


# *HIPAA's IMPACT: Mr. Smith Goes to the Hospital*



*A Brief Review of the Final Privacy  
Rule Requirements in the Hospital  
Setting*

*Mr. Smith goes to the  
hospital...*




*HIPAA's impacts and  
implementation strategies*

*Mr. Smith, a prominent member of the community, is brought to the ED unresponsive with a gunshot wound to the abdomen. Dr. Goodcare examines the patient and begins resuscitative efforts.*



- ⌘ 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)
- ⌘ Providers may obtain consent if they choose or if required by state law

*Mr. Smith's family notes that he has been depressed and is in psychotherapy at another facility. They are concerned the GSW may have been self-inflicted. Dr. Goodcare requests the psychotherapy notes.*




- ⌘ HIPAA has special protections for psychotherapy notes.
- ⌘ Hospital must obtain an authorization for release of psychotherapy notes with limited exceptions
- ⌘ The rest of Mr. Smith's treatment record from this facility is accessible for treatment purposes.
- ⌘ The minimum necessary standard does not apply because the information is requested for patient care.

## *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 are 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 ED nurse accesses the hospital information system to obtain reports from Mr. Smith's previous hospital stays.*




- ⌘ A hospital must reasonably safeguard 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

*The family also notes that Mr. Smith maintains a personal health record at MyHealthRecord.com, and Dr. Goodcare requests emergency access to this information.*



- ⌘ MyHealthRecord.com is not a covered entity under HIPAA.
- ⌘ Dr. Goodcare does not need to limit his request to the minimum necessary because he needs the information to treat Mr. Smith (and because MyHealthRecord.com is not a covered entity).

*In the meantime, the police, having apprehended a suspect, request information about the gunshot wound to help them with their investigation.*



⌘ The information may be disclosed without Mr. Smith's authorization only if:

☑ He is suspected to be a victim of crime

☑ The doctor is unable to obtain his consent because of incapacity

☑ The law enforcement official represents that:


☒ this is violation of law by a person other than Mr. Smith

☒ the information will not be used against Mr. Smith

☒ the information is needed immediately

☑ The doctor, in his professional judgement, determines the disclosure is in Mr. Smith's best interest

*Mr. Smith regains consciousness, and his condition stabilizes.*



⌘ The hospital must:

- ☑ Provide him with a notice of privacy practices
- ☑ Attempt to obtain an acknowledgement from him that he has received the notice
- ☑ Tell him information will be put in the facility directory and allow him an opportunity to object

⌘ The physicians treating Mr. Smith (direct care providers) must also provide him with a notice of privacy practices and attempt to obtain an acknowledgement.

## *Organized Healthcare Arrangement*



- ⌘ The hospital and physicians may be considered an “organized healthcare arrangement”
- ⌘ Clinically integrated setting in which individuals typically receive healthcare from more than one provider
- ⌘ Hospital and physicians in an OHCA may have a joint notice of privacy practices

*Mr. Smith's family asks Dr. Goodcare for an update on his condition and prognosis.*




⌘ Dr. Goodcare must tell Mr. Smith he would like to discuss his condition with his family and give Mr. Smith an opportunity to object or limit the information disclosed to his family.

*The press demands to know his condition.*




- ⌘ HIPAA allows release to the public of directory information, including:
  - ☑ patient name
  - ☑ location in the facility
  - ☑ description of the patient's condition in general terms
- ⌘ Provided that:
  - ☑ Mr. Smith was informed about this use and given the opportunity to object
  - ☑ The press asks for Mr. Smith by name

*ED screening software identifies Mr. Smith as a candidate for a research study on gunshot wounds. Research coordinator arrives in the ED, obtains informed consent, and starts the research protocol.*



- ⌘ Clinical research studies can access patient information without patient authorization provided the research protocol has been approved by an IRB or privacy board
- ⌘ IRB may approve use of PHI for research without authorization if:
  - ☑ Involves no more than minimal risk to privacy; and
  - ☑ Research could not be done without waiver.

*ED screening software identifies Mr. Smith as a candidate for a research study on gunshot wounds. Research coordinator arrives in the ED, obtains informed consent, and starts the research protocol.*




- ⌘ Mr. Smith's consent for participation in the research protocol is required under FDA regulations
- ⌘ It is permissible to combine the informed consent (for treatment under the research protocol) with the research authorization for disclosure/use of the PHI when there is not an IRB/privacy board waiver of the authorization requirement.

*Patient Accounting contacts Mr. Smith's health plan online to verify eligibility. The health plan requests additional information.*




- ⌘ The eligibility inquiry/response must follow the designated ANSI X12 standard format
- ⌘ As a CE, health plan is required to request minimum information necessary
- ⌘ Specific authorization is not required

*Dr. Goodcare admits the patient and dictates an ED note, which is transcribed by an outside vendor.*




- ⌘ The transcription company is a business associate to the hospital. The hospital must have a business associate contract with the transcription company that meets HIPAA requirements.
- ⌘ 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

*Following Mr. Smith's recovery and discharge, the hospital and his physicians submit claims to his health plan.*




- ⌘ Diagnoses and procedures must be coded using standard code sets.
- ⌘ Standard formats (ANSI X12N or NCPDP) must be used for electronic transactions
- ⌘ Neither providers nor health plans can modify the standard formats.
- ⌘ Clearinghouses may be used to convert non-standard formats for electronic transmission.

