HIPAA Minimum Necessary
Grasp the Concept

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Purpose

Who can I share PHI with?

What are the rules of the road??
Minimum Necessary General Standard: 45 CFR 164.502(b)

When using or disclosing PHI or when requesting PHI from another covered entity (CE), a CE must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

Use = internal;
Disclosure = external

What is internal and what is external?
What is the ACE?
You might be surprised!
University of Nebraska
Board of Regents
(Hybrid Entity)
Covered Healthcare Components

(INBs)

UNMC

UNMC Physicians
University Dental Associates
Children’s Pediatric Practice

Bellevue Medical Center
& Medical Staff
The Nebraska Medical Center
& Medical Staff

Business Associates

Health Plans (3)
Barkley Center
UNL Student Health

Other
Children’s
Nebraska Health Network (NHN)
Nebraska Orthopedic Hospital (NOH)
VA

Hybrid
Affiliated Covered Entity (ACE)
Organized Healthcare Arrangement (OHCA)

45 CFR 164.105
August 1, 2009
Minimum Necessary Implementation Specifications

Role-based Access: 45 CFR 164.512(d)

A) Identify workforce persons or classes of persons who need PHI to carry out their duties; and

B) For each, identify categories of PHI needed, and any conditions appropriate to such access

*System Administrators/Information Custodians responsible for this.

Information Custodian for One Chart is Carisa Masek
Requests for PHI

PHI: individually identifiable health information; contains at least one of 18 individual identifiers (see IM.12 for list)

– HIPAA does not apply to de-identified information

Minimum Necessary does not apply to uses and disclosures to:

– Health care providers for treatment purposes.
– Disclosures required by Law
– Disclosures made pursuant to authorization
– Disclosures made to DHHS for enforcement
– Electronic data elements transmitted in electronic claims
Responding to Requests for PHI

1. Ask: “For what purposes will you use the information?”
2. Determine if purpose of use is permissible under HIPAA
3. Verify that amount of PHI disclosed is minimum necessary to accomplish purpose
4. Document information released and specific description of stated use
5. Verify what service area is to be included in the report.
Use & Disclosure of Protected Health Information (PHI)

• The HIPAA Privacy Rule specifies how PHI can be used and disclosed with and without patient written authorization.

• Primary Uses/Disclosures without authorization:
  
  • Treatment
  • Payment
  • Health care operations
    • Business Support Activities
    • Performance Improvement/patient safety
    • Risk Management
    • Training health care professionals such as UNMC students
Okay, so what’s a permissible use of PHI under HIPAA?

IM.12: “Use and Disclosure of PHI” policy contains full information:
Treatment, Payment and Health Care Operations
Treatment includes:
  – Communication between health care providers
  – Consults and Referrals
Treatment, Payment and Health Care Operations (TPO)

Payment includes:

- Activities to obtain reimbursement for health care
  - Determinations of insurance coverage
  - Billing and collection activities
  - Claims management
  - Medical necessity determinations
  - Utilization review activities, including precertification and pre-authorization
Treatment, Payment and Health Care Operations (TPO)

Health Care Operations includes:

- QA, PI, outcomes evaluation, development of clinical guidelines
- Activities relating to improving health or reducing costs
- Protocol development
- Case management
- Risk assessment
- Reviewing competence or qualifications & accrediting/licensing of providers

- When does QA become research?
Treatment, Payment and Health Care Operations (TPO)

Health Care Operations includes:
– Training future health care professionals
– Accreditation activities (JCAHO, etc.)
– Legal services
– Business planning and development
– Administrative and business functions
– Medical reviews and auditing
– Insurance activities
– Resolution of internal grievances
– Fundraising (several restrictions)
Research

PHI may be used and disclosed for research, as long as requestor provides you with IRB approval number

- IRB ensures HIPAA requirements met before approving research requests

If requestor wants PHI in preparation for research, direct the caller to the Health Information Dept (Judith Botts @ 9-7455)

Covered entities may use and disclose health information that is de-identified – remove 18 identifiers
Patient Authorization

All other uses and disclosures of PHI not described in the sections above are prohibited unless the patient signs an authorization specifically permitting the use/disclosure.
Fundraising

If information requests are for fundraising, direct the requestor to Nebraska Medicine Office of Development and/or the NU Foundation.

Only the following information may be used or disclosed to business associates and institutionally-related foundations for fundraising (see Policy MI 10, Corporate Fundraising Guidelines):

1. Demographic information relating to an individual, including name, address, other contact information, age, gender, and date of birth;
2. Dates of health care provided to an individual;
3. Department of service information;
4. Treating physician;
5. Outcome information; and
6. Health insurance status.

Disclosure of all other types of PHI for fundraising purposes is prohibited unless the patient signs an authorization.

All fundraising materials must clearly and conspicuously explain how the individual may opt out of receiving any further fundraising communications for an individual campaign or for all future fundraising.
Marketing

Individual authorization required before PHI can be used for marketing

Very narrow HIPAA definition. The following is NOT Marketing:

1. Communications to describe a health-related product or service provided Communications for treatment of the individual;
2. Communications for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual;
3. Providing refill reminders or otherwise communicating about a drug or biologic that is currently being prescribed for the individual, only if any financial remuneration received by Hospital in exchange for making the communication is reasonably related to the covered entity’s cost of making the communication (such as the cost of mailing); and
4. Communications to describe a health related product or service that is provided by or included in a plan of benefits of the Hospital, including communications about: (i) the entities participating in a health care provider network or health plan network; (ii) replacement of, or enhancements to, a health plan; and (iii) health-related products or services available only to a health plan enrollee that add value to, but are not a part of, a plan of benefits;
Disclosures permitted/required by Law

Anytime a state or federal law permits or requires disclosure of PHI, it is a permissible disclosure under HIPAA

Examples:

– Registries mandated by law
– Infectious disease reporting
– Suspected child abuse reporting
– Reports to the FDA
– Many more
Disclosures to Law Enforcement

Several types of disclosures to law enforcement are permitted under HIPAA Contact Privacy Officer, Risk Management, or Medical Records Dept if you receive such a request.
Sale of PHI

Selling protected health information is prohibited unless the patient signs an authorization specifically permitting the sale
You may use & disclose PHI for the following purposes...

If it is necessary to do your job – that is, to support the range of services you provide, which may include:

- Training healthcare professionals – including students, residents & trainees
- For patient treatment purposes - including continuation of care, obtaining consults, and communications necessary for patient safety.
- Healthcare operations such as quality improvement initiatives
- Billing/Payment activities
Only the minimum amount of PHI necessary to accomplish the intended purpose should be used and disclosed for payment and health care operations activities.