Helpful Hints on
Top Things Every Privacy
Officer Needs to Know But Won’t
Encounter Every Day

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Today’s Agenda

1. ROI – Minors, law enforcement, etc.
2. Business Associate Agreements
3. Marketing, Fundraising & Research
4. Phones, Photos & Privacy
5. Questions
ROI - Minors, Law Enforcement, etc.

Release of Information Regarding Minors

• Understanding the Rule
  – Parent/Guardian or other stands in the shoes of the child except when they don’t
  – Don’t confuse sharing with family and friends with a personal representative
  – State law nuances
    o Minor rights
    o Emancipated minors
    o Divorced parents
Release of Information Regarding Minors

• Make practical decisions
  – Patient portal access
  – HIE
  – Care EveryWhere

Law Enforcement

• All HIPAA disclosures of information for law enforcement are permissive.
• Six exceptions under 45 C.F.R. 164.512(f)
  – Pursuant to process or required by law
  – Identification & location
  – Victims of a crime
  – Decedents
  – Crime on the premises
  – Reporting a crime in an emergency
Law Enforcement - Pursuant to Process

- Proactive - under legal obligations
- Reactive – Court order, warrant, subpoena or summons issued by a judicial officer, grand jury subpoena, subpoena with reasonable assurances

Law Enforcement - Identification and Location

- Reactive – subject to law enforcement request
- Limitations on what can be disclosed
- Cannot disclose
  - DNA or DNA analysis
  - Dental records
  - Typing, sampling or analysis of bodily fluids or tissue
Law Enforcement - Victims of a Crime

• Reactive – subject to law enforcement request
• About an individual who is or is suspected to be a victim of a crime
  – Individual must agree to the disclosure or
  – If unable to obtain the individual’s agreement because of incapacity or emergent condition IF
    o LOE represents the PHI is needed to determine a violation of the law by someone other than the patient and the information will not be used against the patient and
    o There is an immediate law enforcement need that will be materially and adversely affected without disclosure and
    o The CE determines it is in the best interest of the patient

Law Enforcement - Decedents

• Proactive – CE can disclose information about a deceased patient to alert the LOE that the death is suspected to be the result of criminal conduct.
Law Enforcement - Crime on the Premises

- Proactive – CE can disclose PHI to LOE if the CE believes in good faith that the information constitutes evidence of criminal conduct that occurred on the CE’s premise.

Law Enforcement - Reporting a Crime in an Emergency

- A CE providing emergency medical care in response to a medical emergency, not on the CE’s premises, may disclose PHI to a LOE if the disclosure appears necessary to alert the LOE of:
  - Commission and nature of a crime
  - Location of the crime or the victim and
  - Identification, description and location of perpetrators of the crime
- However, if the CE believes the medical emergency is the result of abuse, neglect or domestic violence this exception does not apply and 164.512(c) must be followed.
Key Terms to Reconsider

- Notification of security incidents
  - What does your BAA say?
  - Definition of a security incident

- Notification of a breach
  - What does your BAA say?
    - Time for notification
      - Regulations
      - State law
    - Definition of a breach
  - Do you want your BA determining if a data compromise is a breach?
Key Terms to Reconsider

• Process for reasonable assurances
  – Ongoing assessments
    o Reputable 3rd party reviews

• Status of data at termination of the agreement.
  – Do they get to keep it?
  – How are you assured they are continuing to protect it?
  – Have you considered minimal necessary?

Marketing, Fundraising and Research
Issues with Marketing

- Remember the definition of marketing
  - Not marketing is marketing when remuneration is received
    - Communications for treatment or alternative treatments
    - Description of health related product or service provided by or included in a plan of benefits
- Who decides what is not marketing?
- Sale of PHI
  - Always requires authorization

Issues with Fundraising

- What fundraising is occurring in your organization?
  - Close relationships with associations
  - Physician lecture
- Does everyone understand what an institutionally related foundation is?
- Is your NPP updated?
Issues with Research

• This has always been a complex area
  – Nature of the organization
  – Nature of the relationship between organizations
• How does the data exist in the EHR?
• Is your NPP being provided to patients?
• Waivers of authorization
  – Confidence in the IRB or Privacy Board
  – Audits of the process

Phones, Photos & Privacy
Use of Cell Phones in Healthcare

• BYOD
• Emails
• Text/IM
• Photos/Videos
• Apps on the phone
• Patient phones

BYOD - You can’t stop it!

• Unlikely a covered entity can avoid all issues with BYOD
• What is the policy on the use of personal devices?
• Have you educated your workforce on
  – How information is stored and backed up on their phone
  – Whether the use is appropriate or not
Emails

• Can users get their work email on a personal device?
  – What protections do you have in place if the answer is yes
    o Is it secure?
    o What happens when the user leaves the organization?
    o Can users forward their email to a personal account?
    o What is the back-up on the personal device?
    o What about patient communications?

• Can personal email be used for work?

Texting and Instant Messaging

• Are users permitted to text or IM PHI?
  – How much?
• Do you have a secure texting/IM solution?
• CMS guidance on secure texting
• What is if it is on a personal phone?
Photos and Videos

• Can a user take photos or videos on a personal device?
  – If so under what circumstances?
  – What happens to the photo or video once it is taken?
    o Should it be transferred to the EHR?

Apps on the Phone

• Can clinicians use apps on their phone for patient care?
  – Apps that calculate information on the patient
  – Apps that record patient information
  – Dictation apps
Patient Phones

- Do you have a policy addressing patient phones?
  - What they can photographs?
  - What they can record?
  - Where can they take cell phones in your facility?
  - Can a care provider record information on a patient phone?

Thank You!

Questions?

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