

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



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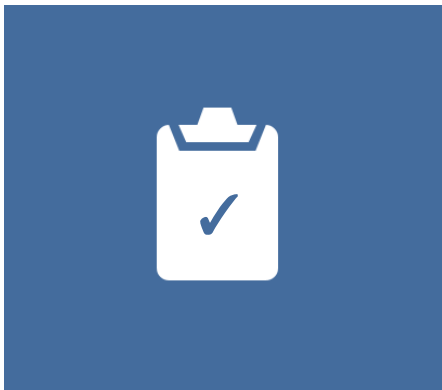


CynergisTek won the 2017 Best in KLAS Award for Cyber Security Advisory Services

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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.



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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
 - Minor rights
 - Emancipated minors
 - Divorced parents



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Release of Information Regarding Minors

- Make practical decisions
 - Patient portal access
 - HIE
 - Care EveryWhere



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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



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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
 - 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
 - There is an immediate law enforcement need that will be materially and adversely affected without disclosure and
 - The CE determines it is in the best interest of the patient



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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.



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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.

Business Associate Agreements



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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 you BA determining if a data compromise is a breach?



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Key Terms to Reconsider

- Process for reasonable assurances
 - Ongoing assessments
 - 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?



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Marketing, Fundraising and Research



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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



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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?



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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



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Phones, Photos & Privacy



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Use of Cell Phones in Healthcare

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



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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



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Emails

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



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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?



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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?
 - 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 photograph?
 - What they can record?
 - Where can they take cell phones in your facility?
 - Can a care provider record information on a patient phone?



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Thank You!

Questions?

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