



GET THE FACTS & LEARN HOW TO USE THEM

EDUCATION WEBINAR

presented by Association for the Chronically Mentally Ill (ACMI)

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THREE DISCLAIMERS ABOUT TONIGHT'S PRESENTATION

1. *WHAT IT IS NOT:*

- Legal Advice.
- Representative of the Views Of ACMI's Board or Individual Board Members.

2. *WHO'S THE TARGET POPULATION: Adults Living with Mental Illness (including Substance Abuse) & their Family/Friends.*

3. *WHAT'S THE PURPOSE: Enhance Advocacy for Continuity of Care with Accurate Information about access to records and informationHIPAA's Privacy Rule.*



3 DISCUSSION TOPICS ABOUT HIPAA's HANDCUFFS

1. Context: The Privacy Rule within the HIPAA
"Industry"
2. PRIVACY RULE: Accessing Information
* HIPAA IQ Test
3. FUTURE: HIPAA, Recovery and Care Continuity
* Life without "handcuffs" in AZ



HIPAA IS MUCH MORE THAN A PRIVACY RULE

Five HIPAA Rules

HIPAA Privacy Rule

PHI Disclosure Rules



HIPAA Security Rule

Standards to safeguard ePHI



Omnibus Rule

Merges HITECH rules into HIPAA



Breach Notification Rule

60 Days to notify HHS



Enforcement Rule

How investigations are conducted



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HIPAA incentivized
focus on internal
“compliance” to
prevent breaches
and fines, not on
assuring access to
information to
support recovery.

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HIPAA COMPLIANCE CHECKLIST



TECHNICAL PROTECTIONS

- ENCRYPT & AUTHENTICATE EPHI
- CONTROL/LOG ACCESS & CHANGES TO EPHI
- AUTO-LOGOFF



PHYSICAL PROTECTIONS

- CONTROL/MONITOR PHYSICAL ACCESS
- MANAGE WORKSTATIONS
- PROTECT & TRACK EPHI DEVICES



ADMINISTRATIVE PROTECTIONS

- ASSESS & MANAGE RISK
- TRAIN STAFF
- BUILD/TEST CONTINGENCIES
- BLOCK UNAUTHORIZED ACCESS
- SIGN BAAS
- DOCUMENT SECURITY INCIDENTS



HIPAA PRIVACY RULE TO-DO

- RESPOND TO PATIENT ACCESS REQUESTS
- INFORM PATIENTS WITH NPPS
- TRAIN STAFF
- MAINTAIN EPHI INTEGRITY
- GET PERMISSION TO USE EPHI
- UPDATE FORMS/COPY



HIPAA BREACH NOTIFICATION RULE TO-DO

- PROMPTLY NOTIFY PATIENTS
- HHS & POTENTIALLY THE MEDIA
- ENSURE YOUR NOTIFICATION CONTAINS THE 4 REQUIRED ELEMENTS



HIPAA OMNIBUS RULE TO-DO

- REFRESH YOUR BAA
- SEND NEW COPIES
- UPDATE PRIVACY POLICIES
- MODERNIZE NPPS
- TRAIN STAFF

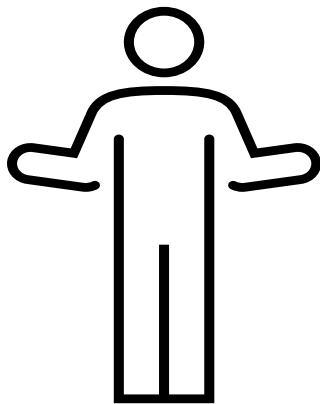
DRIVEN BY: PENALTIES, NOT INCENTIVES



FOCUS: TECHNOLOGY; NOT PEOPLE



WHAT DOES IT TAKE TO BECOME HIPAA CERTIFIED?



ANSWER:

BUY a Commercial *Compliance* Program that Sells You A Badge.

BUT there is NO government “accreditation” or “certification” process.



ACCESS TO MEDICAL RECORD INFORMATION ...

