


COMPLYING WITH THE PRIVACY REGULATIONS: Mr. Smith Goes to the Hospital



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hospital...



HIPAA's impacts and
implementation strategies

Mr. Smith, a prominent member of the community, is brought to the ED unresponsive with a gunshot wound to the abdomen. Dr. Goodcare examines the patient and begins resuscitative efforts.

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⌘ The hospital and the physicians treating Mr. Smith are required to:

- ☑ Obtain patient consent for use of PHI in treatment, payment, and healthcare operations
- ☑ Provide a notice of privacy practices

⌘ Providers are required to obtain consent before treatment except in emergencies, if they are required by law to treat, or if there are barriers to communication and consent is “inferred”

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- ⌘ HIPAA has special protections for psychotherapy notes. The general consent for treatment, payment, and healthcare operations does not extend to psychotherapy notes.
- ⌘ The rest of Mr. Smith's treatment record from this facility is accessible for treatment purposes.
- ⌘ The minimum necessary standard does not apply because the information is requested for patient care.

What is included in psychotherapy notes?

- ⌘ HIPAA defines psychotherapy notes as notes recorded by a mental health professional documenting or analyzing the contents of a conversation during a private, group, joint, or family counseling session.
- ⌘ EXCLUDES: medication prescription, modalities and frequency of treatment, results of clinical tests and summaries of diagnosis, functional status, treatment plans, symptoms, prognosis, and progress.

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- ⌘ Access control systems are required for security
- ⌘ The nurse must be authenticated to the system and be assigned access privileges on a need-to-know basis
- ⌘ Workstation must be located in a secure place
- ⌘ Data back-up and disaster recovery plan are required

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- ⌘ MyHealthRecord.com is not a covered entity under HIPAA.
- ⌘ Dr. Goodcare does not need to limit his request to the minimum necessary because he needs the information to treat Mr. Smith.

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⌘ The information may be disclosed without Mr. Smith's authorization only if:

- ☑ He is suspected to be a victim of crime
- ☑ The doctor is unable to obtain his consent because of incapacity
- ☑ The law enforcement official represents that:
 - ☒ this is violation of law by a person other than Mr. Smith
 - ☒ the information will not be used against Mr. Smith
 - ☒ the information is needed immediately
- ☑ The doctor, in his professional judgement, determines the disclosure is in Mr. Smith's best interest

Mr. Smith regains consciousness, and his condition stabilizes.

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⌘ The hospital must:

- ☑ Obtain his consent for use of his PHI
- ☑ Provide him with a notice of privacy practices
- ☑ Tell him information will be put in the facility directory and allow him an opportunity to object

⌘ The physicians treating Mr. Smith (direct care providers) must also obtain consent for use of PHI and provide him with a notice of privacy practices.

Mr. Smith regains consciousness, and his condition stabilizes.

- ⌘ The hospital and physicians may be considered an “organized healthcare arrangement”
- ⌘ Clinically integrated setting in which individuals typically receive healthcare from more than one provider
- ⌘ Hospital and physicians may obtain a joint consent for use and disclosure of PHI if they have a joint notice of privacy practices

Mr. Smith's family asks Dr. Goodcare for an update on his condition and prognosis.

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⌘ Dr. Goodcare must tell Mr. Smith he would like to discuss his condition with his family and give Mr. Smith an opportunity to object or limit the information disclosed to his family.

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⌘ HIPAA allows release to the public of directory information, including:

☑ patient name

☑ location in the facility

☑ description of the patient's condition in general terms

⌘ Provided that:

☑ Mr. Smith was informed about this use and given the opportunity to object

☑ The press asks for Mr. Smith by name

ED screening software identifies Mr. Smith as a candidate for a research study on gunshot wounds. Research coordinator arrives in the ED, obtains informed consent, and starts the research protocol.

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- ⌘ Clinical research studies can access patient information without authorization provided the research protocol has been approved by an IRB or privacy board
- ⌘ Study design falls under specific new waiver requirements that HIPAA delegates to the IRB or privacy board
- ⌘ Mr. Smith's consent for participation in the research protocol is required under FDA regulations

Patient Accounting contacts Mr. Smith's health plan online to verify eligibility. The health plan requests additional information.

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- ⌘ The eligibility inquiry/response must follow the designated ANSI X12 standard format
- ⌘ As a CE, health plan is required to request minimum information necessary
- ⌘ Specific authorization is not required; use of PHI for payment is covered under the general consent

Dr. Goodcare admits the patient and dictates an ED note, which is transcribed by an outside vendor.

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- ⌘ The transcription company is a business associate to the hospital. The hospital must have a business associate contract with the transcription company that meets HIPAA requirements.

Following Mr. Smith's recovery and discharge, the hospital and his physicians submit claims to his health plan.

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- ⌘ Diagnoses and procedures must be coded using standard code sets.
- ⌘ Providers are not required to use electronic transactions. If used, they must follow the standard formats.
- ⌘ Health plans are required to accept electronic transactions in the standard formats if providers choose to submit them.
- ⌘ Neither providers nor health plans can modify the standard formats.
- ⌘ Clearinghouses may be used to convert non-standard formats for electronic transmission.

A few weeks later, the hospital foundation contacts his family for a contribution.

