

Health Information Compliance Alert

Privacy Rule: Dispel 4 Common PHI Disclosure-Related Myths

HIPAA Privacy Rule does not trump state law-required reporting.

With all of the breach cases popping up with impermissible disclosures of protected health information (PHI), it's easy to fall into the trap of simply denying any kind of disclosure. But beware that in some cases, not making a required or permissible disclosure can get you into just as much trouble as making a prohibited disclosure.

Here are four prevalent myths regarding PHI disclosures under HIPAA:

Yes, Treatment-Related Disclosures are Okay

Myth 1: HIPAA prevents or limits healthcare providers from sharing PHI between each other to provide care for a patient.

Reality: "This is not true," stressed healthcare attorney Casey Moriarty in an April 30 blog posting for **Ogden Murphy Wallace Attorneys**. "HIPAA allows the disclosure of health information for treatment purposes."

"I also commonly hear the idea that HIPAA requires a business associate agreement [BAA] in order for a provider to share health information for the purpose of treating a patient," Moriarty noted. This is also untrue.

"In fact, the HIPAA treatment disclosure exception is so broad that it applies to disclosures between healthcare providers AND the 'coordination or management of health care' by a provider and a third party," Moriarty said. "The third party does not even have to be a healthcare provider!"

Provide Broad Access to Your Patients

Myth 2: Patients do not have an unfettered right to access their entire medical record.

Reality: If you (like other providers) feel that your practice, not the patient, has ownership of the patient's PHI and you have no obligation to give the patient unrestricted access, you're wrong. And this opinion has led to more than one **HHS Office for Civil Rights** (OCR) investigation, Moriarty warned.

You must allow individuals to request access to their own records, for a reasonable cost-based fee, according to **Jim Sheldon-Dean**, founder and director of compliance services for **Lewis Creek Systems LLC** in Charlotte, VT. And you no longer have a 30-day extension for offsite data.

Additionally, you must now also furnish laboratory information to the patient or his authorized representative, Sheldon-Dean says. A final rule effective April 7, 2014 (enforceable Oct. 4, 2014) removed lab information from the list of information that you may deny the patient's access to.

"HIPAA gives patients broad rights to access their health information and healthcare providers are required to honor patient requests. Denial of such access could constitute a HIPAA violation," Moriarty said. "Patients are also not required to fill out an Authorization for Release of Records when requesting their own healthcare information."

Caveat: There are a few exceptions to patient access rights under HIPAA. These include exceptions for psychotherapy notes, as well as health information for civil, criminal or administrative proceedings, Sheldon-Dean notes.

Keep Health & Safety Threats in Mind

Myth 3: HIPAA prohibits disclosure of PHI, even if that disclosure might minimize a threat to health or safety.

Reality: HIPAA actually encourages the disclosure of health information to minimize an imminent threat to health or safety of an individual or of the public, Moriarty said. You can disclose PHI to persons reasonably able to prevent or lessen the threat.

HIPAA also permits CEs to disclose PHI to law enforcement authorities to identify or apprehend an individual "where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody," Moriarty explained. Additionally, you can disclose PHI to law enforcement when "an individual makes a statement admitting participation in a violent crime that the [CE] reasonably believes may have resulted in serious physical harm to the victim."

What's more: And according to OCR, HIPAA allows disclosures of health information to help with public health and safety issues to:

- Prevent disease;
- Help with product recalls;
- Report adverse reactions to medications;
- Report suspected abuse, neglect, or domestic violence; and
- Prevent or reduce a serious threat to anyone's health or safety.

Beware: Keep in mind, however, that HIPAA has some key exceptions to this disclosure for mental health counselors, and your state law may further restrict the extent of these disclosure exceptions, Moriarty noted.

Comply with Your State's Legally Mandated Disclosures

Myth 4: Complying with state laws that require certain disclosures violates the HIPAA Privacy Rule.

Reality: The HIPAA Privacy Rule actually contains an exception specifically involving disclosures required by state law, Moriarty stated. Common state-law disclosure obligations include reporting cases of child abuse, reporting cases of vulnerable adult abuse, and reporting to law enforcement if an individual has certain types of wounds like a bullet wound.

HIPAA's "required by state law" disclosure exception makes reviewing and understanding your state's mandatory reporting laws absolutely essential, Moriarty stressed. "Focusing only on the federal HIPAA regulations to inform your disclosure obligations is a mistake."

Bottom line: When it comes to PHI disclosures, "HIPAA does not always mean 'no,'" Moriarty said. "Learning the types of health information disclosures that HIPAA prohibits and encourages will facilitate the proper flow of information, improve patient experience, and help avoid costly government investigations and fines."