Who Really Owns The Medical Record?

Health Care Reform and Patient Access to Medical Records

Sandy Gilmore

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Who owns the medical record

Objectives
- Understand the impact of HIPAA Omnibus regulations – patient access
- Understand the new CLIA/HIPAA release of lab results – preemption of Oregon lab release law
- Be aware and understand the new guidelines for sharing mental health information
- Understand Meaningful Use and the new transparent medical record

Legacy Health
Portland – Vancouver
- 6 medical centers
  > 2 urban
  > 3 suburban
  > 1 children’s hospital
  > Regional burn center
  > Trauma center
  > Inpatient rehabilitation facility
  > 2 inpatient behavioral health facilities

Legacy Health
- Legacy Medical Group
  > 25 Primary care clinics
  > 25 Specialty care clinics
- Hospice
  > Inpatient facility
  > Home hospice care
- Hospital outpatient clinics
- 9000 employees
- 1578 licensed beds
Back when the department was known as “Medical Records”

- You knew where to find records – most of the time
- You were the “Custodian” of the medical record
- You controlled how, when, with whom and where medical records were shared
HIPAA Changed Everything

- Notice of Privacy Practices
- Patient right to inspect and copy
  - Patient access request
  - Authorization to use and disclose
- Continuing care requests
- Patient right to amend records
  - Statement of disagreement

2013 HIPAA Omnibus changed it again

- Access to patient records /Electronic format
  - PDF
  - CD/DVD
  - Flash drive
  - Email
- Different time frames depending on type of request
  - Discharge summary/instructions – Meaningful use time frames
  - Other medical records – 30 day requirement
2013 HIPAA Omnibus changed it again

- Blurred definitions
- Patient Access
  > To self
  > To another party identified by patient or representative
  > Deceased patients – friends and family involved with care
- Authorization to Use and Disclose
  > Is this only 3rd party requests now
  > Do you charge for 3rd party requests

CLIA Program and HIPAA Privacy Rule; Patients’ Access to Test Results

- Federal Register 2/6/2014
- Amends Clinical Laboratory Improvement Amendments (CLIA) regulation
- Allows patient, patient representative or other designated person to receive lab results directly from the lab
- Preempts state law – Oregon 7 day waiting period

CLIA Program and HIPAA Privacy Rule; Patients’ Access to Test Results

- Brings CLIA rules into alignment with HIPAA patient access rules
- Restates HIPAA definitions
- What about sensitive test results
  > No exemptions
  > Patient rights trump lab or provider
  > Patient directed health care
CLIA Program and HIPAA Privacy Rule; Patients’ Access to Test Results

- Effective date 4/7/2014
- Department awareness?
  > Laboratory – medical director, managers
  > Genetic counselors
  > Maternal fetal medicine
  > HIV clinics
  > Cancer centers

HIPAA Privacy Rule and Sharing Information Related to Mental Health

- New guidance from Office for Civil Rights
- List of people that providers are permitted to share mental health conditions
  > Family members, friends and involved in care
  > Family members when patient is adult
  > Parent of a minor
  > Communicate with law enforcement about release after psychiatric hold
  > Communicate with law enforcement – imminent threat

HIPAA Privacy Rule and Sharing Information Related to Mental Health

- New guidance is primarily verbal disclosures
- Restatement of what are psychotherapy notes
- Review your facility definitions of psychotherapy notes and mental health notes
- Psychotherapy notes Do Not include:
  > medication prescriptions
  > Diagnosis
  > Results of clinical tests
Meaningful Use – and the new transparent medical record

Provide patients the ability to view online, download and transmit health information

- 50% of unique patients are provided online access to health information within 4 business days
- More than 5% of unique patients view, download or transmit to a third party

Meaningful Use – and the new transparent medical record

- Requires an excellent relationship of Health Information Management and Information Technology
- Met with patient access to Epic product “MyChart”
- Met with patient portals to the entire electronic health record
- Met with secure electronic communication (or even not secure if patient requests)

Meaningful Use – and the new transparent medical record

- OpenNotes Initiative
- Sharing provider notes directly with patients
- Provider notes sent to patient “MyChart” or other electronic record (patient portal)
Meaningful Use – and the new transparent medical record

9 health systems and physician practices have agreed to participate:
> Kaiser NW
> Legacy Health
> OHSU
> Providence Medical Group
> The Portland Clinic
> The Vancouver Clinic
> Portland VA Medical Center
> OCHIN

Open notes:
- Increases patient engagement
- Improves provider-patient communication
- More timely correction/amendment process
- Culture change for providers
- Culture and workflow changes for HIM departments

Open notes:
- Chart correction process
  > Medications
  > Diagnosis
  > Demographics
  > Past medical history
- Amendment process
  > Errors in documentation
  > Amend or deny
  > Statement of disagreement
So who really owns the medical record?

- The health provider owns the platform
  - Responsible for security
  - Responsible for content – accuracy and timeliness
  - Use content to provide health services
  - Responsible to provide access to patient and any other parties that the patient requests
  - Responsible to make content available to other providers involved with patient
  - Responsible to make content available to regulators and government agencies

So who really owns the medical record?

- Partnership patient and provider

- Expect more transparency requirements from regulators

So What?

- What does this mean for your compliance department? More:
  - Complaints to:
    - Compliance department
    - Patient relations
    - Providers
    - Regulators – OCR, CMS, State
  - Amendment Requests
  - Education to departments and staff
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Questions?
Sandy Gilmore 503.413.3870
SGilmore@LHS.org