

# HOSPITAL HIGHLIGHTS

*Prepared for AHA members whenever there is important HIPAA-related news.*

## **HHS ISSUES NEW GUIDANCE ON HIPAA PRIVACY REGULATIONS**

December 6, 2002

On December 4, 2002, the Department of Health and Human Services' (HHS) Office of Civil Rights (OCR) issued guidance to address questions and concerns regarding implementation of the final federal privacy regulations (Privacy Rule) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Generally, the guidance reiterates much of the clarifications and information already set forth in the preamble to the Privacy Rule published on August 14, 2002. In addition to a general overview, the guidance covers the following areas: incidental uses and disclosures; minimum necessary; personal representatives; business associates; uses and disclosures for treatment, payment and health care operations; marketing; public health; research; workers' compensation laws; notice; and government access. The guidance provides a few new clarifications and the areas most relevant to hospitals are listed below.

The HHS guidance on HIPAA privacy regulations is at [www.hhs.gov/ocr/hipaa/privacy.html](http://www.hhs.gov/ocr/hipaa/privacy.html). This Hospital Highlights also is available on our Web site by clicking on "HIPAA" at [www.aha.org](http://www.aha.org).

### **INCIDENTAL USES AND DISCLOSURES**

OCR reiterates that, so long as appropriate safeguards are used, hospitals may maintain patient charts at the patients' bedsides or outside patient rooms. OCR clarifies that patient care signs, such as "high fall risk" or "diabetic diet," may be displayed with reasonable safeguards in place. Some of OCR's suggested safeguards include limiting access to or supervising such areas, escorting non-employees, or turning the information to the wall so it is not visible to passers-by. This ensures that, with reasonable safeguards in place, hospitals can have important information easily accessible at patient locations.

### **MINIMUM NECESSARY**

OCR confirms that the minimum necessary requirement "is not an absolute standard," but rather a "reasonableness standard" and states that covered entities have "substantial discretion with respect to how [they] implement the minimum necessary standard." This provides further comfort to hospitals that their minimum necessary judgments will be subject to a reasonableness standard and that the minimum necessary requirements need not impede the provision of quality care and services. Moreover, OCR notes that it will continue to monitor the workability of the minimum necessary standard and consider revisions to ensure that the timely delivery of quality health care is not hindered.

## **BUSINESS ASSOCIATES**

OCR states that business associate contracts “must limit the business associate’s uses and disclosures of, as well as requests for, protected health information to be consistent with the covered entity’s minimum necessary policies and procedures.” The guidance also states that “a covered entity must ensure through its contract with the business associate that the business associate’s uses and disclosures of protected health information and other actions are consistent with the covered entity’s privacy policies, as stated in the covered entity’s notice.” These statements suggest that a business associate must comply with the covered entity’s policies and procedures and notice of privacy practices. This is not consistent with the business associate contract requirements set forth in the Privacy Rule and likely will be onerous for entities that act as business associates of multiple covered entities, such as state hospital associations.

## **DISCLOSURES FOR TREATMENT OF ANOTHER INDIVIDUAL**

OCR confirms that a hospital may, without authorization, disclose to a health care provider the protected health information of one patient, including a deceased patient, to aid in the treatment of another. This ensures that providers can exchange information about family members of patients as necessary for treatment purposes.

## **PAYMENT DISCLOSURES**

The guidance specifically states that the Privacy Rule “does not limit to whom” a covered entity may make a disclosure for payment purposes. For example, the guidance clarifies that a hospital may communicate with the patient’s spouse regarding payment for the patient’s care.

## **MARKETING**

As discussed in the final Privacy Rule, OCR states that, without individual authorization, a hospital may “use its patient list to announce the arrival of a new specialty group or the acquisition of new equipment through a general mailing or publication.” These are permissible non-marketing communications because they are about the hospital’s own products or services. In addition, the guidance states that hospitals may “provide a free package of formula and other baby products to new mothers as they leave the maternity ward.” This is considered a permissible face-to-face marketing communication that does not require individual authorization. OCR also states that the face-to-face marketing exception would permit a hospital to leave general circulation materials at the hospital that patients could pick up. Finally, OCR reiterates that “a hospital’s Wellness Department could start a weight-loss program and send a flyer to all patients seen in the hospital who meet the definition of obese, even if those individuals were not specifically seen for obesity when they were in the hospital.” OCR considers this a permissible communication about the hospital’s own services.

## **NOTICE**

OCR clarifies that any covered entity, including a hybrid entity or affiliated covered entity, may develop more than one notice of privacy practices, for example, to cover different functions that may in turn result in variations in the entity’s privacy practices. This may provide more flexibility to hospitals; however, hospitals should be careful to ensure that multiple notices do not create consumer confusion.