

# **METROPOLITAN COMMUNITY SERVICES**

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## **CONFIDENTIALITY AND THE LAW: PUTTING REGULATIONS INTO PRACTICE**

### **HIPAA STUDY GUIDE**

APRIL 2003

#### **DESCRIPTION**

The rules have changed. Health care workers are now held to a higher standard of accountability for keeping private information confidential. The rules are significantly more far-reaching than any confidentiality rules to date, covering not only electronic medical records, but also paper records and verbal communication.

The new HIPAA (Health Insurance Portability and Accountability Act) Privacy Law is here. Part of the law clearly requires that every employee receive HIPAA-specific training. This training needs to be completed no later than April 14, 2003 and ongoing thereafter whenever changes are made in any policy or procedure related to HIPAA.

#### **OBJECTIVE**

1. Examine the role of front line worker in upholding confidentiality.
2. Acknowledge client rights and privacy principles.
3. Identify potential violations of the privacy rule.
4. Recognize when (and to whom) to report breaches of confidentiality and privacy.
5. Be familiar with privacy and the relationship to HIPAA regulations.

#### **WHAT IS HIPAA?**

HIPAA (Health Insurance Portability and Accountability Act):

1. A federal law that was put in place to protect the confidentiality and security of health records through enforcing certain standards or values.
2. It gives us a set of guidelines for protecting the confidentiality of individually identifiable health information (PI-II) also known as patient information.
3. HIPAA requires formal education and training of the work force about HIPAA.
4. HIPAA is designed to re-build and enhance trust with patients.
5. HIPAA is the law- a federal law about:
  - a. What is considered confidential information;
  - b. How we use patient information;
  - c. Who we share that information with;
  - d. How much information we are allowed to read and to share;
6. Privacy of patient information is now new, but HIPAA but a spotlight on privacy.

**"I will respect the secrets which are confided in me even after the patient has died"**

## HIPAA QUICK OVERVIEW

1. PRIVACY AND CONFIDENTIALITY - attention is on who has the right to look at patient identifiable information in the patient record/chart.
  - a. It is intended to protect the patient's right to privacy.
  - b. It gives more control to the patients over how their information is used and to whom it is given.
  - c. It is impossible to have privacy and confidentiality without security, which is the second leg of the HIPAA rules.
2. SECURITY - looks at people, systems and policies
  - a. People Security has to do with who has access to patient information and who has access to the facility or organization.
  - b. System Security looks at computer access, location, usage, storage, etc.
  - c. Policies under security - policies exist to protect computers from unauthorized use, to make sure virus protection and passwords are in place, and other policies to make sure patient information is available only to the appropriate people.
3. EDI - (Electronic Data Interchange) has to do with standards concerning communication between two computers.

## WHY CARE?

1. Because we are ethically bound to protect patient information.
2. Healthcare is a service industry that relies on patient information for every aspect of its delivery.
3. Mental health, substance abuse, sexually transmitted disease, and now genetic information create a heightened awareness of the need for patient information privacy.
4. In healthcare, it has been our responsibility to protect health information for over 2000 years.
5. Every day we face situations where there is the possibility that confidentiality will be breached.
6. Most of the time when confidential patient information is leaked, it is unintentional or accidental.
7. But whether done intentionally or unintentionally, violations of privacy have increased.
8. Technology does not breach confidentiality, the user of that technology does.
9. The need for health care does not justify unwanted invasion into the patient's life.

## CONFIDENTIALITY / PRIVACY

1. The HIPAA Privacy rule for the first time creates NATIONAL standards to protect individual's medical records and other personal health information.

2. It's all about protecting patient health information.

### **WHAT INFORMATION IS PROTECTED UNDER HIPAA**

1. Any information about a patient's mental or physical health condition that could identify the patient.
2. It includes information in any format- computer, paper, talking, video, etc.
3. HIPAA also uses the terms "use" and "disclosure."
  - a. "Use" refers to how confidential patient health information (PHI) is used within an organization to treat the patient, fulfill the billing function, and other operations such as research or auditing.
  - b. "Disclosure" relates to how you communicate protected health information to an outside person or organization.