* MAY BE HELPFUL TO RECOVERY

- 8 in 10 individuals who viewed their medical record online considered the information useful.*
 - 27% of individuals are unaware or didn't believe they had a right to an electronic copy of their medical record.*
 - 41% of Americans have never even seen their health information.*
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- NOT All Friends & Families are “Healthy”
-
- HIPPA can “help” ...**
 - “Mental health professionals prevent harm”

*https://www.healthit.gov/sites/default/files/YourHealthInformationYourRights_Infographic-Web.pdf

** <https://www.hhs.gov/sites/default/files/hipaa-helps-prevent-harm.pdf>

HIPAA AND BEHAVIORAL HEALTH

- Providers (not just BH providers) may ...
 - Always share info with patient's "personal representative."
 - Decide when to share information in order to treat patients & prevent self-harm or harm to others.
 - Share info if the patient agrees or *does not object* AND the info is relevant to the family member's, friend's, caregiver's involvement with the patient's health or payment.
 - Crisis
 - Logistics - Travel to appointments, pick up meds, etc.
 - Reasonably likely to less the risk of harm OR the patient presents a serious AND imminent threat to the health or safety of the person OR public.



HIPAA AND BEHAVIORAL HEALTH

- OPIOD Epidemic Responses ...
 - Disclose info without patient permission in certain circumstances ...
 - Patient is incapacitated or unconscious (45 CFR 164.510(b)(1)(i) and 164.510(b)(3), or
 - To prevent a serious and imminent threat to the patient's health or safety. (45 CFR 165.512(j)(1)(i)*)
 - If patient has decision-making capacity
 - Must give patient opportunity to agree or object unless facing serious and imminent threat to the patient's health or safety (45CFR 164.510(b)(2) and 45 CFR 164.512(j)(1).
 - If patient regains capacity, then must offer opportunity to agree or object (45 CFR 164.510(b)(2).

* consistent with State Law



HIPAA AND BEHAVIORAL HEALTH – “PART 2”

- SAMHSA 42 CFR Part 2 Revised Rule:
 - Applicability and re-disclosure of non-Part 2 treatment records are no longer not covered by Part 2 provider records unless previously incorporated.
 - Destruction of “incidental messaging” by sanitizing device.
 - Patient may consent to entity, not a specific person.
 - Disclosure with written consent for 18 activities in connection with payment is now incorporated into text of the Rule (not just preamble) and expanded to include care coordination and case management activities.
 - Non-OTP and central registry providers can query a central registry for opioid tx .
 - Patient consent not required for services in medical emergency from declared national emergencies.
 - Research disclosures now permitted by HIPAA-covered entities to non-covered entities and business associates not subject to Common Rule
 - Court-ordered placement of undercover agents or CIs is extended to 12 months and may be further extended by court order.
- **“It’s written to confuse people and it certainly has met its goal.” Dr. Michael Franczak**



2 KEY HIPAA FORMS

- Notice of privacy practices (NPP) -- inform patients of their privacy rights and providers' privacy policies and procedures.
- Authorization Form:
 - * Description of the specific information to be used or disclosed.
 - * Identification of the person(s), or class of persons, authorized to make the requested use or disclosure.
 - * Name or other specific identification of third parties to whom the covered entity may make the requested use or disclosure.
 - * Description of each purpose of requested use or disclosure.
 - * *Expiration date or an expiration event*
 - * The signature of the individual, and the date.

HIPAA AND STATE LAW

- HIPPA recognizes “personal representative” [person with decision-making authority] according to state law (45 CFR 164.512(g)).
- Federal Law controls charges for medical records ...
 - As of January 2020, District Court for District of Columbia
 - Patient rate for copies of medical records no longer applies to copies for 3rd parties.
(*Ciox Health LLC v. Azar et al*, No. 18-cv-0040(D.D.C. Jan. 23, 2020))

LET'S PLAY "20 QUESTIONS"



1. HIPAA prevents my providers from giving copies of my mental health records to anyone unless I agree and sign a HIPAA compliant *Information Release Form*.

☐ True ☐ False

2. HIPAA lets my providers share information about me with anyone unless I sign a form entitled, *Authorization to Release Mental Health Information*.

