

Oral Communication of PHI

Introduction

This paper provides guidance and best practices for the oral communication of protected health information (PHI). Covered entity (CE) and business associate (BA) workforce members are responsible for protecting all forms of PHI (electronic, written, oral, etc.). The application of privacy standards to oral (spoken) information makes sure there is protection when discussed, or read aloud from a computer screen or a written document. Federal laws and privacy regulations protect oral communication between health care providers and to their patients by setting guidelines for appropriate modes of communication.

Definitions

Business Associate (BA): A person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity.

Covered Entity (CE): A health plan or a health care provider who transmits any health information in electronic form in connection with a standard transaction.

Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the information.

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained by electronic or any other form or medium. PHI excludes individually identifiable health information in employment records held by a CE in its role as employer.

Use: With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

Discussion

Privacy regulations are not intended to prohibit providers from speaking to each other and to their patients; however, CEs/BAs are required to implement reasonable safeguards that reflect their specific circumstances. Sometimes healthcare providers will incidentally disclose PHI in order to perform their duties. For example, in a busy emergency room, it may be necessary for providers to speak loudly in order to ensure the correct treatment. The following practices are acceptable, if reasonable precautions are taken to minimize the chance of unintentional disclosures to others who may be nearby (such as using lowered voices or talking away from others):



- Health care staff may orally coordinate services at hospital nursing stations.
- Nurses or other health care professionals may discuss a patient's condition over the phone with the patient, a provider, or a family member.
- A health care professional may discuss lab test results with a patient or other provider in a joint treatment area.
- A physician may discuss a patient's condition or treatment program in the patient's semi-private room.
- Health care professionals may discuss a patient's condition during training rounds in an academic or training institution.
- A pharmacist may discuss a prescription with a patient over the pharmacy counter or with a physician or the patient over the phone.

CEs/BAs must have appropriate reasonable safeguards to protect the privacy of PHI. "Reasonable safeguards" means that CEs/BAs must make practical efforts to prevent uses and disclosures that are not permitted by regulations. In determining what is reasonable, potential effects on patient care, financial burden and other such concerns should be taken into account. For example, private rooms, soundproofing rooms, or encrypting telephone systems are not considered reasonable safeguards.

In a more realistic approach, the following are considered reasonable and appropriate safeguards to protect the privacy of PHI:

- Pharmacies could ask waiting customers to stand a few feet back from a counter used for patient counseling.
- Providers can speak quietly and avoid using patients' names in a waiting room, public hallways, elevators, and any other public areas.
- Providers could add curtains or screens to areas where oral communication often occur between doctors and patients or among professionals treating the patient.
- In an area where multiple patient-staff communication routinely occurs, use of cubicles, dividers, shields, or similar barriers may constitute a reasonable safeguard.

When using or disclosing PHI in any form, including oral communication, a CE/BA shall make reasonable efforts to limit the use, disclosure, or request of PHI to the minimum necessary – only enough to accomplish the intended purpose of the use. However, this does not apply to uses or disclosures for which an authorization was obtained, in an exchange among providers for treatment purposes, or in patient to provider communication.

In addition, privacy regulations do not require CEs/BAs to document any information, including oral information that is used or disclosed for treatment, payment or health care operations (TPO). There are, however, documentation requirements for some information disclosures for other purposes. For instance, some disclosures must be documented in order to provide an accounting of disclosures to an individual upon his or her request.

Resources/ References

DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 24, 2003, C8

