

PRIVACY COMPLIANCE UPDATES

HCCA Portland Regional Conference

February 8, 2019

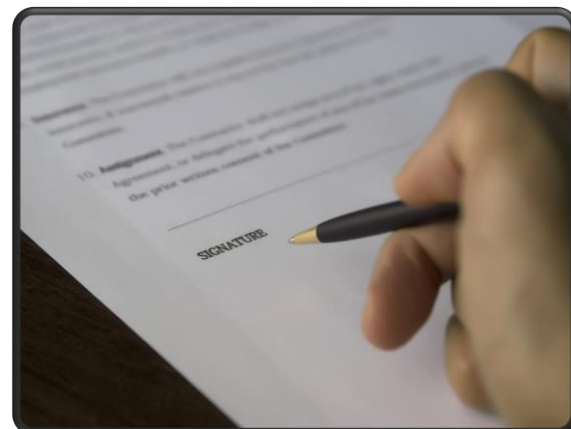
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AGENDA

- OCR Updates
 - RFI
 - Recent Resolution Agreements
 - Audit Protocol
- 42 CFR Part 2
 - Integrated Records
 - Court-Ordered Subpoenas
 - Prohibited Redisclosure
- Family and Friends Involved in Care
- Investigations/Inquiries
- Upcoming Regulatory Changes
- Key Takeaways



OCR SEEKING COMMENTS

- Promoting information sharing for care coordination and case management through encouragement, incentivizing or mandating disclosures.
- Sharing information of adults facing health emergencies, i.e. opioid crisis
- Accounting of disclosures for TPO
- Eliminating or modifying acknowledgment of receipt of Notice of Privacy Practices
- Public comments due **February 11, 2019**



PROMOTING INFORMATION SHARING FOR TREATMENT AND CARE COORDINATION

- Currently no deadline or requirement to disclose records when requested by another provider or covered entity for purposes of coordinating care or managing cases.
 - How long does it take to provide a copy not pursuant to an individual's right of access?
 - Does the length of time vary on format of information?
 - Shorter response times for individual access?
 - Five days for records that fall under ORS 179.505:
 - *179.505(2) addresses "written accounts of the individuals served by any health care services provider maintained in or by the health care services provider by the officers or employees thereof who are authorized to maintain written accounts within the official scope of their duties"*



PROMOTING INFORMATION SHARING FOR TREATMENT AND CARE COORDINATION

- Clarify the scope of CEs to disclose PHI to social services and community-based support programs to facilitate treatment and coordination of care with the provision of other services to the individual.
- Permit disclosures to multi-disciplinary/multi-agency teams?
 - Limitations if law enforcement involved?
- Would outreach and education on existing provisions be sufficient to facilitate these activities?



PROMOTING PARENTAL AND CAREGIVER INVOLVEMENT/OPIOID CRISIS AND SERIOUS MENTAL ILLNESS

- Reference the entire discussion on changes to 42 CFR Part 2
 - Would more sharing mean less seeking services?
 - Parental access to minor child's health information, opioid use or mental health issues.
 - Should changes be made to allow parents and spouses greater access to the treatment information of their children or spouses who have reached the age of majority?
 - Allow adult children to access treatment records of parents even when child is not the parent's personal representative?
 - Changes to personal representative authority?
- Challenges with obtaining consent to treat?



NPP BURDEN

- How often are NPPs bundled with other documents at patient “intake” and with how many other pages of documents?
- What use do providers make of the signed NPP forms?
- Do you use the OCR’s model NPP forms?
- Should OCR deem entities who use the model NPPs compliant with the NPP content requirements?



ACCOUNTING OF DISCLOSURES FOR TPO

- OCR intends to withdraw the 2011 NPRM, creating the right to an access report
- How can an individual obtain a meaningful accounting of disclosures?
- How many accounting of disclosure requests annually?
- Average number of TPO disclosures per individual in a year?
- Can the EHR system distinguish between uses and disclosures?
- How are accounting of disclosures tracked? (centralized or decentralized)
- In lieu of a standard Accounting of Disclosures, conduct an investigation based on certain circumstances?



