

Health Information Compliance Alert

PRIVACY COMPLIANCE: DON'T USE HIPAA TO HINDER AN HHA'S PATIENT ACCESS

Home health agencies can track their patients

Scenario: A facility denies a home health agency access to a patient who was on service, then admitted to the facility. Common? Yes. Right? No.

That's the situation faced by Petersburg, IL's Menard County Home Health, says nursing supervisor **Coleen Koch**. The county health department-based HHA used to be able to go in to the local hospital once a week to visit patients, look through their charts and plan for discharge, Koch tells **Eli**.

But now the hospital says HIPAA bars Menard's access to patients and their records, Koch says. The hospital insists the extra work securing patient consent isn't feasible.

RESPECT TREATMENT RELATIONSHIPS

"It's just so wrong for them to say HIPAA's the reason why" agencies can't access patient charts, insists **William Dombi**, vice president for law with the National Association for Home Care & Hospice's Center for Health Care Law.

Using HIPAA's privacy rule as a reason "is incorrect because visits from treating providers clearly falls under the exception for treatment, payment and healthcare operations," points out Burtonsville, MD-based health care attorney **Elizabeth Hogue**.

No individual patient consent forms are required, because sharing of PHI is allowed between treating providers under HIPAA, Dombi agrees. At the most, facilities would want to check that the patient plans to return to the HHA's care after discharge before sharing the chart, he allows.

"HIPAA is not a block" to sharing PHI, Dombi stresses. **Tip:** Ask the patient if there's a relationship. If the patient expects treatment from the agency after discharge, the HHA has "an unbeatable argument" for consent exemption.

Exception: While it's reasonable for HHAs to visit current patients and access their records, the same isn't true for potential patients, Dombi advises. Letting HHAs "comb through" patient records to identify possible candidates for home care is a no-no.

KEEP UP WITH THE COMPETITION

It is within a facility's rights to bar HHA access to patients for other non-HIPAA reasons, legal experts acknowledge. The organization is "the primary caregiver," explains attorney **Deborah Randall** with Washington-based Arent Fox. "Their rules are in effect."

"Hospitals have a legitimate interest in ensuring that the provision of health care ... is under their control in the hospital environment," points out attorney **Virginia Caudill** with Indianapolis-based Gilliland & Caudill.

Watch out: The kicker is that if a facility bars an HHA's access to patients due to its security or other non-HIPAA rules, it must do the same for all agencies, Dombi asserts. Otherwise, the hospital is favoring some HHAs, violating patient rights rules and possibly even antitrust laws.

The most common scenario is for facilities to keep freestanding agencies out while allowing inside home health staff

access to patients.

If your local hospital is allowing any other HHAs to access patients while keeping you out, "you don't have to sit still for it," Hogue insists. "The hospital should be facilitating patient choice, not steering patients," Randall says.

CONSIDER IT GOOD PLANNING

If your local hospital truly isn't allowing any HHAs to consult with patients before discharge to the home, you still have a good reason to argue against it, Dombi advises. "It may be their policy, but it's a bad policy."

Strategy: It's in a health care organization's best interest to have a smooth discharge planning process, Hogue reminds. Doing so boosts good patient outcomes and allows patient discharge as early as possible -- and that means money saved under most DRGs.

And the Medicare conditions of participation and Joint Commission on Accreditation of Healthcare Organizations standards require facilities to conduct appropriate discharge planning, Dombi adds. There is no definition of discharge planning; HHAs can successfully argue that communicating with post-acute care providers is vital to a good discharge.

"The patient must be ready for the home and the home for the patient," Dombi says. "That can't happen with a snap of the fingers after discharge."

Another approach: While not as productive as official visits, agencies have every right to go in during normal hospital visiting hours and check in on their patients, experts agree. Barring agencies from social visiting is a violation of patient rights to visitation, Randall warns.