

How should staff respond to the grandmother?

Hospital policy regarding disclosures needs to be followed. Giving specific information upon request would not be considered incidental disclosure. Covered entities are required to establish and implement policies and procedures (which may be standard protocols) for routine, recurring disclosures, or requests for disclosures. These are intended to limit the disclosure of PHI to that which is the minimum amount reasonably necessary. Using protocols allow disclosure without individual review of each event, but non-standard and non-routine disclosures must be reviewed individually in accordance with the established criteria. In general it is OK to acknowledge patient is in hospital and general condition (stable, serious, critical). Information within a limited data set can be shared based on the discretion of the covered entity based on professional ethics and best judgments, or informal permission may be obtained by asking the individual outright, or by circumstances that clearly give the individual the opportunity to agree, acquiesce, or object. Finally, disclosure is allowed if notifications are required, or the patient identifies someone (e.g. the grandmother) as a trusted person. Thus many disclosures are allowable unless there is a specific restriction request from the patient. In order to provide additional patient control, a commonly used approach is to utilize family (e.g. the wife) as the primary contact, allowing them to identify and communicate to others. Additionally, along with other contact involving patient care, the communication should be documented in the patient chart because individuals have a right to an accounting of the disclosures of their protected health information by a covered entity. In our group we discussed that this represents a more constrictive set of rules than HIPAA currently defines.

What should be given to the Police officer?

As noted, anyone calling in can get very general status, but not more than would be published in a facility directory or for notification purposes. Although it is allowable to provide records as required by law, there is no urgency to do so here. Specific requests need a warrant or subpoena in the absence of specific patient authorization. Any authorization needs to be written and include specific terms as well. This telephone police request would not fall into the other 5 categories of PHI disclosure (to the individual; regarding Treatment, Payment, and Health Care Operations; allow the patient an opportunity to agree or object; be incident to an otherwise permitted use and disclosure; or be part of a Limited Data Set). And within the other 11 national priority purposes defined as Public Interest or Benefit Activities, (Public Health Activities. Victims of Abuse, Neglect or Domestic Violence. Health Oversight Activities. Judicial and Administrative Proceedings. Law Enforcement Purposes. Decedents. Cadaveric Organ, Eye, or Tissue Donation. Research. Serious Threat to Health or Safety. Essential Government Functions) there is no clear allowance or requirement for disclosure. (Department of Health and Human Services, 2003)

Our group discussed the possibility of whether this involved a crime, and who the victim is. It is possible that Mr. Smith was observed or was peripheral to a drug related crime, and it is important to assure that he was not taking drugs. There is no urgent medical or legal need to get that information to the police and therefore it can wait for a legal warrant.

How should you respond to BCBS?

Assuming that BCBS is his insurer, there is likely an appropriate need for them to receive the requested information. The representative should be referred to the billing/medical records department. Those departments have information regarding the Business Agreements with insurance companies. They also have the knowledge that helps assure that the party calling is authorized, as well as the appropriate numbers to securely fax information. They are also more familiar with the information which meets the minimum required rule, increasing the likelihood that the disclosure rules will not be violated. In the event that the floor staff elect to provide the information, they at least have some benefit from the expectation that another covered entity will only ask for the minimum required data.

Did staff respond appropriately to the wife?

No. In general nursing staff can help explain what has been ordered and what is being done. It is appropriate to provide a general statement of condition and explanations of what that means so that family can understand. As soon as the discussion moves from definition to decision about diagnosis, treatment or prognosis, the nurse needs to defer to the provider who makes those decisions. It is beyond the scope of care for nursing to discuss the basis of a decision or action. This is sometimes nebulous and contentious, but represents the critical defining line between caregivers.

The issues created by this interaction are not related to PHI however, and therefore not violations of the Privacy Rule. The data released is de-identified, but incomplete and out of context. This created a medico-legal problem, along with other ethical, organizational and social problems. As a result there will be a need to involve human resources and obtain a legal evaluation.

How should the CEO respond to the wife?

Within a short interval of time a meeting should be arranged with her and anyone she wishes to explain the purpose of the study, what has been done in the interim, what is being done to educate the nurse regarding the study and nursing responsibility to respond to the results in a problem solving way. This meeting should have an appropriate representation from the hospital based on balancing the number and scope of people she brings to the meeting, and the expertise needed to explain the information.

Organizationally the response needs to assure that the staff are up to date and aware of how that can get help or further information before responding to questions when they are unsure about the answer. In our group we discussed the merits of putting together an immediate assessment of the current status of this medical problem utilizing experts from inside and outside the organization before the meeting with the wife. Helpful information would include a comparison of the hospital to others regarding nosocomial infection rates, and whether there are any specific at risk populations that may include the patient (e.g. IV drug user?). A HIPAA disclosure challenge is to be very careful not to respond with any specific data that the patient may not want to share (e.g. drug use?).

The CEO must assure that the complaint policy is followed and accept all information about complaints. The privacy officers can work to establish the validity of the complaints relative to this incident or others, and help to frame the organizations response. The CEO needs to be sure that whatever action taken does not represent a retaliation upon the individual due to

this employees or our organizations failure to maintain due diligence regarding the patients privacy.

Is there a BA Agreement involved here?

There should be one with the IT contractor, whether his work related to treatment, payment or hospital operations, or if this was a research project. Disclosures would then be governed by the same rules that the organization is as a covered entity.

Are there any other business, legal, ethical, or social issues?

Giving a copy of any document from the hospital except pre-designated and provider approved information (e.g. patient education) falls outside the scope of nursing. Generally information for dissemination is approved through nursing departments, but in agreement with providers. This is not a HIPAA issue, but represents a medico-legal issue for the hospital.

Occupational/Workman's Compensation is exempted from HIPAA, but in general does not require any immediate response. Exceptions would include any agreement that the hospital may have regarding drug testing for work related injuries.

Bibliography

Department of Health and Human Services. (2003). *Summary of the HIPAA Privacy Rule, OCR privacy Brief*. Washington, DC.