Health Information & the Law
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Myth Busters
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MYTH: Patient authorization is always required to release records under HIPAA.

FACT: The HIPAA Privacy Rule includes over a dozen situations where patient authorization is NOT required for the release of medical records.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule establishes basic consumer protections and outlines permitted uses and disclosures of protected health information (PHI).

Permitted disclosures. Generally, a "covered entity" or CE (a health plan, healthcare clearinghouse, or healthcare provider who transmits health information) may not use or disclose PHI without the consent of the patient, but this rule has many exceptions. A covered entity is permitted – but not required – to use and disclose PHI *without the patient's consent* for the following purposes or situations:

- to the individual;
- for treatment, payment or health care operations;
- incident to an otherwise permitted use and disclosure;
- for public interest and benefit activities (described below).

Public interest and benefit activities (for which use and disclosure of PHI does not require patient consent) include disclosures:

- to public health officials authorized to collect or receive such information for preventing or controlling disease, injury, or disability;
- to public health or other government officials authorized to receive reports of child abuse and neglect;
- to entities subject to FDA regulation regarding FDA-regulated products or activities for purposes such as adverse event reporting, tracking of products, product recalls, and post-marketing surveillance;
- to individuals who may have contracted or been exposed to a communicable disease when notification is authorized by law;
- to employers requesting information about employees' work-related illness or injury.

Other exceptions. CEs also may use and disclose PHI without patient consent:

- if they believe such disclosure is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat;
- to law enforcement if needed to identify or apprehend an escapee or criminal;
- in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal.

Limited Data Sets. CEs may also use and disclosure limited data sets for the purposes of research, public health or health care operations. Limited data sets have certain identifying information removed but are not entirely de-identified.

Emergencies. The patient consent requirement may be waived or modified during emergencies.

CEs rely on professional ethics and their best judgment in deciding which permissive uses and disclosures to make. A prudent course of action is to inform patients, as part of the HIPAA consent and disclosure form, of the various disclosures that may be made without patient consent.

For more information on state and federal laws related to privacy, see www.healthinfolaw.org/topics/63. For more information about HIPAA, see www.healthinfolaw.org/federal-law/HIPAA.

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