HIPAA Complaints: Is Strategy in Place?

BY ELAINE ZABLOCKI
Contributing Writer

SAN DIEGO — Health care organizations need a proactive process in place to deal with Health Insurance Portability and Accountability Act complaints, Teresa A. Williams, in-house counsel for Integris Health, Inc., said at the annual meeting of the American Health Lawyers Association. Having an effective complaint process in place could reduce the number of complaints patients file with government enforcement agencies.

At present, HIPAA enforcement is primarily complaint based, Ms. Williams said. During the first year of enforcement, 5,648 complaints were filed with the Office for Civil Rights (OCR), according to a report published by the Government Accountability Office. Of those, about 56% alleged impermissible use and disclosure of protected health information, about 33% alleged inadequate safeguards, and about 17% concerned patient access to information. (Percentages total more than 100 because some complaints fall into more than one category.)

As of June 30, 2005, OCR has received more than 13,700 complaints, and has closed 67% of those cases. They've been closed because the alleged activity actually did not violate the privacy rule, or because OCR lacks jurisdiction, or because the complaint was resolved through voluntary compliance. To date, OCR hasn't actually imposed any monetary penalties.

OCR is making every effort to resolve potential cases informally. Ms. Williams gave an example from her company.

Last fall, a patient at one of Integris Health's rural facilities filed an OCR complaint alleging her son's health information had been improperly disclosed. Within 2 days, Integris was able to confirm, through an audit trail, that this had in fact happened, and the responsible employee was terminated.

OCR then requested a copy of the explanatory letter sent to the complainant, records showing that the employee had received appropriate training about HIPAA, and written evidence of termination. "It was all very informal, just a series of phone calls and letters back and forth," Ms. Williams said. "It took only about 2 months for our case to be closed."

Ms. Williams advises health care organizations to put a strategy in place for handling potential HIPAA complaints. Key steps include:

► Train staff on appropriate records and documentation.

► Develop and enforce discipline policies.

► Conduct patient satisfaction surveys.

► Conduct training to inform staff about appropriate uses and disclosures of protected health information.

► Take corrective action if necessary, then document it.

► Use information that is gained from the complaint process to better your system.

A variety of methods may be used to process complaints, including written complaint forms, a hotline, a privacy officer, regular mail, e-mail, and online forums. One key element: The person in charge of the complaint process should be able to listen and respond with empathy.

"Sometimes people aren't looking for a monetary resolution," Ms. Williams said. "They just want someone to listen to their complaint and tell them that its been corrected." ■

Enforcement Rule Needs Clarification

The final installment of the HIPAA enforcement rule was released on April 18, 2005. Civil monetary penalties are set at a maximum of $100 per violation, up to a maximum of $25,000 for all violations of an identical requirement per calendar year.

But a single act can create multiple violations, Ms. Williams pointed out. That's because the rule uses three variables to calculate the number of violations:

► The number of times a covered entity takes a prohibited action or failed to take a required action.

► The number of persons involved or affected.

► The duration of the violation, counted in days.

Under the new rule, information about civil monetary penalties, including reason for the penalty and identity of the covered entity, will be made available to the general public. It is not clear whether this happens when the penalty is first imposed, or after legal appeals are completed.

"This provision is a bit worrisome," Ms. Williams said. If an emergency department over a 3-month period doesn't collect and file written acknowledgments of privacy notifications, that would count as numerous violations of the privacy rule.

"If a consumer then reads in the paper that your hospital paid hundreds of thousands of dollars for a thousand violations of the privacy rule, that's arguably misleading," Ms. Williams said. "This is an area that hopefully will be clarified and changed."

Questionnaires Help to Promote Prevention

BY HEIDI SPLETE
Senior Writer

WASHINGTON — Physicians have limited time to devote to preventive care, but a short questionnaire mailed to patients prior to their visit or administered in the waiting room could change this.

A 20-item questionnaire to promote brief prevention counseling during patient visits was presented at the annual meeting of the American College of Preventive Medicine by Larry Dickey, M.D., of the California Department of Health Services, Sacramento.