*Following Mr. Smith's recovery and discharge, the hospital and his physicians submit claims to his health plan.*




- ⌘ Providers are not required to use electronic transactions, with one exception. If used, they must follow the standard formats.
- ⌘ Health plans are required to accept all covered transactions in the standard formats if providers choose to submit them.

*Following Mr. Smith's recovery and discharge, the hospital and his physicians submit claims to his health plan.*




- ⌘ Deadline for complying with the transaction standards was extended to 10/16/03 under the Administrative Simplification Compliance Act
- ⌘ Extension was not automatic--CEs had to file a request and plan for compliance with DHHS
- ⌘ Providers with 10 or more FTEs will be required to bill Medicare electronically by 10/16/03

*Mr. Smith is discharged. In a follow-up 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.

*Mr. Smith drops the prescription off at his local pharmacy on his way home. When the prescription is ready, he asks his wife to pick it up for him.*



- ⌘ The acceptability of this practice has been clarified under a privacy guidance. A family member who asks to pick up a patient's prescription is considered to be involved in the patient's care.
- ⌘ The pharmacy must provide Mr. Smith with a notice of privacy practices when he brings in the prescription to be filled.

*A few weeks later, the hospital foundation contacts his family for a contribution.*




- ⌘ The final rules permit this use of PHI, provided that notification of this use was included in its notice of privacy practices.
- ⌘ The request must tell Mr. Smith how he can ask to be removed from the contact list for future solicitations.
- ⌘ If Mr. Smith asks to opt out of future mailings, the hospital must make reasonable efforts to honor his request.

*Medical students who participated in Mr. Smith's care write up the case for presentation at grand rounds.*



- ⌘ HIPAA's definition of "health care operations" includes conducting training programs in which students, trainees, or practitioners in healthcare learn under supervision to practice or improve their skills as healthcare providers
- ⌘ The minimum necessary information should be used; Mr. Smith should not be identified by name

*Mr. Smith, curious about what's documented in his medical record, returns to the hospital and asks to review his record.*



- ⌘ Patients have the right to access and obtain a copy of information in designated record sets for as long as CE maintains information
- ⌘ No automatic right to access:
  - ☑ psychotherapy notes
  - ☑ information in criminal, civil, or administrative action
  - ☑ PHI exempted by CLIA
- ⌘ CE may deny request under some circumstances
- ⌘ CE must act upon request within 30 days (60 days if information is off-site)

*What is a designated record set?*



- ⌘ Information used by CE to make decisions about individuals
- ⌘ For providers, includes:
  - ☑ medical records
  - ☑ billing records
- ⌘ For health plans, includes:
  - ☑ enrollment records
  - ☑ payment records
  - ☑ claims adjudication records
  - ☑ case management records

*Mr. Smith wants to know to whom the hospital has released information from his record.*

⌘ Individuals have the right to request an accounting for disclosures of PHI for 6 years prior to the request

⌘ Exceptions:

- ☑ payment, treatment, or healthcare operations
- ☑ to the individual or authorized by the individual
- ☑ for the facility directory or those involved in care
- ☑ for national security or intelligence purposes
- ☑ to prisons, jails, and law enforcement (inmates)
- ☑ prior to the compliance date

*Mr. Smith wants to know to whom the hospital has released information from his record.*



⌘ Must account for disclosures required by law:

- ☑ Subpoenas and court orders
- ☑ Reporting communicable diseases
- ☑ Reporting abuse and neglect
- ☑ Reporting to state databases

⌘ Must account for research disclosures unless authorized by the patient


⌘ CE must act on request within 60 days (possible 30-day extension)

*Mr. Smith wants to know to whom the hospital has released information from his record.*



- ⌘ CE 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 request for disclosure
- ⌘ Documentation retained for at least 6 years

*In his review of the record, Mr. Smith finds information that he believes is incorrect. He asks to have his record amended.*



- ⌘ Individual has right to request amendment:
  - ☑ in a designated record set
  - ☑ for as long as CE maintains information
- ⌘ CE may require written request with rationale  
CE has 60 days to act (with possible 30-day extension)
- ⌘ If request is granted, CE must:
  - ☑ notify individual that amendment was accepted
  - ☑ inform relevant persons identified by individual

*The hospital, after reviewing his request for amendment and discussing it with Dr. Goodcare, denies Mr. Smith's request.*



⌘ CE may deny request if protected health information:

- ☑ was not created by CE (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:*



- ⌘ CE must give written notice to individual, explaining:
  - ☑ reason for denial
  - ☑ right to submit written statement of disagreement or have request included with future disclosures
  - ☑ individual's right to complain to CE or HHS
- ⌘ CE may prepare rebuttal statement to individual's statement of disagreement; must give copy to individual
- ⌘ Must include request and denial with future disclosures

*Mr. Smith's wife requests a copy of his record.*




⌘ Patient authorization is required

⌘ Valid authorization must be in writing & contain:

- ☑ description of the information to be used or disclosed
- ☑ entity authorized to make disclosure
- ☑ entity to whom disclosure may be made
- ☑ A description of each purpose of the use/disclosure
- ☑ expiration date
- ☑ statement of individual's right to revoke
- ☑ statement about redisclosure and loss of protection
- ☑ signature of individual and date

*A doctoral student at the local school of public health is conducting research on gunshot wounds. She requests information on all gunshot wounds treated by the hospital in the past year.*



- ⌘ This information may be released without patient authorization if it is de-identified.
- ⌘ An IRB or privacy board may grant access without patient authorization under certain circumstances.
  - ☑ Waiver
  - ☑ Reviews preparatory to research

*Questions?*



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