course there may be mandatory reporting of this in your area, in which case rule 1 applies.)

You see this all the time on police shows, although I never see the representations happening first...

See 164.512(f)(3)

# How to handle this?

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- Solution by policy: Forbid ED personnel to disclose except where already required by law without first consulting the privacy officer.
- Solution by training: Give ED personnel specialized training in disclosures to LEOs
  - May want to require non-ED personnel to call the privacy officer.
    - Less urgency
    - Lack of regular experience with the situation

# Doing Privacy Right

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- Your patient presents to the ED for the first time, and as a result, needs a NPP and to sign the acknowledgement.

How does your staff handle that?

How should the staff handle that?

# Specialized privacy training

- Awareness of privacy issues in the chaotic environment
  - Dealing with families
  - Dealing with telephone calls
- Disclosures to Law Enforcement
- Customer Service with HIPAA

# Case Studies

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- Patient is an elderly female who presents to the ED unconscious following a significant stroke, and is not expected to live. The patient's family isn't present, but is called on the phone. They are en-route, but won't be reachable during the 4 hour drive. Soon after the call to the family, the Red Cross calls. They'd like to get the grandson on a plane from Iraq to see the grandmother, but need the treating physician to certify that the patient is not expected to live in order to process the hardship trip for the military, which must be done in the next two hours, or he won't be able to get on the next plane for several days.

# Case Studies

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- It's clear that the release of information isn't expected to aid the patient in any way ... she's comatose and not expected to regain consciousness.
- The family, who might be presumed to be designated representatives isn't reachable for several hours
- What to do?



# For debate

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- EMS at your facility routinely collects a copy of the patient's face sheet.
  - Is this allowable?
  - What's the justification?



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# Security in the ED

# The flavors of security

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- Physical Security
- Administrative Security
- Technical Security

# Physical Security Challenges in the ED

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- Department is open 24-7, and must remain generally accessible at all times
- More non-patient visitors in treatment areas than anywhere else in the hospital
- Chaotic nature of environment makes careful scrutiny of visitors difficult
  - “Codes happen”

# Administrative Security Challenges in the ED

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- Non-expected situations
  - Difficult to devise exhaustive examples and situations that eliminate the need for staff “judgment”
- Cultural bias against rules
  - “It’s different in the Emergency Department”

# Administrative Security Challenges in the ED

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- Management resources not available
  - Security Officer on site less than 1/3 of the time and typically for 1/4 of the patients

# Technical Security Challenges in the ED

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- Automatic logout doesn't work well with workflow
- Rapid pace provided challenges to staff security actions like logging off when leaving terminals
- Physical positioning of terminals, screens, and whiteboards for maximum privacy is not always practical

# Solutions to Security Challenges

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- Improve perimeter security with minimally invasive means i.e. proximity badges are far superior to keypads and keys
- Add surveillance technology
- Consider security's command post in the ED
- Offer the local law enforcement a community substation (and keep the lights on all the time)



# More solutions

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- Ensure that ED personnel have a “no questions asked” ability to get additional assistance at any time of day or night
- Work with information technology for reasonable accommodations for technical security measures that may not be needed elsewhere in the facility e.g. proximity sensors

# The bang-for-the-buck solution

- Work with the staff to identify security issues (risk identification) and develop solutions that mitigate the issues (risk management)
- Rely on specific training in awareness and staff behavior as your key solution

# Stress the importance of the model

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**SECURITY**

**Confidentiality**

**Integrity**

**Availability**



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# Transactions in the ED



*270/271*

## 270/271

- The 270 and 271 transactions will allow you to request and to receive authorization and benefit information from your payers.
- The transactions may be conducted in advance of or **at the time of service.**

# Implementation Strategy

- This transaction is easy to implement as a web-based transaction
  - Purchase blocks of transactions from a vendor
- More effective is an integrated solution with your HIS
  - Saves staff time
  - Avoids errors

# In the ED

- Most non-scheduled patients arrive in the emergency department
- A good 270/271 process is very fast
- You can do eligibility, get co-pay data, and be ready for point-of-service collection by a discharge counselor
- Point-of-service E&M level selection is a big plus in this implementation



# Doing the discharge counselor correctly

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- Present the discharge counselor as a quality control specialist
- Start with asking about the patient's satisfaction with their visit
- Present any facility specific literature, and review follow up information
- Review insurance information as a courtesy to ensure minimum hassle for the patient
- Ask for the co-pay
  - Consider an expanded write-off policy for smallish balances

# Future Implementation

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- Once the transaction specification for interactive claims goes live, the ED would be a perfect location for this technique
- In this case, you could not only present the patient with a estimated co-pay, but a finalized amount



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# HIPAA in a Disaster Scenario

# The rule: 164.510(b)(4)

## Use and disclosures for disaster relief purposes

- A covered entity may use or disclose protected health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts
- For the purpose of coordinating with such entities the uses or disclosures required to notify, or assist in the **notification** of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death.

# Clarification from Katrina

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- **TREATMENT.** *Health care providers can share patient information as necessary to provide treatment.*
  - Sharing information with other providers (including hospitals and clinics)
  - Referring patients for treatment (including linking patients with available providers in areas where the patients have relocated)
  - Coordinating patient care with others (such as emergency relief workers or others that can help in finding patients appropriate health services)
- **PAYMENT.** Providers can also share patient information to the extent necessary to seek payment for these health care services

# Clarification from Katrina

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- **NOTIFICATION.** Health care providers can share patient information as necessary to identify, locate and notify family members, guardians, or anyone else responsible for the individual's care of the individual's location, general condition, or death.
- The health care provider should get verbal permission from individuals, when possible;
  - if the individual is incapacitated or not available, providers may share information for these purposes if, in their professional judgment, doing so is in the patient's best interest.
- When necessary, the hospital may notify the police, the press, or the public at large to the extent necessary to help locate, identify or otherwise notify family members and others as to the location and general condition of their loved ones.

# Clarification from Katrina

- **IMMINENT DANGER.** Providers can share patient information with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public -- consistent with applicable law and the provider's standards of ethical conduct.
- **FACILITY DIRECTORY.** Health care facilities maintaining a directory of patients can tell people who call or ask about individuals whether the individual is at the facility, their location in the facility, and general condition.

# The Red Cross

- When a health care provider is sharing information with disaster relief organizations that, like the American Red Cross, are authorized by law or by their charters to assist in disaster relief efforts, it is unnecessary to obtain a patient's permission to share the information if doing so would interfere with the organization's ability to respond to the emergency.
- The HIPAA Privacy Rule does not apply to disclosures if they are not made by entities covered by the Privacy Rule. Thus, for instance, the HIPAA Privacy Rule does not restrict the American Red Cross from sharing patient information





# Questions ?

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# Thank You