☐ True ☐ False

3. HIPAA prevents my providers from e-mailing, face-timing, or texting me.

☐ True ☐ False

4. My clinic violates HIPAA by making me print and sign my name on a sign-in sheet.

☐ True ☐ False

5. HIPAA prohibits my family member or friend from picking up my prescription at a pharmacy.

☐ True ☐ False



6. HIPAA does not permit my clinic to give or sell my personal health information (PHI) to a third party for marketing purposes unless I sign a Business Associate Agreement.

☐ True ☐ False

7. HIPAA permits my clinic to refuse to treat me if I do not read and sign the clinic's *HIPAA Notice of Privacy Practices*.

☐ True ☐ False

8. I have a right under HIPAA to see all the information in my medical record.

☐ True ☐ False

9. My clinic does not need my written consent to send my PHI to another provider, the RBHA, or AHCCCS.

☐ True ☐ False

10. Susie, a supervisor at my health plan (not my clinic), gave information about me to a mutual acquaintance, Libbie, who gossiped about that information to people in the community. Both Sue and Joan violated HIPAA.

☐ True ☐ False



11. A healthcare provider cannot give the media any information about me.

___ True ___ False

12. A TV reporter violated HIPAA by reporting I was hospitalized with life threatening injuries after being shot in the chest by police. What if the reporter got the information directly from an EMT who took care of my son? A policeman?

___ True ___ False

13. My clinic violated HIPAA by calling me by name in the waiting room and by making me print my name on a sign in sheet in the waiting room.

___ True ___ False

14. I can sue my psychiatrist and clinic for (i) giving information about me to my mother, and (ii) talking about my bi-polar disorder in front of my friend who accompanied me to my appointment?

___ True ___ False

15. HIPAA requires my clinic to give me my medical information in a paper format if I request it.

___ True ___ False



16. HIPAA does not permit my Guardian to get my personal health information without a written release signed by me.

☐ **True** ☐ **False**

17. As a person living with mental illness, I can object to information about me being shared with anyone unless I have signed a release of information.

☐ **True** ☐ **False**

18. HIPAA does not apply to health information requested by my employer.

☐ **True** ☐ **False**

19. HIPAA prevents a provider from listening to family members/friends about my condition.

☐ **True** ☐ **False**

20. Law enforcement can get my healthcare information by asking my provider.

☐ **True** ☐ **False**



21. HIPAA does not permit providers to give my health information to anyone but me unless I sign an Authorization for Release of Medical Information.

☐ True ☐ False

22. HIPA allows providers to have policies that are more restrictive for releasing health information.

☐ True ☐ False

23. Because HIPAA is a federal law, states cannot have laws that contradict HIPAA.

☐ True ☐ False

24. HIPAA requires clinics to implement HIPAA Certified Compliance Plans and HIPAA Certified Electronic Medical Records.

☐ True ☐ False



SOME RESOURCES

- Association for the Chronically Mentally Ill. <https://acmionline.com/>
 - Written answers with explanation and citations for the T/F Test.
- Andy Arnowitz, COPA,
- HIPAA -- Federal Office Of Civil Rights. <https://www.hhs.gov/hipaa/for-individuals/guidance-materials-for-consumers/index.html?language=en>.
- HIPAA -- Privacy Rule and Sharing Information Related to Mental Health. <https://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf>
- How HIPAA Allows Doctors to Respond to the Opioid Crisis. <https://www.hhs.gov/sites/default/files/hipaa-opioid-crisis.pdf>.
- Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) And the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Health Records. <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/coveredentities/hipaaferpajointguide.pdf>.



ARIZONA IS UNIQUELY POSITIONED TO IMPROVE PATIENT ACCESS TO INFORMATION

- **SCR 1005** – 2016 Concurrent Resolution Recognizing the Rights of Family Members, Caregivers, and Guardians of Individuals with a Serious Mental Illness. (Senator Nancy Barto et al.)
 - 1st resolution nationally
 - Unanimous approval by AZ House and Senate
- **SB 1442** –
 - Clarified that providers may receive (listen to) information from family/friends
- Not an unduly restrictive state medical records law.

Knock, knock ...



Who's there?



HIPAA ...



HIPAA who?



I can't tell you ...

*Yes you can ... 'cause I know the
Privacy Rule!*



CHECK ACMI WEBSITE NEXT WEEK

- Resources – Bibliography
- Sample HIPAA Forms