

HIPAA'S IMPACT:

Mr. Smith Goes to the Doctor's Office



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*Mr. Smith goes to the
doctor's office...*



*HIPAA's impacts and
implementation strategies*


Mr. Smith, a new patient referred by Dr. Jones, comes into Dr. Goodcare's office for his initial appointment. He appears to be developing complications from a chronic illness, and Dr. Jones has asked for a comprehensive evaluation.

The office will need to:

- ✚ Provide a notice of privacy practices the first time the patient is seen in the office
- ✚ Make a "good faith" effort to obtain a written acknowledgement from the patient that he has received the notice of privacy practices


A separate authorization is NOT needed to release information to his insurance company.

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- ✚ Significant changes to the consent requirement were published 8/14/02
- ✚ Patient consent is no longer required to use information for treatment, payment, and healthcare operations
- ✚ Instead, providers must make a "good faith" effort to obtain the patient's written acknowledgement of receipt of notice of privacy practices

During the office visit, Dr. Goodcare prescribes a new medication for Mr. Smith and gives him some samples to try.




- ✚ Such “marketing” activities are permitted under HIPAA during a face-to-face communication between the patient and his healthcare provider.
- ✚ The privacy guidance issued 7/6/01 specifically mentions medication samples as an acceptable activity.

When Mr. Smith's exam is finished, Dr. Goodcare completes a super bill for the visit, documenting diagnoses, the extent of the examination, and the tests performed. The bill is sent to the office's billing service, along with demographic and billing information.



- ✚ Diagnoses must be coded using ICD-9-CM
- ✚ Procedures must be coded using CPT-4 and HCPCS; local codes are no longer permitted
- ✚ Bills do not have to be submitted electronically except for Medicare. Providers with more than 10 FTEs must bill Medicare electronically by October, 2003.


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Electronic transactions must use designated ANSI X12N standards.


Providers who are billing electronically must use the ANSI standard transactions by October 16, 2002, unless they filed a request with the Department of Health & Human Services to request a one-year extension

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Because it handles protected health information, the billing service is considered a business associate under HIPAA. The office must have a written business associate agreement with the billing service to protect the confidentiality of the information.

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Under new regulations published 8/14/02, CEs have additional time to comply with business associate requirements:

- ✚ Contracts renewed or modified after 4/13/03 must meet requirements

- ✚ All contracts must be in compliance by 4/13/04

A few weeks later, Mr. Smith returns to the office and asks for a copy of his records.



Under HIPAA, patients have the right to access their records in **designated record sets** and obtain copies of them. This right extends for as long as the office keeps the records.

Designated record set for providers includes:

- ✚ Medical records
- ✚ Billing records

A few weeks later, Mr. Smith returns to the office and asks for a copy of his records.



Patients do not have the right to access:

- ✚ Psychotherapy notes
- ✚ Information compiled for civil, criminal, or administrative investigations
- ✚ Information protected by Clinical Laboratory Improvements Act (CLIA)

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 AND filed separately from the rest of the medical record.
- ✚ EXCLUDES: medication prescription, modalities and frequency of treatment, results of clinical tests and summaries of diagnosis, functional status, treatment plans, symptoms, prognosis, and progress.

The receptionist checks with Dr. Goodcare, who does not want to give Mr. Smith access to his records.




May deny access in certain circumstances:

- ✚ Unreviewable grounds (inmates, confidential records)
- ✚ Reviewable grounds (may cause harm to patient or someone else)

Must provide a timely, written notice of denial:

- ✚ Basis for denial;
- ✚ Right to request a review, if applicable; and
- ✚ Description of how the individual may complain to the office or DHHS.

After considering the request, Dr. Goodcare decides to give Mr. Smith access to the records. The receptionist tells Mr. Smith that he will have to pay a fee for the copies.



May charge a reasonable cost-based fee for making copies or preparing a summary and postage. May NOT charge a fee for retrieving records for review.

Must act within 30 days of receipt of request. If information is stored off-site, this may be extended to 60 days.

Mr. Smith wants to know to whom the office has released information from his records.




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 patient or authorized by the patient
- ✚ 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

Mr. Smith wants to know to whom the office has released information from his records.



Must act on request within 60 days (possible 30-day extension)

Must provide one free accounting per year; may charge for subsequent requests

Written accounting of disclosures must include:

- ✚ Date of disclosure
- ✚ To whom information was disclosed
- ✚ Brief description of information disclosed
- ✚ Copy of authorization or request for disclosure

After reviewing his records, Mr. Smith finds information he believes is incorrect. He asks to have the record amended.

Patient has right to request amendment:

- ✚ in a designated record set
- ✚ for as long as the office maintains information

May require written request with rationale

Have 60 days to act (with possible 30-day extension)

If request is granted, you must:

- ✚ notify patient that amendment was accepted
- ✚ inform relevant persons identified by patient

After reviewing Mr. Smith's request, Dr. Goodcare denies the amendment.



May deny request if protected health information:

- ✚ was not created by the covered entity (unless originator is no longer available)
- ✚ is not part of designated record set
- ✚ was not available for inspection
- ✚ is accurate and complete

If the request for amendment is denied:


Must give written notice to patient, explaining:

- ✚ reason for denial
- ✚ right to submit written statement of disagreement or have request included with future disclosures
- ✚ individual's right to complain to the office or HHS

May prepare rebuttal statement to patient's statement of disagreement; must give copy to individual

Must include request and denial with future disclosures

Mr. Smith calls the office for a prescription renewal. The nurse accesses the practice information system to obtain information from Mr. Smith's previous visit.



- ✚ Reasonable safeguards must be in place to protect health information
- ✚ 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

Mr. Smith has applied for a life insurance policy. The life insurance company wants copies of his records.



Written authorization is required

The authorization must include:


- ✚ the name of the life insurance company
- ✚ a description of the information to be disclosed
- ✚ a date or event when the authorization will expire
- ✚ a statement explaining the patient's right to revoke the authorization in writing and how to do so
- ✚ a statement that the information may be subject to redisclosure and no longer be protected

Mr. Smith has applied for a life insurance policy. The life insurance company wants copies of his records.




Minimum necessary requirements apply
Office should only release the information
needed to fulfill the purpose or specifically
authorized by the patient

Dr. Jones, who practices with another group, has admitted a new patient to the hospital. He asks Dr. Goodcare to see her in consultation when he makes rounds that afternoon. Dr. Goodcare has not seen this patient before.



- ✚ Must provide a notice of privacy practices and make a good faith effort to get the patient's written acknowledgement of receipt of the notice
- ✚ Consent to use and disclose information for treatment, payment, and healthcare operations is no longer required (new regulations published 8/14/02 eliminated this requirement)

Mr. Smith's wife requests a copy of his record. She says Mr. Smith wants to send it to another doctor who is treating him.



- ✚ Written authorization from the patient is required to give Mr. Smith's wife a copy
- ✚ The record could be sent to another healthcare provider upon request, since this is covered as part of treatment, payment, and healthcare operations

Resources



To obtain the full text of the final regulations, go to the Department of Health and Human Services' comprehensive HIPAA website:

<http://aspe.os.dhhs.gov/admnsimp/>

Questions?



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