Special Issues in Privacy Compliance for Payors/Managed Care Organizations

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Overview

♦ The HealthPartners Perspective
♦ Managing Enrollee Expectations
♦ Managing Employer Expectations
♦ Other Practical Issues
The HealthPartners Perspective

♦ Commercial and government-sponsored health plans
  • 600,000+ members
  • Medical and dental plans
  • Fully-insured (HMO and Indemnity)
  • Self-insured (TPA)

♦ Multi-specialty medical and dental providers
  • Approx. 33 outpatient medical clinics
  • Approx. 16 dental clinics
  • Hospital (Academic Medical Center; Level I Trauma)
  • Transitional care center
  • Home health and hospice
  • Clinical labs (clinic-based and central)
  • Pharmacy (clinic-based and central)
  • Eye care

♦ Ancillary
  • Health Research
  • Institute for Medical Education
  • Foundation
The HealthPartners Perspective

- Mission-driven
- Minnesota-based
  - Multiple regulators
  - Multiple regulatory schemes
  - Attorney General
- Other jurisdictions
- Electronic medical record
- Huge data warehouses
- Multiple covered functions (plan and provider)
How Are Plan Privacy Practices “Regulated”?

♦ Federal Laws
  • HIPAA
  • GLBA
  • ERISA
  • Research - Common Rule for Human Subject Protection and others
  • Special Rules for Special Types of Information - for example:
    - HIV/AIDS
    - Chemical Dependency Treatment
    - Social Security Number

♦ State Laws
  • Plans (HMO, Indemnity, TPA)
  • Providers (Re-releases of info received from providers)
  • Fair Trade Practices
  • Data Practices Act

♦ Accreditation

♦ Contracts
  • Government Programs
  • Commercial Products
Managing Enrollee Expectations

- Notice of Privacy Practices
- Consents and Authorizations
- Caller Verification
- Special Communications
- Notification of Unauthorized Disclosures
- Accounting of Disclosures
- Complaints and Appeals
Managing Enrollee Expectations - When Things Go Right

◆ Notice of Privacy Practices
  • GLBA requires it annually; HIPAA does not
  • Make sure it’s accurate - enrollees think of it as a contract (and so do regulators)
  • The best way to avoid surprises
    - What you will do
    - What you will *not* do
    - Opt-out forms and instructions
Managing Enrollee Expectations - When Things Go Right

♦ Consents - SURVEY QUESTION #1
  • Enrollee permission to use/disclose protected information for treatment, payment and health care operations (TPO)
  • Not required by HIPAA
  • State law may be “more stringent”
  • If required, how do you deal with...
    - Electronic enrollment?
    - People who refuse to sign or who alter the form?

♦ Authorizations
  • Enrollee permission to use/disclose protected information for activities other than TPO
    - At the request of the enrollee
    - At another party’s request
  • Family and caregivers
  • Insurers, law enforcement, litigants
  • Research
Managing Enrollee Expectations - When Things Go Right

♦ Caller Verification
  • Identifying the enrollee, family member/caregiver, parents
  • Set up passwords and hints, if possible
  • Ask for multiple identifiers
  • Explain why - you’ll get a lot of resistance

♦ Requests for Special Communications
  • Cover all bases
    - Member services
    - Membership accounting
    - Collections
    - All other areas and systems that communicate with the enrollee
  • Sync with employers
  • Reconfirm periodically
Managing Enrollee Expectations - When Things Go “Wrong”

♦ Notification of Unauthorized Disclosures - SURVEY QUESTION #2
  • HIPAA requires if to “mitigate harm”
  • State law may require it in other or all situations
  • Establish written procedures
    - Who sends the letter
    - How much information do you provide
      ▪ Information released/disclosed
      ▪ To whom
      ▪ How it happened
      ▪ How discovered
      ▪ Corrective action taken
    - Point person for follow-up inquiries
  • If state law requires notification, do you have a different process for self-insured enrollees?
Managing Enrollee Expectations - When Things Go “Wrong”

♦ Accounting of Disclosures
  • Include if previous notification?
  • Collect the “accountings” at the time of the disclosure
  • Manage centrally

♦ Complaints and Appeals
  • Train privacy officer and staff on dealing with difficult/angry people
  • Acknowledge and apologize
  • How to “appeal” a breach?
Managing Employer Expectations

- Fully-insured (we’re the Covered Entity)
- Self-insured (we’re the Business Associate)
- Employer Reporting
- Data Aggregators, Brokers, Consultants
- Notification of Unauthorized Disclosures
Managing Employer Expectations

♦ Employer Reporting - Fully-Insured
  • Certification of De-Identification
  • If you get it, abide by it

♦ Employer Reporting - Self-Insured - Survey Question #3
  • Paperwork - SPDs, Certifications

♦ Data Aggregators, Brokers, Consultants
  • What is the relationship between two Business Associates?
  • Get direction in writing
  • 3-party confidentiality agreement
  • Negotiate to de-identify and aggregate
  • Indemnification
Managing Employer Expectations - Self-Insured

♦ Notification of Unauthorized Disclosures
  • Detail expectations in the BAA
  • By event?
  • Regular reports?
  • “Reportable incidents” only?
  • How does it tie to accounting of disclosures
Other Practical Issues

♦ Disease Management
♦ Quality vs. Research
♦ Workforce Issues
Other Practical Issues

♦ Disease Management
  • Treatment vs. health care operations
  • External vendors
    - Manage the message
    - Manage the messenger
    - Allocate responsibilities
Other Practical Issues

♦ Quality vs. Research

• “Research” is the systematic evaluation and examination of medical information, the results of which are intended to be shared in the public domain

• How does this differ from HEDIS and other quality-oriented information-gathering exercises?

• HIPAA on “Research”
  - Activities preparatory to research
  - “Privacy board” waiver process (or get consent before disclosure)
Other Practical Issues

♦ Workforce
  • Access to own information
  • Discipline expectations
  • “But dental claims are not as sensitive as reproductive claims”
  • Training
Questions?