Dr. Dickey shared the "Staying Healthy" Assessment questionnaires developed by his department that are now standard for all Medicaid patients in California. Pilot studies of the questionnaires show that they were well received by patients, and their use triggered doctors to provide brief preventive medicine counseling, but formal evaluations are pending.

The sample below is for Medicaid patients aged 18 years and older. To view the questionnaires for all age groups in PDF form, visit www.dhs.ca.gov/ps/ocpm/html/staying%20healthy.htm.

Answers for the questionnaire include choices of "yes," "no," or "skip."

1. Do you receive health care from anyone besides a medical doctor, such as an acupuncturist, herbalist, curandero, or other healer?
2. Do you see the dentist at least once a year?
3. Do you drink milk or eat yogurt or cheese at least three times each day?
4. Do you eat at least five servings of fruits or vegetables each day?
5. Do you try to limit the amount of fried or fast foods that you eat?
6. Do you exercise or do moderate physical activity such as walking or gardening 5 days a week?
7. Do you think you need to lose or gain weight?
8. Do you often feel sad, down, or hopeless?
9. Do you have friends or family members who smoke in your house?
10. Do you often spend time outdoors without sunscreen or other protection such as a hat or shirt?
11. Do you smoke cigarettes or cigars or use any other kinds of tobacco?
12. Do you use any drugs or medicines to go to sleep, relax, calm down, feel better, or lose weight?
13. Do you often have more than two drinks containing alcohol in 1 day?
14. Do you think you or your partner could be pregnant?
15. Do you think you or your partner could have a sexually transmitted disease?
16. Have you or your partner(s) had sex without using birth control in the last year?
17. Have you or your partner(s) had sex with other people in the past year?
18. Have you or your partner(s) had sex without a condom in the past year?
19. Have you ever been forced or pressured to have sex?
20. Have you ever been hit, slapped, kicked, or physically hurt by someone?

Do you have other questions/ concerns about your health? (Please identify.) ■

Source: State of California Office of Clinical Preventive Medicine

Government to Monitor EHR Adoption Gap

BY ELAINE ZABLOCKI
Contributing Writer

SAN DIEGO — Government strategies for health information technology will aid physicians by lowering the cost, improving the benefits, and lowering the risks, said David J. Brailer, M.D., Ph.D., national coordinator for health information technology, in a keynote address at the annual meeting of the American Health Lawyers Association.

Information technology "is a tectonic issue for physicians, one that separates old from young, progressive from Luddite, and those who want to be part of a performance-based future from those who want to practice the way they have for years," Dr. Brailer said.

"We're trying to be nonregulatory, to use a market-based approach, and that means we want to work with the willing. Surveys show that many physicians, at least half today, would do this if they could figure out how to do it," he said.

One barrier to adoption of electronic health records (EHRs) is the variety of products on the market. Certifying a basic, minimally featured EHR system will aid physicians in making rational purchasing decisions, Dr. Brailer said.

Another barrier to adoption of EHRs is the current lack of a sound business model. A "pay-as-you-go" financial model is not feasible, and financial incentives will be needed to accelerate the transition, Dr. Brailer added, without specifying any further details.

Large physician groups and hospitals are far ahead of small physician offices in adopting EHRs. According to Jodi Goldstein Daniel, a Department of Health and Human Services senior staff attorney on health information technology issues who also spoke at the meeting, more than 50% of large practices have adopted EHRs, while only 13% of small practices have done so.

Dr. Brailer's office plans to monitor the adoption gap annually, to see whether it is closing, whether certified technologies are being used, and whether rural practices and other practices with special needs require some kind of safety net.

"We don't want to see health IT become a strategic wedge between the haves and the have-nots; we want a level playing field so that everyone can participate," Dr. Brailer said.

Once a significant mass of physicians shifts to EHRs and consumers experience the benefits of information passing seamlessly among their doctors within a secure electronic infrastructure, then physicians who haven't adopted EHRs "may actually get rolled over by the market," Dr. Brailer said. "The market force, once it gets going, will be inevitable." ■