

HIPAA: Understanding Its Effect on the Medical Community and the Patient Since 1996

By Julie A. Dialessi-Lafley, Esq.

FAST FACTS

- HIPAA, which stands for the American Health Insurance Portability and Accountability Act of 1996, is a set of rules to be followed by physicians, hospitals, and other health care providers, which took effect on April 14, 2006. Its purpose was to help ensure that all medical records, medical billing, and patient accounts meet certain consistent standards with regard to documentation, handling, and privacy in regard to patient medical information.
- In addition to HIPAA, the Privacy Rule, was implemented to provide patients with access to their medical records and more control over how their personal health information is used and disclosed. Compliance with the Privacy Rule is required by health plans, health care clearinghouses, and those health care providers who conduct certain financial and administrative transactions (e.g., enrollment, billing, eligibility verification) electronically.
- Each person should execute their own Advanced Directives and Health Care Proxies and use those forms for the communication of their health care decisions in the event they are incapacitated or incompetent, physically or mentally. For those people who have completed their estate planning prior to 2003, the documents should be reviewed to ensure the language of the document provides for disclosure despite the existence of HIPAA and the Privacy Rule.

Many have heard the story of the husband who drops his wife off at the Emergency Room (ER) and goes to park the car. By the time he finds a space and walks back to the ER, his wife has already been admitted. As one

would expect, he asks about his wife's status and to be taken to see her, and of course, thanks to HIPAA, he is given no information or access to his wife.

True or not, this story exemplifies the effect HIPAA has had on access to medical information by anyone other than the patient. To understand how HIPAA has been effecting the medical community and the patient since its implementation, one must first know a bit more about HIPAA other than the commonly observed result of extra forms to be signed when receiving medical care.

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In addition to adding consistency standards and privacy of medical information, HIPAA was also designed to allow all patients access to their own medical records, the ability to correct errors or omissions, and the right to be informed how personal information is shared or used by physicians, hospitals, or health care providers involved. Further, HIPAA has specific provisions included in its regulations, which must be followed to give notification to the patient of the medical provider's privacy procedures.

Specifically, HIPAA is categorized in three major standards:

- **HIPAA Privacy Rule**, which

mandates the protection and privacy of all health information and defines the authorized uses and disclosures of "individually identifiable" health information whether in print or electronic form. Its purpose is to give true privacy to individuals when dealing with their medical and health information.

- **HIPAA Transactions and Code Set Rule**, which addresses the use of predefined transaction standards and code sets for communications and transactions in the health care industry. Its purpose is to ensure continuity and consistency in the health care industry by the use of a set of standards by all parties involved.
- **HIPAA Security Rule**, which

About the Author



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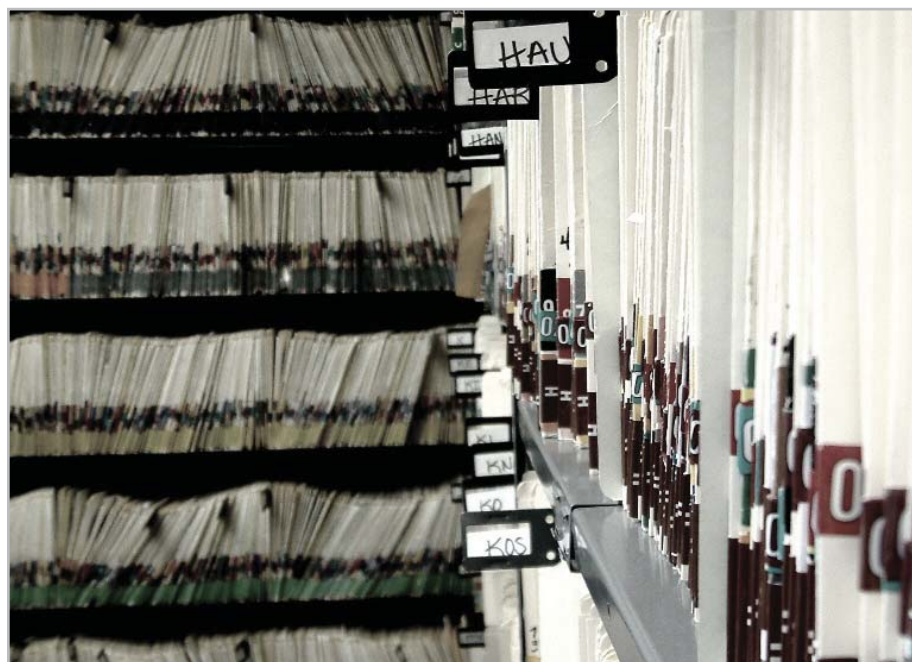
mandates the security of electronic medical records (EMR). EMR is a computer-based medical record for a patient that provides secure, real-time data access, sharing, and evaluation for medical care. It is also called an electronic health record or electronic patient record. This rule provides broad protection to health information, regardless of the form it takes, and requires the assignment of security responsibility to an individual; requires that the electronic systems, equipment, and data used in maintaining, storing, or otherwise using information are protected; and finally, requires that the information be secured at a technical level by the use of authentication and encryption to control access to the medical data.

other health information provided to health plans, physicians, hospitals, and other health care providers. Known as the Privacy Rule, these standards provide patients with access to their medical records and more control over how their personal health information is used and disclosed. Compliance with the Privacy Rule is required by health plans, health care clearinghouses, and those health care providers who conduct certain financial and administrative transactions (e.g., enrollment, billing, eligibility verification) electronically.

The effect on the medical community has been in many cases a complete overhaul with regard to medical records and billing systems to ensure compliance with the standards and the Privacy Rule. The areas effected include, but are not limited to, the requirement of

The effect on the patient has also been far-reaching. It begins with access to medical records by the patient who should generally be able to see and obtain copies of their medical records at their own cost but within 30 days of their request and be able to request corrections if there are errors or mistakes. Patients must be given Notice of Privacy Practices defining how the provider may use personal medical information and the patient's rights under the new privacy regulation. The providers are also now limited in how they may use individually identifiable health information. It can be shared among providers for the care of the patient but on a limited basis and for a specific purpose. Clearly, the patient's information cannot be used for marketing purposes internally or sold to a third party.

Getting back to the couple at the ER, under the Privacy Rule, patients can request that their physicians, health plans, and other covered entities take reasonable steps to ensure that their communications with the patient are confidential. For example, the wife could ask that her husband not be told where she has been admitted or why, a patient could ask a physician to call his or her office rather than home, and a medical provider should comply with that request if it can be reasonably accommodated. As is always advocated, each person should execute their own Advanced Directives and Health Care Proxies and use those forms for the communication of their health care decisions in the event they are incapacitated or incompetent, physically or mentally. For those people who have completed their estate planning prior to 2003, the documents should be reviewed to ensure the language of the document provides for disclosure despite the existence of HIPAA and the Privacy Rule. ■



In April of 2003, as a result of the request of Congress to the Department of Health and Human Services (DHHS) to issue patient privacy standards as part of HIPAA, DHHS set into effect the first-ever federal privacy standards to protect patients' medical records and

written privacy procedures, employee training on the privacy procedures, the appointment of a Privacy Officer, and the allowance of limited disclosure of medical information for the public good due to the provider's public responsibilities.