OCR CASES

- **Failure to Terminate Access**
 - Pagosa Springs Medical Center (a critical access hospital) paid \$111,400 and two-year corrective action plan for security management and business associate agreement policies
 - Former employee continued to have remote access to the web-based scheduling calendar exposing 557 individuals to impermissibly disclosure of their ePHI
 - No Business Associate Agreement for the software (Google)
- **Lessons**
 - Follow termination procedures and audit
 - Important of contracts and BAAs
 - Policies and procedures – security management
 - Training



OCR CASES

- **Know Thy Business Associates**
 - Advanced Care Hospitalists PL (ACH) engaged the services of a medical billing representative of Doctors' First Choice Billings, Inc., but allegedly without any knowledge or permission of First Choice's owner.
 - Local hospital notified ACH that patient information was viewable on the First Choice website – name, DOB, SSN of 400 patients but up to 8,855 could have been affected.
 - ACH reported the breach to OCR for 400 patients and then filed a supplemental report for the additional 8,855.
 - ACH agreed to pay \$500,000 to OCR and adopt a substantial CAP.
- **Lessons:**
 - Importance of contracts and BAAs
 - Conduct a risk analysis
 - Implement security measures
 - Policies and procedures



OCR CASES

- Allergy Associates of Hartford, P.C. (Allergy Associates), has agreed to pay \$125,000 to the Office for Civil Rights (OCR) for a doctor who impermissibly disclosed a patient's PHI to a reporter.
 - Patient and clinic in a dispute
- Lessons
 - Review and follow media policy
 - Training
 - Consistent disciplinary action



OCR AUDIT PROTOCOL

- Last updated July 2018 - <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/audit/protocol/index.html>
- Online table; previous versions included a downloadable document
- How do you use it?



42 CFR PART 2 ALIGN WITH HIPAA

- Efforts to align 42 CFR Part 2 with HIPAA for purposes of TPO
- HR 6082, the Overdose Protection and Patient Safety Act was not included in the HR 6, signed into law in October.
- As of 12/14/18, time expired for moving a compromised bill forward in Congress.



SUD CHALLENGES

- Integrated Records – Primary Care/ Mental Health and Substance Use Disorder (SUD)
 - Required consent for disclosures for treatment
- Court Ordered Subpoenas
- Redisclosure Prohibitions
 - Lawful Holders
 - ORS 179.505



FAMILY AND FRIENDS

- Both ORS 192.567 and 45 CFR 164.510 permit the disclosure of PHI to a family member, friend or others involved in an individual's care as long as certain conditions are met.
- Do you have a policy/procedure for involving family and friends in care?
 - Verbal disclosures?
 - Disclosures of written records?
- When do you require an authorization?
- Best practices for documentation



INVESTIGATIONS/INQUIRIES

- Continuum of preliminary inquiries to formal/principal investigations
- Confidentiality
- Inter-agency/inter-entity investigations
- Union-represented staff



OCITPA

- House Bill 4147 amended ORS 646A.600-646A.628, effective June 2, 2018
- Affected consumers must be notified no later than 45 days following discovery of breach
- If number affected is greater than 250, notify Attorney General and published on Oregon DOJ website
- The definition of “personal information” under the law is expanded to include any “information or combination of information that a person reasonably knows or should know would permit access to the consumer’s financial account.”
- Oregon’s Wall of Shame - <https://justice.oregon.gov/consumer/databreach/>



FYI IN PRIVACY REGULATIONS

- California Consumer Privacy Act (CCPA) – only affects certain CA businesses within the scope of CCPA
- GDPR – applies to any organization that processes the personal data of citizens of the European Union
- Differences in personal data definitions and breach notification timeframes
- Near Future = National Consumer Privacy law like GDPR?
- Revisions to OCITPA
 - Oregon LC 1656 2019
- Proposed Consumer Privacy legislation in Washington State
 - House Bill 1071



WRAP-UP/KEY TAKEAWAYS

- Bottomline =
 1. Communication
 2. Documentation
 3. Professional judgment
 4. Minimum necessary when applicable

- Use the OCR Audit Protocol



QUESTIONS?



THANK YOU!

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