### **MINIMUM NECESSARY**

1. Another important idea used in the HIPAA regulations is "minimum necessary."
2. Minimum necessary deals with looking at information, using that information or sharing that information on a need to know basis to get your job done.
3. Working in a healthcare organization does not automatically give a person the right to use or even see any and all patient records.
4. You should be able to look at only the information you need to know to get your job done.
5. The minimum necessary standard does not apply to the patient. They can have access to all of their protected health information (in other words-, their entire chart).
6. The HIPAA rule requires an organization to define who has access to PHI and identify what they can and cannot look at in the medical record.
7. If you are unsure about what information you can see and what information is restricted in your organization, check with organization's leaders or supervisors.
8. If you ever move patient information from one building or location to another (for example, take it from the office to home or from one branch office location to another branch office location) it is important to have steps in place to prevent loss or unauthorized access.
9. If you carry any patient information - in a folder from home-to-home, on a laptop computer, etc., check to see what policies exist in your organization regarding transporting patient records.
10. HIPAA also expects sanctions or punishment for employees who don't properly protect patient information.

### **WHAT DOES THE RULE MEAN FOR MY PATIENT?**

#### **Patient Privacy Rights Overview**

1. Think of yourself as a patient. What rights would you want -who would you want knowing all of your private health information?
2. HIPAA gives patients more control over their health information.
3. For patients - it means being able to make informed choices when looking for care and when looking for who will pay for the care (for example, which insurance company to use), based on how personal health information may be used.

#### **Patients have the following rights under the HIPAA regulations**

1. The right to know what their rights are under the HIPAA regulation.
2. The right to receive a paper copy of the "Notice of Information Practices":
  - This notice (given to the patient when admitted) tells the patient how their health information may be used by the organization and with whom their information will be shared.
3. The right to "Request Restrictions" - to control who will NOT be allowed to see parts of their records.
  - For example, they may say that no family members are allowed to see the notes related to their visit with the psychologist.
  - Organization doesn't have to agree with the requested restrictions but only the Privacy Official or someone they appointed can decide what requests are accepted or rejected.
  - Generally, the request should be granted if the request is reasonable, won't interfere with the care, and is in the best interest of the patient.
4. The right to have "Confidential Communication" between the patient and persons caring for the patient.
  - For example, they can request that no family member be present when discussing their health or that no phone calls are made to their work.
5. The right to look at their health record and to get a copy of it.
  - HIPAA allows an individual see and copy their protected health information although there are exceptions.
  - If a patient asks you if they can see their record or asks you to copy a portion of the record for them, forward the individual's request to the appropriate person or department in your organization.
  - Know your organization's policy and procedures on access to records.
6. The right to "Amend Records"- the right to request an amendment or correction.
  - This does not mean they have a right to cross through or get rid of part of the charting.
  - It means they can add some written information to the record making a correction to something they don't agree with. The original charting is not changed.
  - The organization can deny the request to "amend" the record.

- When an individual requests an amendment to their record, always send the request to the appropriate department or staff.
7. The right to an "Accounting of Disclosures" - the right to know what health information has been sent to whom and why the information was sent.
    - However, there are very few types of "disclosures" that the organization needs to track.
  8. The right to complain if they believe their privacy has been violated.
  9. In regard to marketing products and participating in fundraising- they have the right to "opt-out-of" (not be contacted) future communication on marketing and fundraising activities.

### **PROVIDING / FAMILY INTERACTION**

What if a family member or close friend is asking for information contained in your patient's medical record? What would you do?

1. First, if the patient is there and they are capable of giving permission, ask the patient if it is okay to talk in front of the person present. Give them a chance to comfortably say "no."
2. If the patient is not there when someone else is asking for information, use your best professional judgment or contact your supervisor.
3. Generally, don't change what has been okay with the patient in the past. For example, if family members have always been present when discussing the patient's health and there has been no objection from the patient, continue to have the discussions just as you did before HIPAA.

### **WHAT DOES THE HIPAA RULE MEAN FOR ME?**

1. When you work in a healthcare organization you are exposed to confidential information all the time.
2. What you do with the information is serious business.
3. It is now more important than ever before that healthcare workers do everything they can to keep patient information confidential and to be especially careful not to reveal any information to the wrong person.
4. How do you decide when information is considered private and when it is not? Here is a major consideration:
  - Did you see, hear, or read information through your job?
  - If yes, it is considered confidential and you must keep it to yourself.

