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20 YEARS

An Informational Bulletin Brought To You By Polaris Group

Polaris Group Hits 20 Year Anniversary in 2008!

Twenty (20) years of proven expertise will be celebrated by Polaris Group in 2008. It is with great pride and enthusiasm that we celebrate this milestone and thank each of our valued clients for their continued support. Twenty years in business, especially with a niche in health care consulting, puts Polaris Group in limited company in the healthcare industry. An entire year of activities is planned for our staff, and clients.



New HIPAA Privacy Rule Guidance for Providers

The Health and Human Service Office of Civil Rights (OCR) recently released "A Health Care Provider's Guide to the HIPAA Privacy Rule: Communicating with a Patient's Family, Friends, or Others Involved in the Patient's Care."

The guide explains when a health care provider is allowed to share a patient's health information with the patient's family members, friends, or others identified by the patient as involved in the patient's care under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. HIPAA is a Federal law that sets national standards for how health plans, health care clearinghouses, and most health care providers are to protect the privacy of a patient's health information. Even though HIPAA requires health care providers to protect patient privacy, providers are permitted, in most circumstances, to communicate with the patient's family, friends, or others involved in their care or payment for care. The guide is intended to clarify these HIPAA requirements so that health care providers do not unnecessarily withhold a patient's health information from these persons. This guide includes common questions that summarize the relevant requirements.

NOTE: (1) This guide does not apply to a health care provider's disclosure of psychotherapy notes, which generally requires a patient's written authorization. (2) This guide does not negate the importance of adherence to a provider's HIPAA Policy, which may be more restrictive.

Common Questions About HIPAA

Q1. If the patient is present and has the capacity to make health care decisions, when does HIPAA allow a health care provider to discuss the patient's health information with the patient's family, friends, or others involved in the patient's care or payment for care?

If the patient is present and has the capacity to make health care decisions, a health care provider may discuss the patient's health information with a family member, friend, or other person if the patient agrees or, when given the opportunity, does not object. A health care provider also may share information with these persons if, using professional judgment, he or she decides that the patient does not object. In either case, the health care provider may share or discuss only the information that the person involved needs to know about the patient's care or payment for care.

Q2. If the patient is not present or is incapacitated, may a health care provider still share the patient's health information with family, friends, or others involved in the patient's care or payment for care?

Yes. If the patient is not present or is incapacitated, a health care provider may share the patient's information with family, friends, or others as long as the health care provider determines, based on professional judgment, that it is in the best interest of the patient. When someone other than a friend or family member is involved, the health care provider must be reasonably sure that the patient asked the person to be involved in his or her care or payment for care. The health care provider may discuss only the information that the person involved needs to know about the patient's care or payment.

A health care provider is not required by HIPAA to share a patient's information when the patient is not present or is incapacitated, and can choose to wait until the patient has an opportunity to agree to the disclosure.

Q3. Does HIPAA require that a health care provider document a patient's decision to allow the provider to share his or her health information with a family member, friend, or other person involved in the patient's care or payment for care?

No. HIPAA does not require that a health care provider document the patient's agreement or lack of objection. However, a health care provider is free to obtain or document the patient's agreement, or lack of objection, in writing, if he or she prefers.



Q4. May a health care provider discuss a patient's health information over the phone with the patient's family, friends, or others involved in the patient's care or payment for care?

Yes. Where a health care provider is allowed to share a patient's health information with a person, information may be shared face-to-face, over the phone, or in writing.

Q5. If a patient's family member, friend, or other person involved in the patient's care or payment for care calls a health care provider to ask about the patient's condition, does HIPAA require the health care provider to obtain proof of who the person is before speaking with them?

No. If the caller states that he or she is a family member or friend of the patient, or is involved in the patient's care or payment for care, then HIPAA doesn't require proof of identity in this case. However, a health care provider may establish his or her own rules for verifying who is on the phone. In addition, when someone other than a friend or family member is involved, the health care provider must be reasonably sure that the patient asked the person to be involved in his or her care or payment for care.

Q6. Can a patient have a family member, friend, or other person pick up a filled prescription, medical supplies, X-rays, or other similar forms of patient information, for the patient?

Yes. HIPAA allows health care providers to use professional judgment and experience to decide if it is in the patient's best interest to allow another person to pick up a prescription, medical supplies, X-rays, or other similar forms of information for the patient.

Q7. May a health care provider share a patient's health information with an interpreter to communicate with the patient or with the patient's family, friends, or others involved in the patient's care or payment for care?

