**HIPAA Happenings**

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**Overview**

- Disclosing PHI to Law Enforcement
- Scenarios
- Patient Access to PHI
- HIPAA and the Media

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**Disclosures of PHI to Law Enforcement**

This Discussion is About Requests Without Legal Process

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Requests Without Legal Process

- Law enforcement can get a subpoena, summons or warrant for PHI
  - Legal process should be forwarded to HIPAA Compliance Officer
- HIPAA permits disclosures in compliance with legal process

What About Other Requests

General Principles

- HIPAA greatly limits the disclosures that agencies can make!
- Your agency is a patient advocate, not a tool of law enforcement
- Permissible law enforcement disclosures are limited to specific situations

6 Basic Permissible Law Enforcement Disclosures

1. Required by law
2. Identification and location purposes
3. Crime victims
4. Decedents
5. Crime on premises
6. Reporting crime in emergencies

1. Required by Law

- Permitted to disclose PHI when required by state law
- Examples (depends on state law)
  - Gunshot injuries
  - Burns
  - Animal bites
  - Elder abuse
  - Child abuse

2. Identification and Location

- To identify or locate a:
  - Suspect
  - Fugitive
  - Material witness
  - Missing person
- If law enforcement knows who the patient is and where they are, this doesn’t apply!
2. Identification and Location

- **May only** furnish:
  - Name
  - Address
  - DOB
  - SSN
  - Blood type
  - Type of injury

- Not necessarily the whole PCR!

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<th>Identification and Location</th>
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<td>• Where the individual is a possible crime victim</td>
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<td>• Name</td>
<td>• If pt agrees; OR</td>
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<td>• Address</td>
<td>• If pt unable to agree because of condition, may release PHI if law enforcement represents that the info is needed immediately and it won‘t be used against the victim</td>
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<tr>
<td>• DOB</td>
<td>• Date/time of treatment</td>
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<tr>
<td>• SSN</td>
<td>• Date/time of death</td>
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<tr>
<td>• Blood type</td>
<td>• Description of distinguishing physical characteristics</td>
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<tr>
<td>• Type of injury</td>
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3. Crime Victims

- Where the individual is a possible crime victim
  - If pt agrees; OR
  - If pt unable to agree because of condition, may release PHI if law enforcement represents that the info is needed immediately and it won‘t be used against the victim

4. Decedents

- May release PHI to alert law enforcement of a patient's death, if there is a reasonable belief the death may have resulted from criminal activity
- Note: there is a general exception for releasing PHI to coroners and funeral directors for non crime-related deaths

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<th>5. Crime on Premises</th>
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5. Crime on Premises

- Can disclose PHI to report a crime at the provider’s premises
- Need only have a “good faith belief” that the information may constitute evidence of a crime on the premises

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<td>• Commission and nature of a crime</td>
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<td></td>
<td>• Identity, description and location of perpetrator</td>
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6. Reporting Crime in Emergencies

- May release PHI to law enforcement to alert them to:
  - Commission and nature of a crime
  - Location of the crime or of the victim
  - Identity, description and location of perpetrator

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<th>Law Enforcement Disclosures Should be Tracked</th>
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<td>• May release PHI to law enforcement to alert them to:</td>
<td>• Date of the disclosure</td>
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<tr>
<td>• Commission and nature of a crime</td>
<td>• The name law enforcement officer and agency</td>
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<tr>
<td>• Location of the crime or of the victim</td>
<td>• Brief description of the PHI disclosed;</td>
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<tr>
<td>• Identity, description and location of perpetrator</td>
<td>• Purpose of the disclosure</td>
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<td>• Any representations made by law enforcement</td>
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Guiding Principles

• Guiding principles for staff members
  ▪ Be a patient advocate first
  ▪ Err on the side of nondisclosure unless:
    − You are required by state law to disclose to PHI
    − Releasing the PHI would prevent imminent harm to someone
    − The patient authorizes you to release the PHI

Alternatives

• There are alternatives
  ▪ Law enforcement can speak with the patient if the patient is competent and able to talk
  ▪ Law enforcement can get legal process for the information

Scenarios: HIPAA and Law Enforcement

Scenario 1

• You respond to a motor vehicle crash on a city road with injuries. First responders and ambulance on scene, as well as local law enforcement. Two patients are transported from the scene.
• After the call, a City police officer stops by your station and asks for a copy of the PCR for one of the patients transported to the hospital as a result of the accident.

Scenario 2
Scenario 2

- You respond to a one-vehicle crash and arrive on scene and find a car that ran off the road into a light pole with two patients, a 20 year old driver and 24 year old passenger. The driver has minor injuries but is otherwise in no distress. The passenger appears to be intoxicated and has moderate injuries but no life threats.
- A police officer asks the EMS crew if the passenger appears to have been drinking.