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- ⌘ The final rules permit this use of PHI, provided that notification of this use was included in its notice of privacy practices.
- ⌘ The request must tell Mr. Smith how he can ask to be removed from the contact list for future solicitations.
- ⌘ If Mr. Smith asks to opt out of future mailings, the hospital must make reasonable efforts to honor his request.

Medical students who participated in Mr. Smith's care write up the case for presentation at grand rounds.

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- ⌘ HIPAA's definition of "health care operations" includes *conducting training programs in which students, trainees, or practitioners in healthcare learn under supervision to practice or improve their skills as healthcare providers*
- ⌘ No authorization is needed, since this is covered in Mr. Smith's general consent
- ⌘ The minimum necessary information should be used; Mr. Smith should not be identified by name

Mr. Smith, curious about what's documented in his medical record, returns to the hospital and asks to review his record.

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- ⌘ Patients have the right to access and obtain a copy of designated record sets for as long as CE maintains information
- ⌘ No automatic right to access:
 - ⊞ psychotherapy notes
 - ⊞ information in criminal, civil, or administrative action
 - ⊞ PHI exempted by CLIA
- ⌘ CE may deny request under some circumstances
- ⌘ CE must act upon request within 30 days (60 days if information is off-site)

What is a designated record set?

⌘ Information used by CE to make decisions about individuals

⌘ For providers, includes:

☑ medical records

☑ billing records

⌘ For health plans, includes:

☑ enrollment records

☑ payment records

☑ claims adjudication records

☑ case management records

Mr. Smith wants to know to whom the hospital has released information from his record.

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⌘ Individuals have the right to request an accounting for disclosures of PHI for 6 years prior to the request

⌘ Exceptions:

☑ payment, treatment, or operations

☑ to the individual

☑ for the facility directory or those involved in care

☑ for national security or intelligence purposes

☑ to correctional institutions and law enforcement

☑ prior to the compliance date

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- ⌘ CE must act on request within 60 days (possible 30-day extension)
- ⌘ CE must provide one free accounting per year; may charge for subsequent requests
- ⌘ Written accounting of disclosures must include:
 - ☑ Date of disclosure
 - ☑ Person to whom information was disclosed
 - ☑ Brief description of information disclosed
 - ☑ Copy of authorization or request for disclosure
- ⌘ Documentation retained for at least 6 years

In his review of the record, Mr. Smith finds information that he believes is incorrect. He asks to have his record amended.

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- ⌘ Individual has right to request amendment:
 - ☑ in a designated record set
 - ☑ for as long as CE maintains information
- ⌘ CE may require written request with rationale for change
- ⌘ CE has 60 days to act (with possible 30-day extension)
- ⌘ If request is granted, CE must:
 - ☑ notify individual that amendment was accepted
 - ☑ inform relevant persons identified by individual

The hospital, after reviewing his request for amendment and discussing it with Dr. Goodcare, denies Mr. Smith's request.

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⌘ CE may deny request if protected health information:

- ☑ was not created by CE (unless originator is no longer available)
- ☑ is not part of designated record set
- ☑ was not available for inspection
- ☑ is accurate and complete

The hospital, after reviewing his request for amendment and discussing it with Dr. Goodcare, denies Mr. Smith's request.

⌘ If request for amendment is denied:

☒ CE must provide timely, written notice to individual

☒ Notice must explain:

☒ reason for denial

☒ right to submit written statement of disagreement or have request included with future disclosures

☒ individual's right to complain to CE or HHS

⌘ CE may prepare rebuttal statement to individual's statement of disagreement; must give copy to individual

⌘ Must include request and denial with future disclosures

Mr. Smith's wife requests a copy of his record.

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⌘ Patient authorization is required

⌘ Valid authorization must be in writing and contain:

- ☑ description of the information to be used or disclosed
- ☑ name of person authorized to make disclosure
- ☑ name of person to whom disclosure may be made
- ☑ expiration date
- ☑ statement of individual's right to revoke
- ☑ statement about redisclosure and loss of protection
- ☑ signature of individual and date

A doctoral student at the local school of public health is conducting research on gunshot wounds. She requests information on all gunshot wounds treated by the hospital in the past year.

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- ⌘ This information may be released without patient authorization if it is de-identified.
- ⌘ To be considered “de-identified,” cannot contain any of 18 specific identifiers of individual and his/her relatives, employers, or household members
- ⌘ If any identifiers remain, it may be released if a qualified statistician determines risk of re-identification is very small

Implementation Strategies

- ⌘ Educate key staff members and medical staff
- ⌘ Designate a privacy officer
- ⌘ Track flow of information through organization to determine uses and disclosures
- ⌘ Centralize responsibility for handling requests for patient information

Implementation Strategies

- ⌘ Collaborate with medical staff to develop joint consent and privacy notice
- ⌘ Review/revise policies and procedures for disclosure
- ⌘ Revise admission consent form
- ⌘ Revise authorization form for release of information

Implementation Strategies

- ⌘ Develop a mechanism for handling complaints
- ⌘ Develop notice of privacy practices
- ⌘ Train staff on new policies/procedures
- ⌘ Identify business associates; review/revise contracts

Implementation Strategies

- ⌘ Develop mechanism to assure staff has access to minimum information necessary to perform their job duties
- ⌘ Determine how de-identified information is currently used in your organization
 - ☒ Who prepares it
 - ☒ How it is de-identified
 - ☒ Who uses it
 - ☒ How it is used

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