

Yours, Mine and Ours-Issues in Patient Access to Records

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REGZILLA

HIPAA/HITECH Omnibus Rule was issued on January 25, 2013.



HIPAA is a Rule of Notice

- Patients must know how and under what circumstances their information will be used, stored and transmitted. The twin obligations of keeping data secure and keeping patients informed ultimately rests with the provider.

Social Media Policy: Non Negotiable Terms

1. Keep Confidential Information Confidential:

- Protected company information should not be shared outside the company.
- Patient information should not be posted online or shared in any way.

2. Be Respectful

- Do not post defamatory content about others for any reason.
- Make it clear that views expressed online are yours alone, and do not represent the views of your employer.

3. Do Not Break the Law

- Do not post pictures or other information about your participation in illegal activities, or that imply you engage in such conduct.

4. Protect Privacy Rights of Yourself and Others

- Be cautious about how you share personal information.
- Do not post pictures of or personal details about co-workers that may be considered an invasion of privacy without express permission.
- Stay mindful of privacy laws such as HIPAA.
- Do not destroy, even personal media, without approval if it has been used to create, transmit or store work-related data.

5. Standards of Conduct Still Apply

- Any conduct that would be grounds for dismissal at work will be grounds for dismissal if done online.

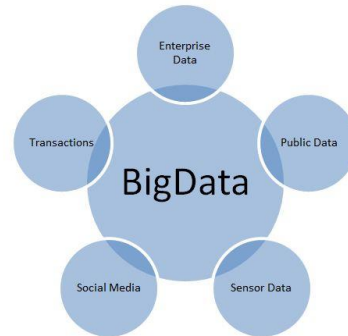
SOCIAL MEDIA SPECIAL ISSUES

- Relatives/Friends as patients
- Shadow record
- Infringe on work time
- Licensure issues



Record Creation and Retention

- Data map
- Policies specific to data points and data



- Shadow record
- What do I have to confiscate when I have a subpoena

Creation of a Shadow Record

- Orders not in formal EMR
- Orders, etc. not in auditable form
- Duplication and mistake more likely with use of multiple processes/accounts
- How to explain to IBM/DEA/HHS
- Other HIPAA Issues

Will a Disclaimer Fit in 140 Characters?

- Who to advise
- How to advise
- Screen shot of disclaimer/disclosure
- Massachusetts Medical Society requires online disclosure

*Statnews.com 2/29/2016

What About that Cool App?

- Integrated App (App + EMR)
- Is the App Developer a BA?



PHI/HIPAA/OCR and Apps

- Patient downloads personal app for use
 - No
- Direct to consumer app – Doc suggest app to track diet then the app sends a summary to the Doc.
 - No-as the consumer initiates (less clear cut)

PHI/HIPAA/OCR and Apps

- Doc contracts with App developer and patients use app per doc request, direct to EHR
 - Yes
- 2 data streams, one CE driven, one consumer driven
 - Must keep data separate, CE driven section requires a BAA

Right to Access

- The Designated Record Set
 - Medical records
 - Billing records
 - Enrollment, payment, claims, management systems
 - Records used to make decisions about individuals

No Right to Access

- Quality assessment
- Peer review
- Patient safety activity
- Business planning
- Psychotherapy notes
- Records prepared in anticipation of litigation

Verification of Identity

- Same process required
- Orally or in writing
- Good faith



NOT OK

- Require patients to “pick up” records
- Only use web portal
- Only accept mailed access requests
(Delay)



What About Arguments Among Family?

- Parents of child/patient
- Family in general
- 3rd parties



Fees

- Reasonable cost based fee
 - 1) Labor for copying
 - 2) Supplies (paper, cd)
 - 3) Postage



May Not Include Costs For

- Documentation, verification, search, systems, etc.
- Portal access is free
- OCR wants cheap or free access (\$6.50 or free)

Workers' Compensation

- A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial, as well as final clinical assessment, without cost when the assessments are requested as supporting documentation to determine liability for payment of a medical provider's bill for medical services.

Workers' Compensation

When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed: \$20 for 1-20 pages; \$20 plus \$1 per page for 21-30 pages; \$30 plus \$.50 per page for 31-100 pages; \$65 plus \$.25 per pages for 101-200 pages; \$90 plus \$.10 per page for more than 200 pages, and the actual expense of postage. No other expenses shall be allowed.

You may not Require a Reason
for Requesting Access

MYOBB!!

Timelines for Production

- 30 days (outer limit)
- 1 extension 30 days (written notice within 30 days)
- Review of denial “reasonable period of time”

Can I Refuse Because You
Haven't Paid the Bill?

NO

HIPAA 45 CFR 164.524(C)(4)

IBM Ethical Rules

Texting

Hire a Service/App Secure

- Inherently not secure
 - Private device
 - Lack of basic safeguards
 - Don't know how stored
 - Inability to audit
 - Inability to receive
 - Storage by service telecommunications provider

Best Practice for Texting

- A secure sign-on process
- Encrypted messaging
- Delivery and read receipts
- Date and time stamp
- Customized message retention time frames;
- Specified contact list for individuals authorized to receive and record orders; and
- Patient Consent

Joint Commission 5/20/2016 – AHLA Article

Update NPP



Resources

- [OCR.gov](https://www.ocr.gov)
 - Special topics
 - 45 CFR Part 160
 - 45 CFR Part 162
 - 45 CFR Part 164
- [HealthIT.gov](https://www.healthit.gov)
- [TheSedonaConference.org](https://www.sedonac.com)

Thank you

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