

Health Information Compliance Alert

Learn By Example: Avoid 3 Types Of Refill Communications

Some communications about new drug formulations may fall within the exception.

Even with the new guidance from the **HHS Office for Civil Rights** (OCR) on the HIPAA Omnibus Final Rule's refill reminder prohibitions, there's still room for many sticky compliance situations. Here are three scenarios that can trip you up and how to avoid them.

Example 1: You send out email reminders to patients whose prescriptions lapsed within the last 180 days.

Although sending communications encouraging patients to renew recently-lapsed prescriptions generally falls within the refill reminder exception, you may make such a communication only when the prescription lapsed within the past 90 days, according to recent analysis by the law firm Ropes & Gray LLP.

Example 2: You send letters to patients who have prescriptions for statin drugs describing a drug that they could use in conjunction with the currently-prescribed statin.

"Communications regarding a drug that may be used in conjunction with a currently-prescribed drug or biologic do not meet the 'currently prescribed' requirement," Ropes & Gray stated. Therefore, this type of communication is not permissible without prior patient authorization.

Right way: You can make communications to patients in a more general manner, however, "such as recommending that an individual ask his/her doctor about common side effects of a currently-prescribed drug or biologic," Ropes & Gray advised.

Example 3: You send out emails to patients currently taking a prescription drug to inform them of a new formulation now available for that drug.

"Communications regarding new formulations of a currently-prescribed drug or biologic do not meet the exception," Ropes & Gray stressed. You can make such communications only in a general manner, "such as providing information about dosing schedules or a liquid rather than pill formulation."