

## Getting Medical Documentation In the Age of HIPAA

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Several ambulance services from different states have recently approached me with the same problem: their local hospital refuses to release its patient's medical records to the service. Why? Because of a fundamental misunderstanding of what the HIPAA Privacy Rule requires.

HIPAA regulates the disclosure of health information. More specifically HIPAA requires that you give notice to a patient that his or her medical information may be disclosed for purposes of treatment, payment, or healthcare operations. Most other disclosures require that you get a patient's authorization before releasing his or her information. For purposes of receiving medical records for a patient that has been or is going to be transported by an ambulance service, the reasons for any disclosure will always fall within treatment, payment, or healthcare operations, therefore only notice to the patient is required. Any confusion between what a healthcare provider can disclose once a patient is given notice and what disclosures require a patient's authorization should be easy to clear up by a simple example: once you have given notice to the patient, you can disclose health information to any other healthcare provider who requests the information for purposes of treating the patient, billing the patient or their insurance company, or operating the service; on the other hand, if a non-healthcare provider were to request a patient's medical records, they would need to provide you with an authorization form signed by the patient.

Perhaps the confusion is not due to the distinction between "notice" and "authorization". Perhaps it was created because under the original HIPAA Privacy Rule it was required that a healthcare provider get a patient's "consent" to disclose information prior to releasing any medical records. The consent requirement was removed in the September 2002 revision of the Privacy Rule. However, many hospitals and other providers seem to think that unless they have specific approval for the disclosure of a patient's health information, the safest procedure is to simply deny the request of another provider.

Or perhaps the confusion comes from the so called "minimum necessary requirement". This portion of the Privacy Rule requires that only the minimum amount of information required to meet the needs of the requesting party be disclosed. For example: if you need the patient's address for billing purposes, then you do not need to see their entire medical chart, you just need their address. However, the minimum necessary requirement has never been applied to disclosures for the purposes of treatment. Under the original rule, the minimum necessary requirement applied to disclosures made for payment or business operations, but not for treatment. However the September 2002 revisions made it clear that unlimited disclosures can be made between providers for purposes of treatment *or* payment. Therefore, there is currently no reason for a hospital or other healthcare provider to withhold patient records requested by an ambulance service for fear of violating the minimum necessary requirement.

In fact, there is no reason for any confusion, and if some still exists with your local hospital or other healthcare provider, you can use DHHS's own words to justify your request for records. In a "Fact Sheet" published on August 9, 2002, HHS stated that:

*"Disclosures for Treatment, Payment, or Health Care Operations of Another Entity-* The final Rule clarifies that covered entities can disclose protected health information for the treatment and payment activities of another covered entity or a health care provider, and for certain health care operations of another covered entity." (see: <http://www.hhs.gov/news/press/2002pres/20020809.html> or call the HHS press office at (202) 690-6343 for a copy).

Also, the HHS guidance written for HIPAA states that:

General Provisions at 45 Code of Federal Regulations § 164.506. A covered entity may, without the individual's authorization:

- A covered entity may disclose protected health information to another covered entity or a health care provider (including providers not covered by the Privacy Rule) for the payment activities of the entity that receives the information.

For example:

- A physician may send an individual's health plan coverage information to a laboratory who needs the information to bill for services it provided to the physician with respect to the individual.
- **A hospital emergency department may give a patient's payment information to an ambulance service provider that transported the patient to the hospital in order for the ambulance provider to bill for its treatment services.**

Yes, the very example given by HHS of circumstances where medical records may be disclosed states that a hospital is not restricted by HIPAA in disclosing health information requested by an ambulance service!

Consider the hazards of a hospital or other healthcare provider refusing to release a patient's medical records. First, in the case of a future transport, knowing the patient's medical history and current medications are a must for proper continuing care of the patient. In the case of a past or present transport, knowledge of infectious diseases is equally important for the protection of the ambulance crew. And in the case of a completed transport, documentation of the patient's history and condition may be required to secure payment for the services rendered by the ambulance service. Without these records, the ambulance service will not be able to ascertain the patient's history, diagnosis or treatment. And without that information it may be impossible to properly treat the patient or to get claims paid.

On the other hand, the hazards of releasing the information are minimal, especially in light of those inherent in refusing to release the records. Since ambulance services are

healthcare providers and are equally responsible for compliance with privacy laws, there should be no concern on the part of the other provider that the patient's health information will be misused or illegally distributed by the ambulance service. The ambulance service knows as well as any other healthcare provider what the law requires and there is no reason to believe that they will do anything less than their best to protect the patient's privacy.

Why are other providers refusing to give out patient information that you are so clearly in need of and legally entitled to? If you ask I'm sure the response will be "HIPAA" or "patient privacy". Hopefully, with a little education and common sense, other providers will come to understand that in fact there are no such limitations on what they can and should provide to ambulance services. In the mean time, you should know that there is no justification for withholding health information from your service. For another healthcare provider to do so unnecessarily risks endangering the patient, endangering your crew, and harming your business. Armed with the information in this article, hopefully you will be able to solve a problem that has been effecting many services, possibly including your own.

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