

HIPAA: What's True, What Isn't

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Preamble to The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

"Public Law 104-191, 104th Congress—An Act to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes."

You can find this information at: <http://aspe.hhs.gov/admsimp/pl104191.htm>.

Like motherhood and apple pie, preservation of patient privacy is universally accepted as a good thing. And yet, misconceptions about the Health Insurance Portability and Accountability Act (HIPAA) range from the slightly odd to the ridiculous. This article gives some examples of what's true and what isn't. Now that the first HIPAA Administrative Simplification deadline passed on April 14, 2003, physicians continue to sort through fact and fiction of this complex regulatory effort.

What Is HIPAA?

Using common-sense requirements, HIPAA makes Permanent physicians more conscious of confidentiality by supporting practice with added policies and procedures. Physicians already know many of the HIPAA basics—from not discussing patient information in elevators and cafeterias to making sure that computer passwords are kept confidential. HIPAA helps start identifying instances in which people might be inadvertently releasing protected health information (PHI). This is a beneficial result of HIPAA.

Being aware of our surroundings while completing routine tasks is crucial. Even the method used to handle trash can be a HIPAA violation waiting to happen. Physicians may have several trash bins—for recyclables, regular trash, and shredded documents. We must make a concerted effort to put garbage that may contain PHI in the right receptacle as well as to limit access to those receptacles to follow HIPAA guidelines.

Common HIPAA Misconceptions

Q. *I've heard it said that one cannot say a patient's name in a waiting room because that would be disclosing*

bis/ber PHI—that this is a no-no under HIPAA?

- A.** This is not a HIPAA violation; however, it is an example of one of the more "far-out" misconceptions rolling through medical hallways.
- Q.** *I've heard that I won't be able to discuss my patient's case with another physician. Would this violate HIPAA because I would be disclosing PHI?*
- A.** Since HIPAA is not intended to adversely affect quality or access to care. You may need to consult with another physician or health care professional regarding a patient's treatment, and this is allowed under HIPAA.
- Q.** *Patient charts are stored in a room that is not directly supervised by KP staff but is accessible to the public. The light is on in the room, the door is wide open and unlocked. What do I do?*
- A.** To reduce the risk of a HIPAA violation, you should shut and lock the door so patients' medical records are kept safe and secure. After locking the door, you should report the incident by following your facility's security incident reporting procedures.
- Q.** *Will hospitals where patients share rooms have to be remodeled to create single-bed rooms?*
- A.** No, HIPAA does not require this, according to the Privacy of Health Information/HIPAA Questions and Answers on the Department of Health and Human Services Web site.¹ For more details, see: http://answers.hhs.gov/cgi-bin/hhs.cfg/php/enduser/std_alp.php?p_sid=ySEcB8Eg&p_lva=&p_li=&p_page=1&p_cat_lvl1=7&p_cat_lvl2=%7Eany%7E&p_search_text=&p_new_search=1.1.
- Q.** *In an examination room, a physician's pager goes off while a patient is in the room. S/He steps away*

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for a moment to use a phone in another room. If the physician uses a computer with PHI in the exam room, what should be done before leaving the room?

- A.** Before leaving the room, the physician should remove confidential information from the computer screen to prevent unauthorized disclosure and should lock the computer session to prevent anyone from accessing health information.
- Q.** *I heard I can't leave my patient a voicemail because others may overhear or retrieve the message before the patient does. Is this true?*
- A.** No. You can still leave your patient a message on his or her answering machine. To safeguard the patient's privacy, however, you should limit the amount of information you disclose on an answering machine. Unless asked not to do so by your patient, you are allowed to leave a message with a family member or other person who answers the phone when the patient is not home.
- Q.** *I heard that, under HIPAA, families can no longer eat with a patient they are visiting because they could find out additional information such as if he or she is on a restricted diet. Is this true?*
- A.** This is not true. HIPAA does not state that families can no longer eat with a patient. It's important to remember that HIPAA offers reasonable guidelines.

HIPAA Security

Privacy is just one part of HIPAA. HIPAA also has security standards (finalized in February 2003) and that work in concert with the final HIPAA Privacy Rule.

With a deadline of April 21, 2005, work is underway about how we will comply with the Security Rule. We

have a lot of work to do. Right now we're examining all parts of the Security Rule to create a plan to bring the organization into compliance. We will be performing risk assessments and making management decisions for appropriate security controls to make sure our patients' electronic information is kept secure. We'll be refining Kaiser Permanente's systems, policies, and procedures to take security to a new level to meet the HIPAA deadline less than two years away.

We're also waiting to see if the government will issue additional guidelines for further clarification of the Security Rule. We'll keep you posted. ❖

References

1. United States Department of Health and Human Services. Questions & Answers. Category: Privacy of health information/HIPAA [Web site]. Available from: http://answers.hhs.gov/cgi-bin/hhs.cfg/php/enduser/std_alp.php?p_sid=xPmDQ6Gg&p_lva=&p_li=&p_page=1&p_cat_lvl1=7&p_cat_lvl2=%7Eany%7E&p_search_text=&p_new_search=1 (accessed on: May 20, 2003).
2. United States Department of Health and Human Services. Office for Civil Rights—HIPAA. Medical privacy: national standards to protect the privacy of personal health information [Web site]. Available from: www.hhs.gov/ocr/hipaa. (accessed on May 20, 2003).

Failure to Comply with HIPAA

Deliberately breaking HIPAA's rules could undermine member trust in Kaiser Permanente and could place staff and the organization at risk for penalties under HIPAA as well as other laws.

- HIPAA allows both civil and criminal penalties, including fines and possible time in jail.
- The Office of Civil Rights of the Department of Health and Human Services enforces civil violations, and the Department of Justice enforces criminal violations of the HIPAA Standards.
- Civil penalties are usually monetary fines. HIPAA allows fines of up to \$100 for each violation of the law, to a limit of \$25,000 per year for violations of the same requirement.
- Criminal sanctions for knowing misuse or disclosures of PHI carry fines of \$50,000 to \$250,000 and one to ten years imprisonment.

For more on HIPAA Administrative Simplification, see the Department of Health and Human Services Web site at: <http://aspe.hhs.gov/admsimp/>

Also see KP's HIPAA Intranet site at: <http://kpnet.kp.org/hipaa/>.

What is HIPAA?

In 1996, Congress enacted the Health Insurance Portability and Accountability Act (HIPAA).² HIPAA is a complex federal regulatory effort that has far-reaching effects on the health care industry—including health insurance portability and fraud prevention.

Although it is primarily aimed at ensuring portability of health insurance coverage, another part of HIPAA, called Administrative Simplification, is aimed at reducing the administrative costs of health care and includes electronic transactions standards, privacy, and security.

HIPAA offers many opportunities and benefits for the health care industry. It paves the way for full-scale use of electronic commerce by standardizing electronic transactions. It eases the transfer of information between health plans, providers, payers, and the government. It also provides rigorous safeguards to protect the confidentiality of patient information.