Scenario 2

- Does it make a difference if the intoxicated passenger is 19 years of age?
- Does it make a difference if the driver is the one who appears to be intoxicated?

Scenario 3

- A police officer on scene investigating an accident in which an alleged drunk driver struck a minivan seriously injuring the patient, a young mother, and her two children.
- Police officer asks you her name, brief summary of her condition (critical, minor, etc.) and the name of the hospital you are transporting her to.

Scenario 3

- A police officer on scene investigating an accident in which an alleged drunk driver struck a minivan seriously injuring the patient, a young mother, and her two children.
- Police officer asks you her name, brief summary of her condition (critical, minor, etc.) and the name of the hospital you are transporting her to.

Scenario 4

- Your agency is dispatched for a medical emergency and arrives on scene to find a 68 year old female complaining of chest pain and shortness of breath. Also on scene is a medically trained police officer acting as a first responder. The officer has started the patient on oxygen.
- Before you leave the scene, the police officer asks you for the patient’s date of birth, full name and vital signs for her first responder PCR.
Scenario 5

- Your agency is dispatched for an unknown medical at Joe’s Bar and Grill on Main Street. Upon arrival, you find a 58 year old man, conscious and alert, sitting on the floor in front of the bar, holding his left knee in obvious distress. He is obviously intoxicated, but indicates that he fell off his barstool and landed on his knee and has pain 7/10.
- A police officer is on scene but does not leave his cruiser. Later, the officer asks you for the patient’s name, age and condition.

Scenario 6

- While transporting a patient for a potential heroin overdose a suspicious-looking bag falls out of the patient’s pocket.
- Can you give this potential evidence to the police without violating HIPAA?

Fruit of the Poisonous Tree

Educate Law Enforcement

- Give them a sheet outlining when you can release PHI to them without legal process
- Explain that it helps you remain compliant – and helps them from having evidence excluded if it was improperly-obtained
Educate Your Staff

• Go over the 6 exceptions they might encounter
• If the request doesn’t fall under one of these requests, don’t release it
• Send all questions or legal process to the HIPAA compliance officer

By the way…

• When we say “legal process,” we mean legal papers that require certain actions, like:
  • Subpoenas
  • Summons
  • Warrants
  • Complaints
  • Civil Investigative Demands
  • Etc.

Permissible vs. Required

• Remember that the 6 disclosures are permissible
  • You may, but are not required under HIPAA, to share PHI with law enforcement under those exceptions
  • But, you are required to comply with any state law reporting requirements

Let’s Talk About the Patient’s Right of Access

Two Patient Rights

“I Want a Copy of my Medical Records”

Obtain a Copy of PHI
Inspect PHI

COPY
Inspect vs. Copy

• Although the patient has a right to inspect PHI, should offer to provide a copy of PHI first
• Patient only has a right to a copy, not the actual medical record that you hold (that belongs to your agency)

Business Associates

• Applies to records held by covered entity (CE) and records held by its business associate (BA)
  • Billing company may hold records that patient is seeking
  • Can task billing company with fulfilling access requests, but CE remains liable if the BA does not comply with HIPAA

What PHI is Subject to Access?

• Any information in a “designated record set” (DRS)
  • Documents and electronic records you use to make healthcare decisions or bill for healthcare services
    − PCR
    − PCS
    − Claim forms and billing records
    − Records from other providers

What’s Not Included?

• Preliminary patient notes
• Incident reports
• Preliminary claim documentation
• Information complied for criminal, civil or administrative actions
  • But, this does not mean you can deny access to medical records simply because you are being sued!

Access Request

• May be verbal or in writing
• CE may require a patient to make access request in writing if you tell them
  • Put this in your NPP
  • Have an access request form

Verifying the Patient’s ID

• Obligation under HIPAA prior to any disclosure to:
  1. Verify the identity of a person requesting PHI and
  2. Obtain any documentation, statements, or representations, whether oral or written, from the person requesting the PHI when required by HIPAA

45 CFR §164.512(h)(1)
Manner of Request

- If request is in person
  - Ask to fill out access request form with demographic information
  - Show government issued ID
- If request is over phone, fax, email, etc.
  - Ask to verify SSN, address, DOB, etc.
  - Send access request form via mail, email or fax

Granting Access Requests

- Generally must be provided within 30 days of request
- One time 30-day extension if:
  - Notify the patient in writing within the initial 30-day period about the reason for the delay and the date on which the request will be granted

Electronic Access

- If PHI requested is maintained electronically in a designated record set, CE must provide individual with access in electronic form and format requested, if it is readily producible in that form and format

Request to Transmit PHI

- A CE is also required to transmit a copy of the PHI directly to another person designated by the patient if requested by patient
  - In writing (electronic or paper) signed by the individual that clearly identifies the designated person and where to send the copy of PHI

What if the Person Requesting the Records Isn’t the Patient?

