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OSD(HA), TMA eBPS

# HIPAA - Privacy - Oral Communications

TRICARE Management Activity, Electronic Business Policy & Standards, March 2002

## HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

### BACKGROUND

The Privacy Rule applies to individually identifiable health information in all forms -- electronic, written, and oral. Coverage of oral (spoken) information ensures that information retains protections when discussed or read aloud from a computer screen or a written document. If oral communications were not covered, any health information could be disclosed to any person, so long as the disclosure was spoken.

Providers and health plans understand the sensitivity of oral information. For example, many hospitals already have confidentiality policies and concrete procedures for addressing privacy, such as posting signs in elevators that remind employees to protect patient confidentiality. It is also understood that oral communications must occur freely and quickly in treatment settings, therefore the oral communications aspect of the Privacy Rule receives heightened attention.

### GENERAL REQUIREMENTS

- Covered entities must reasonably safeguard protected health information (PHI), including oral information, from any intentional or unintentional use or disclosure that is in violation of the rule. Appropriate administrative, technical, and physical safeguards must be in place to protect the privacy of PHI. "Reasonably safeguard" means that covered entities must make reasonable efforts to prevent uses and disclosures not permitted by the rule. However, reasonable safeguards do not guarantee the privacy of PHI from any and all potential risks. In determining whether a covered entity has provided reasonable safeguards, all the circumstances, including the potential effects on patient care and the financial and administrative burden of any safeguards, must be taken into account.
- Covered entities must have policies and procedures that reasonably limit access to and use of PHI to the minimum necessary given the job responsibilities of the workforce and the nature of their business. The minimum necessary standard does not apply to disclosures, including oral disclosures, among providers for treatment purposes.
- Many health care providers already make it a practice to ensure reasonable safeguards for oral information - for instance, by speaking quietly when discussing a patient's condition with family members in a waiting room or other public area, and by avoiding using patients' names when discussing an individual's care or condition in public hallways and elevators. Protection of patient confidentiality is an important practice for health care and health information management professionals.

#### Highlights

- ◆ Background
- ◆ General Requirements
- ◆ Frequently Asked Questions



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## ***FREQUENTLY ASKED QUESTIONS***

**Q: If health care providers engage in confidential conversations with other providers or with patients, have they violated the rule if there is a possibility that they could be overheard?**

**A:** The Privacy Rule is not intended to prohibit providers from talking to each other and to their patients. Provisions of this rule requiring covered entities to implement reasonable safeguards that reflect their particular circumstances and exempting treatment disclosures from certain requirements are intended to ensure that providers' primary consideration is the appropriate treatment of their patients. We also understand that overheard communications are unavoidable. For example, in a busy emergency room, it may be necessary for providers to speak loudly in order to ensure appropriate treatment. The Privacy Rule is not intended to prevent this appropriate behavior. Permissible practices include

- Health care staff may orally coordinate services at hospital nursing stations
- Nurses or other health care professional 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
- Health care professionals may discuss a patient's condition during training rounds in an academic or training institution

**Q: Does the Privacy Rule require hospitals and doctors' offices to be retrofitted, to provide private rooms, and soundproof walls to avoid any possibility that a conversation is overheard?**

**A:** No, the Privacy Rule does not require these types of structural changes be made to facilities. Covered entities must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of PHI. "Reasonable safeguards" mean that covered entities must make reasonable efforts to prevent uses and disclosures not permitted by the rule. Examples of reasonable safeguards include asking other patients to stand a few feet back from a counter used for patient counseling or using curtains or screens in areas where oral communications occur.

**Q: Do covered entities need to provide patients access to oral information?**

**A:** No. The Privacy Rule requires covered entities to provide individuals with access to PHI about themselves that is contained in their "designated record sets." The term "record" in the term "designated record set" does not include oral information; rather, it connotes information that has been recorded in some manner.

**Q: Do covered entities have to document all oral communications?**

**A:** No. The Privacy Rule does not require covered entities to document any information, including oral information, that is used or disclosed for treatment, payment or health care operations (TPO). However, documentation requirements for some information disclosures for other purposes are required. Some disclosures must be documented in order to meet the standard for providing a disclosure history to an individual upon request. For example, if a physician discloses information about a case of tuberculosis to a public health authority, then he or she must maintain a record of that disclosure regardless of whether the disclosure was made orally by phone or in writing.