

MAY 2020



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DID YOU KNOW...



HIPAA privacy rule: Myths & Facts

Myth:

"Since it was my Business Associate, a billing company that caused the large breach of PHI, I am off the hook."

Fact:

With a valid written Business Associate Agreement (BAA), this may be true in regard to the financial harm from penalties for a breach by the Business Associate, but this may not prevent significant reputational harm to the covered entity. Be sure that the BAA includes the notification procedure and coverage of costs incurred for meeting breach notification requirements and credit monitoring, if needed.

Resource:

<https://1stfcc.com/facts-5-hipaa-compliance-myths/>



OCR Issues Guidance on Allowable Disclosures of PHI to First Responders During the COVID-19 Crisis

The U.S. Department of Health and Human Services' Office for Civil Rights (OCR) has issued further guidance on HIPAA and COVID-19, the disease caused by the 2019 Novel Coronavirus, SARS-CoV-2. The new guidance document provides examples of allowable disclosures of protected health information (PHI) by covered entities under the HIPAA Privacy Rule to help make sure first responders and others receive PHI about individuals exposed to SARS-CoV-2 or displaying symptoms of COVID-19.

The new guidance document is in Q&A form and explains when covered entities are permitted to disclose PHI such as names and other identifying information to first responders, law enforcement officers, paramedics, and public health authorities without first obtaining a HIPAA authorization.

The document confirms that under the HIPAA Privacy Rule, disclosures of PHI are permitted when the information is required to provide treatment, when a disclosure is required by law, when first responders such as paramedics are at risk of contracting COVID-19 and need information to prevent infection, and when a disclosure could prevent or lessen a serious and imminent threat.

OCR also confirms that a disclosure of PHI is permitted when responding to a request for PHI from a correctional institution or law enforcement official in lawful custody of an inmate or other individual, and PHI is required in order to provide healthcare services to the individual, to ensure the health and safety of the individual or others in the institution, those required to transport the individual, and when PHI is required to maintain safety, security, and good order in a correctional institution.

Read entire article:

<https://www.hipaajournal.com/ocr-issues-guidance-on-allowable-disclosures-of-phi-to-first-responders-during-the-covid-19-crisis/>

DID YOU KNOW...



Failure to Enter into a HIPAA-Compliant Business Associate Agreement (BAA)

The failure to enter into a HIPAA-Compliant Business Associate Agreement with all vendors that are provided with or given access to PHI is another of the most common HIPAA violations. Even when Business Associate Agreements are held for all vendors, they may not be HIPAA compliant, especially if they have not been revised after the Omnibus Final Rule.

Resource: <https://www.hipaajournal.com/common-hipaa-violations/>





OCR Issues Guidance on Telehealth and HIPAA During Coronavirus Pandemic

Following on from the announcement from the HHS' Office for Civil Rights that enforcement of HIPAA compliance in relation to the good faith provision of telehealth services during the COVID-19 nationwide public health emergency has been relaxed, OCR has issued guidance on telehealth and remote communications.

Telehealth is defined by the HHS' Health Resources and Services Administration (HRSA) as "the use of electronic information and telecommunications technologies to support and promote long-distance clinical health care, patient and professional health-related education, and public health and health administration." These services can be provided through the use of text, audio, or video via secure text messaging platforms, over the internet, using video conferencing solutions, or via landlines and wireless communications networks.

The Notification of Enforcement Discretion covers "All services that a covered health care provider, in their professional judgement, believes can be provided through telehealth in the given circumstances of the current emergency," which includes the remote diagnosis and treatment of patients. The Notification of Enforcement Discretion only applies to "Penalties for violations of the HIPAA Privacy, Security, and Breach Notification Rules that occur in the good faith provision of telehealth during the COVID-19 nationwide public health emergency."

OCR has confirmed that its Notification of Enforcement Discretion only applies to HIPAA-covered healthcare providers, not other HIPAA-covered entities that are not engaged in the provision of health care.

OCR explains that during the public health emergency, telehealth services can be provided to all patients, not only those that receive benefits under Medicare and Medicaid. Telehealth services can be provided to patients regardless of their health, not only those with symptoms of COVID-19.