Yes. HIPAA allows covered health care providers to share a patient's health information with an interpreter without the patient's written authorization under the following circumstances:

- *A health care provider may share information with an interpreter who works for the provider (e.g., a bilingual employee, a contract interpreter on staff, or a volunteer).*
- *A health care provider may share information with an interpreter who is acting on its behalf (but is not a member of the provider's workforce) if the health care provider has a written contract or other agreement with the interpreter that meets HIPAA's business associate contract requirements.*
- *A health care provider may share information with an interpreter who is the patient's family member, friend, or other person identified by the patient as his or her interpreter, if the patient agrees, or does not object, or the health care provider determines, using his or her professional judgment, that the patient does not object.*

The "Red Flags" Rule: New Requirements for Fighting Identity Theft

Under the Red Flags Rule certain businesses and organizations — including many doctor's offices, hospitals, and other health care providers — are required to spot and heed the red flags that often can be the telltale signs of identity theft. To comply with the new Red Flags Rule — enforced by the Federal Trade Commission (FTC), the federal bank regulatory agencies, and the National Credit Union Administration (NCUA) — health care entities may need to develop a written "red flags program" to prevent, detect, and minimize the damage from identity theft.

Who Must Comply

To determine if your business or organization is covered by the Rule and required to develop a written Identity Theft Program, you'll need to answer two questions:

1. Is your business or organization either a "**creditor**" or "**financial institution**," as those terms are defined in the Rule?
2. If yes, do you have "**covered accounts**"?

Your business or organization is a "**creditor**" if you regularly:

- Extend, renew, or continue credit;
- Arrange for someone else to extend, renew, or continue credit; or
- Are the assignee of a creditor who is involved in the decision to extend, renew, or continue credit.

Under the Rule, "credit" means an arrangement by which the provider defers payment of debts or accepts deferred payments for the purchase of property or services. In other words, payment is made after product was sold or the service was rendered. Even if you're a non-profit or government agency, you still may be a creditor if you accept deferred payments for goods or services.

Health care providers are creditors if they bill consumers after their services are completed. Health care providers that accept insurance are considered creditors if the consumer ultimately is responsible for the medical fees. Simply accepting credit cards as a form of payment does not make you a creditor under the Rule.

If you determine you're a creditor, the next step is to see if you have "**covered accounts**." There are two types of covered accounts. One is an account used mostly for personal, family, or household purposes that involves multiple payments or transactions. This includes continuing relationships with consumers for the provision



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of medical services.

The other is one for which there is a foreseeable risk of identity theft. In determining whether you have such an account, consider the risks associated with how the accounts may be opened or accessed — i.e. what type of interaction and documentation is required — as well as your experience with identity theft.

If you are a creditor and have covered accounts, you must develop a written program to identify and address the red flags that could indicate identity theft.

Identify Theft Program

There are four basic steps to designing a program to comply with the Rule: (1) Identify relevant red flags; (2) Detect red flags; (3) Prevent and mitigate identity theft; and (4) Update your program periodically. In addition, your program must spell out how it will be administered. The program should be appropriate to the size and complexity of your company or organization, as well as the nature of your operations.

Penalties for Noncompliance

There are no criminal penalties for failing to comply with the Red Flags Rule, however, financial institutions or creditors that violate the Rule may be subject to civil monetary penalties. Mandatory compliance date for the Red Flag Rule is November 1, 2008. On October 22, 2008, the Federal Trade Commission issued an Enforcement Policy statement that delays enforcement of the rule until May 1, 2009. *Source: Federal Trade Commission Division of Privacy and Identity Protection.*

Q & A

“Where No Question Goes Unanswered!”

Q. When is the permanent Recovery Audit Contractor (RAC) Program Scheduled to begin?

A. CMS announced the four new national RACs and the list of states in which they would initially be working on October 6, 2008. On November 4 it was announced that CMS is required to impose an automatic stay in the contract work of the RAC program. The automatic stay is due to protests filed with the Government Accountability Office (GAO) by two unsuccessful bidders for the RAC program. The stay stops all work until a determination is made by the GAO. Under the Competition and Contracting Act of 1984, the GAO has 100 days to issue its decision. The decision is due in early February. The four RAC contracts and any work under these contracts are on hold pending the outcomes of the protests.

TELECONFERENCE TRAININGS

Polaris Group is pleased to present the following

CEU approved teleconference trainings

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<u>Topic</u>	<u>Date</u>
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Pressure Ulcer Management	11/18
Feedback on Performance	11/19
Anatomy of a Chart	11/20
MDS for Administrators	11/25
Medicare Basics	12/2
QA Audits that Work	12/3
ICD9 Part 1	12/3
Managing New Admissions	12/4
Working the RAPs	12/4
SNF Denial Notices	12/9
ICD9 Part 2	12/10
How Therapy Affects the Survey Process	12/10
Tame the Care Plan Monster	12/11
Selecting the Correct CPT Codes	12/11
Nursing Documentation	12/16
Behavior Management	12/17
Urinary Continence	12/18

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*For further information regarding these seminars,
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