Access for Personal Representatives

- The same rules about access we just talked about apply in these situations
- Must treat the patient’s “personal representative” just like you would the patient when it comes to access
Personal Representatives

- Any person that has the legal authority under state law to act on behalf of an adult or emancipated minor
  - Power of attorney
  - Person designated by an advance directive to act for patient
  - Court-appointed guardian

Deceased Patients

- Someone with legal authority under state law to act on behalf of patient
  - Executor
  - Administrator
  - Spouse
  - Child
  - Next-of-kin

What About Minors?

- Anyone authorized under state law to make the minor’s healthcare decisions
  - Parent
  - Legal guardian
  - Someone acting in loco parentis

But, a “Minor” Exception

- If minor is permitted to act on his or her own behalf under state law for healthcare services, should not treat a patient, legal guardian, or someone in loco parentis like the patient
  - Some states permit minors to consent to emergency services and certain other kinds of healthcare

Unless....

- State also grants rights to parents and legal guardians to medical records even if minor can consent to healthcare services
  - If state law says this, you must grant rights to parent or legal guardian

Sharing PHI With Family Members and Others

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General Rule

• Can share PHI with family members, friends and others involved in the patient’s care or payment for that care as long as doing so is in the patient’s best interest
• Must limit disclosures to PHI that the family member or other party would need to know

Patient is Competent

• When patient is competent and able to make healthcare decisions you can share PHI with others if:
  • Patient verbally agrees to allow you to share PHI
  • You give patient an opportunity to object
  • Infer that it’s ok to share their PHI with others

Patient is Competent

• Ask the patient if it’s OK to speak with a family member
• If over the phone - ask patient to verify that it’s ok or ask the caller to verify their relationship and information about the patient

Patient is Competent

• Document
  • Verbal agreement
  • Circumstances
  • Patient’s actions or inactions
  • Actions and representations of other parties

If Patient is Incompetent

• May disclose PHI to friends, family members and others if you believe it is in the best interests of the patient
• Look to:
  • Who the individual is
  • Whether the person is involved in patient’s care or payment for that care

Deceased Patients

• May disclose PHI to family members and others who were involved in deceased patient’s care or payment for care unless doing so would be inconsistent with a prior expressed preference of the patient
• Not limited to just speaking with the formal representative of the estate
It's OK To…
• …discuss the patient’s condition with family members and others
• …discuss the patient’s bill with others who help the patient or who may be responsible to pay (parent)
• …notify a family member about where a patient is and the patient’s condition

Verifying Identity
• The HIPAA verification requirements do not apply to disclosures to family members and others
• You are free to determine from circumstances that the individual is who they say they are

Verifying Identity
• If it’s over the phone, ask the individual to verify who they are and information about the patient
• If it’s in person, you can take their word for it unless you have evidence to the contrary

Copies of Records
• If the family member, friend or other party asks for a copy of the patient's records:
  ▪ Ask them to fill out access request form
  ▪ Can still discuss information that may be in the records without a formal request, but limit discussion to necessary treatment or payment disclosures

HIPAA and the Media
• There are no express provisions in HIPAA addressing media disclosures
• That means can only release PHI to the media with patient authorization
  ▪ Use a HIPAA-compliant authorization form
What About Non-PHI?

- Disclosures of de-identified information
- De-identified PHI is information that:
  - Does not identify an individual; AND
  - There is no reasonable basis to believe the information could be used to identify an individual

Non-PHI

- General information about the incident, number of victims and hospital destinations
  - Example: “a total of three patients were transported from the accident scene. Two were taken by ambulance to County General Hospital and one by helicopter to the Regional Trauma Center.”

Non-PHI

- Example: “we responded to an incident at the Valley Shopping Mall and transported one patient to the hospital.”
- NOT: “we responded to a residence in the 300 block of Main Street and transported a patient from the scene to the local hospital.”

Keep it Under Control!

- Control disclosures to the media
  - Tell staff members no PHI, ever
  - Consider having all requests go to PIO or HIPAA compliance officer
  - Monitor your websites for any PHI

Summary

- HIPAA disclosure rules can be confusing and depend on the circumstances of the request, the identity of the requestor, the PHI requested, and the purpose of the request

Summary

- If you are the HIPAA Officer and you are still in doubt, contact your agency’s legal counsel
- Remember, breach notification rules may apply to improper disclosures of PHI
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• Approved for CEU credit
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**TOTAL:**

☐ Bill Me  
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