Read entire article:

<https://www.hipaajournal.com/ocr-issues-guidance-on-telehealth-and-hipaa-during-coronavirus-pandemic/>

HIPAAQuiz

A patient may inspect or copy his or her entire medical record except for

- psychotherapy notes
- notes or information compiled for use in a civil, criminal, or administrative proceeding
- information that a licensed provider determines will likely endanger the life or safety of the patient or another person
- all of the above

Answer: d

Reason: Patients have the right to inspect and obtain copies of their medical records. HIPAA allows a few exceptions to this rule, including psychotherapy notes, information that may endanger the patient or others, and information compiled for use in civil, criminal, or administrative proceedings.

OCR Issues Notice of Enforcement Discretion to Allow Business Associates to Disclose PHI for COVID-19 Public Health and Health Oversight Activities

On April 2, 2020, the Department of Health and Human Services announced that with immediate effect, it will be exercising enforcement discretion and will not impose sanctions or financial penalties against healthcare providers or their business associates for good faith uses and disclosures of protected health information (PHI) by business associates for public health and health oversight activities for the duration of the COVID-19 public health emergency, or until the Secretary of the HHS declares the public health emergency no longer exists.

The Notice of Enforcement Discretion was issued to support Federal public health authorities and health oversight agencies such as the Centers for Medicare and Medicaid Services (CMS), the Centers for Disease Control and Prevention (CDC), state and local health departments, and other emergency operation centers that require timely access to COVID-19 related data.

While disclosures of PHI by HIPAA-covered entities for public health and health oversight purposes are permitted under the HIPAA Privacy Rule, currently business associates of HIPAA covered entities are only permitted to disclose PHI for public health and health oversight purposes if it is specifically stated that they can do so in their business associate agreement with a HIPAA covered entity. Without the Notice of Enforcement discretion, business associates could face financial penalties for disclosures of PHI for public health and health oversight purposes.

The Notice of Enforcement Discretion applies to the HIPAA Privacy Rule Provisions 45 CFR 164.502(a)(3), 45 CFR 164.502(e)(2), 45 CFR 164.504(e)(1) and (5) but only for a good faith use or disclosure of PHI for public health activities by a business associate for public health activities consistent with 45 CFR 164.512(b), or health oversight activities consistent with 45 CFR 164.512(d). The business associate must inform the covered entity about the use of disclosure no later than 10 calendar days after the use or disclosure occurred.

Read entire article:

<https://www.hipaajournal.com/ocr-issues-notice-of-enforcement-discretion-to-allow-business-associates-to-disclose-phi-for-covid-19-public-health-and-health-oversight-activities/>

HIPAA Humor



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"Yeah, I'm the Ralph Snyder that had a hernia repair last month, but I thought what happens in the hospital stays at the hospital."

THUMBS UP!!!

Thumbs Up To ALL Departments For Implementing Awareness of HIPAA, PII, PHI, ePHI & Social Media



- Main Campus
- West Campus
- Legends Park
- 501a Locations

LINK 1

\$1 Million Settlement Agreed to Resolve American HomePatient Data Breach Lawsuit

<https://www.hipaajournal.com/1-million-settlement-agreed-to-resolve-american-homepatient-data-breach-lawsuit/>

LINK 2

CMS Announces Sweeping Regulatory Changes in Response to Surge in COVID-19 Patients

<https://www.hipaajournal.com/cms-announces-sweeping-regulatory-changes-in-response-to-surge-in-covid-19-patients/>

LINK 3

Cybersecurity Firms Offer Free Assistance to Healthcare Organizations During the Coronavirus Pandemic

<https://www.hipaajournal.com/cybersecurity-firms-offer-free-assistance-to-healthcare-organizations-during-the-coronavirus-pandemic/>

LINK 4

Microsoft Helps Healthcare Organizations Protect Against Human-Operated Ransomware Attacks

<https://www.hipaajournal.com/microsoft-helps-healthcare-organizations-protect-against-human-operated-ransomware-attacks/>