### **ACTION STEPS TO KEEP PATIENT HEALTH INFORMATION CONFIDENTIAL**

1. Be aware of potential problems and take steps to avoid them BEFORE they happen.
2. Create an awareness program and share information about potential problems and

solutions.

3. You are eating at a restaurant and your friend asks you about one of your patients - what should you do? (Answer: Tell your friend that this is not the time or place to talk about patients).
4. You just went to a care conference about your patient with your supervisory nurse. Everyone at the conference received a piece of paper with the patient's name on it as well as some other health information. The conference is over. What do you do with your piece of paper? (Answer: Turn it back in to the supervisory nurse or make sure it is shredded properly).
5. If fax and copy machines are used to send or copy patient information, make sure they are located away from public areas.
  - Make sure private information is sent to the right person (call to verify);
  - Use a fax cover sheet with a confidentiality statement on it;
  - Pick up information immediately from the printer or copier if what you are printing or copying contains patient information.
6. Always consider where you are when discussing confidential information.
  - Are you in a public area where others can hear?
7. Whether you are talking to a patient or family or with other staff members, try to keep your conversations from being overheard.
  - Keep confidential patient information out of public areas such as waiting rooms, conference rooms, the top of a nursing station or receptionist desk, or on white boards viewable by the public.
  - Don't assume the person that is with the patient knows all of the patient's private information.
8. Be aware that when using cell phones, information can be listened to with to with an electronic scanner similar to police scanners or a two-way radio.
  - Never provide personal information over the telephone to anyone unless you placed the call and you know the person at the other end. (For example, a person calls and says they are the patient's doctor. How can you be sure it is their doctor?)
9. Answering machines can be problematic - you never know who is listening to the message at the same time you are listening.
  - Never leave personal information on an answering machine- leave your name and ask the patient to call you back.
10. An important aspect of protecting a patient's privacy is keeping their records safe and protected regardless of where they are kept.
  - If a medical record is kept in an office and the office is unattended and open to the public, how will the record be secured?
  - You carry a computer back and forth between work and home. It contains patient

information. How do you protect that information?

11. Confidential information and records on computers should also be kept private by:

- Passwords that are never shared or easily identified;
- Computer screens should be turned or positioned to prevent the public from viewing the information;
- Laptops are especially dangerous because they may contain lots of information and they are easily stolen.

12. When providing treatment consider where you are and who is around the patient.

- Help protect the patient by giving them the opportunity for privacy when providing treatment or discussing their condition.

### **IMPORTANT STEPS TO KEEP HEALTHCARE HEALTHY**

1. Keep the patient's trust by respecting their privacy.
2. Make the place you work a place you would want to receive care.
3. Make it your personal mission to protect patient privacy.
4. Be the patient's advocate (supporter) for privacy.
5. Make sure only information important to a patient's treatment is released and only to those directly involved with the patient's care (minimum necessary).
6. Recognize that prior to HIPAA there were no clear, logical and complete laws to protect the highly delicate information that a patient shares with his or her health professional.
7. Look at routines - paper handling, machines, personal interactions - what can you do to make it better and improve patient privacy?

### **REPORTING PRIVACY BREACHES**

1. You are duty-bound to report any known or suspected breaches of confidentiality.
2. You can do this without fear or revenge or retaliation –according to the regulations.
3. HIPAA allows for both criminal and civil penalties, which may include jail time and fines for certain types of breaches in confidentiality.
4. When you have a question or concern related to privacy, go to a professional in your organization for advice.
5. Professionals are ethically bound to protect patient privacy and can be a resource on confidentiality as well as use and disclosure issues.
6. The new privacy rule may seem overwhelming now, but making changes to improve privacy is something to be proud of, not a burden.
7. Each person must take ownership over their actions and keep the patient's best interest in mind.
8. Remember, providing quality care means keeping the patient's trust that their

information will be kept private.

### HIPAA HOMECARE IMPLICATIONS

1. Keep conversations private
2. Keep papers private – house and car
3. Use protective measures on laptop:
  - Names on screen
  - Passwords
  - Be sure names don't show
4. Shred all confidential papers
5. Don't show one client another client's name
6. The fax should be out of the general waiting area so information is not seen
7. Be careful of cell phones

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Name: \_\_\_\_\_

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