

# Health Information Compliance Alert

## Privacy: You Can't Hide In The Privacy Rule's Shadows

Eli's experts clear up 'job shadowing' confusion.

Is your facility bustling with students, trainees and visitors taking a peek into the medical microcosm?

Without proper preparation, this community service could result in a HIPAA violation.-

Job shadowers comprise "a really important frontline work force group that can be a great advocate for patients;" they also provide excellent public relations for your organization, explains Jenny O'Brien, director of corporate compliance with Allina Hospitals & Clinics in Minneapolis.-

With patients increasingly aware of their privacy rights, organizations must ensure that this group has the tools necessary to reassure patients that their privacy is being safeguarded, O'Brien stresses. And since shadowers usually have direct contact with your patients, any privacy or security rule slip-up can result in huge compliance headaches, she warns.

### Teach HIPAA Basics

HIPAA training is essential for job shadowers, experts agree. You must impress upon them how important privacy and security is within your facility, reminds John Gilliland, an attorney with Indianapolis, IN-based Gilliland & Caudill.

But you don't have to spend your time and money on daylong training sessions, Gilliland assures. **Best practice:-** "Sensitize job shadowers to the privacy rule and tell them that they should not discuss anything they see or hear-outside the agency," he recommends.- Shadowers won't remember all the regulation's nuances, so you have to make the message short and clear, he says. "It's simple -- don't talk."

**But, training alone isn't going to guarantee your HIPAA compliance. You need to get your volunteers personally invested in your facility's compliance program, O'Brien says.** **Tip:** Don't just train your job shadowers solely on the HIPAA regs. Rather, tie the privacy and security rule into-overall patient treatment. Make shadowers understand your facility is driven by quality patient care, not a regulation.- This sends a "better, clearer message that's user friendly for those on the floor," O'Brien says.

### Turn Shadowers Into Staffers

**Keep in mind that a non-workforce member cannot shadow a nurse or physician without first signing a patient authorization form, Gilliland notes.- While a volunteer or trainee is actually performing a service for your facility, a non-workforce member technically isn't.** **Example:** Many high school students shadow health care professionals to learn more about career options. However, because they provide no service to the organization, you must give patients the option to object to their presence during examinations, Gilliland explains.

**Be upfront with patients and let them decide whether to permit contact with shadowers. "People generally don't mind if things are explained correctly, but it is the patient's call," Gilliland insists.** **Strategy:** Make shadowers part of your workforce, he advises. That will keep you from collecting a bunch of patient authorizations -- and the shadowers can help out around your facility.

**Knowing when to ask for a patient's authorization can be tricky when it comes to pharmaceutical sales reps, warns attorney Mark Barnes, a partner with Ropes & Gray in New York. If a rep wants to shadow a**

physician to get a better idea of how that physician prescribes a drug, the patient must authorize any interaction, Barnes says.

But, if the doctor asks the rep to teach her the best way to use a certain drug or medical device, then "that's for the purpose of assisting in the treatment of patients," Barnes claims, "and an authorization isn't necessary."

#### **Perfect Your Policy**

**If your organization hosts visitors, trainees or other types of volunteer staff, "you'll want to develop a policy so everyone knows how your job shadowing program works," Gilliland counsels. Tip:** Create a policy template that each department or segment of your facility can adjust or tweak, O'Brien offers. This policy can be adapted for use with your facility's visitors (see Be Sure You're Ready For Guests on p. 51).

**Once you have a clear policy, put it in a brochure or handbill that can be handed out to visitors or volunteers, Barnes suggests. Most important:** Have shadowers sign this policy and keep the document for your records, Barnes advises. This acknowledges that your visitors "pledged to maintain the privacy of the information they obtain."