Proactive Process Urged for HIPAA Complaints

More than 13,700 complaints have been filed, but no monetary penalties have been imposed thus far.

By Elaine Zablocki Contributing Writer

San Diego — Health care organizations need a proactive process in place to deal with Health Insurance Portability and Accountability Act complaints, Teresa A. Williams, in-house counsel for Integris Health Inc., said during the annual meeting of the American Health Lawyers Association.

Having an effective complaint process in place could reduce the number of complaints patients file with government enforcement agencies. At present, HIPAA enforcement is primarily complaint based, Ms. Williams said. During the first year of enforcement, more than 1,600 complaints were filed with the Office for Civil Rights (OCR), according to a report published by the Government Accountability Office. Of those, about 50% alleged impermissible use and disclosure of protected health information, about 33% alleged inadequate safeguards, and about 17% concerned patient access to information. (Percentages total more than 100 because some complaints fall into more than one category.)

As of June 30, 2005, OCR has received more than 13,700 complaints, and has closed 67% of those cases. They’ve been closed because the alleged activity actually did not violate the privacy rule, or because OCR lacks jurisdiction, or because the complaint was resolved through voluntary compliance.

To date, OCR hasn’t actually imposed any monetary penalties. OCR is making every effort to resolve potential cases informally. Ms. Williams gave an example from her company.

Last fall, a patient at one of Integris Health’s rural facilities filed an OCR complaint alleging her son’s health information had been improperly disclosed.

Within 2 days, Integris was able to confirm, through an audit trail, that this had in fact happened, and the responsible employee was terminated. OCR then requested a copy of the explanatory letter sent to the complainant, records showing that the employee had received appropriate training about HIPAA, and written evidence of termination.

“I was all very well informed, just a series of phone calls and letters back and forth,” Ms. Williams said. “It took only about 2 months for our case to be closed.”

Ms. Williams advises health care organizations to have a strategy for handling potential HIPAA complaints. Key steps include:

- Train staff on appropriate records and documentation.
- Develop and enforce discipline policies.
- Conduct patient satisfaction surveys.
- Conduct training to inform staff about appropriate uses and disclosures of protected health information.
- Take corrective action if necessary, then document it.
- Use information gained from the complaint process.

Methods to process complaints include written forms, a hotline, a privacy officer, regular mail, e-mail, and online forums. One key element: The person in charge of the complaint process should be able to listen and respond with empathy.

Drug Industry Ad Guidelines Draw Criticism

By Joyce FrienD Associate Editor, Practice Trends

New voluntary guidelines for direct-to-consumer prescription drug advertising that were released by the Pharmaceutical Research and Manufacturers of America have drawn criticism from politicians and consumer groups who say they do not go far enough.

“I wish the PhRMA guidelines would have gone farther and proposed a moratorium on DTC advertising,” said Sidney Wolfe, M.D., who is the director of the Public Citizen Health Research Group. called the PhRMA announcement “a meaningless attempt to fool people into believing the guidelines are stronger than they really are.”

The guidelines were released in Dallas in early August at a meeting of the American Legislative Exchange Council. Among other things, the guidelines call for pharmaceutical manufacturers to educate physicians and other health care providers about new drugs before advertising them to consumers.

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Methods to process complaints include written forms, a hotline, a privacy officer, regular mail, e-mail, and online forums. One key element: The person in charge of the complaint process should be able to listen and respond with empathy.

The centerpiece is the notion that the companies are committing an appropriate amount of time to educate health care professionals about new medications and new indications … to make sure physicians and other providers know about the medicines and benefits before” direct-to-consumer advertising campaigns are undertaken, Billy Tauzin, who is the CEO of PhRMA and a former congressman, said during the annual meeting of the American Health Lawyers Association.

“I wish the PhRMA guidelines would have gone farther and proposed a moratorium on DTC advertising,” said Sidney Wolfe, M.D., who is the director of the Public Citizen Health Research Group.

“We are also committed to continuing to educate health care professionals as well as the public about appropriate uses and disclosures of protected health information,” Mr. Tauzin said.


Enforcement Rule Called ‘Worrisome’

The final installment of the HIPAA enforcement rule was released on April 18, 2005. Civil monetary penalties are set at a maximum of $100 per violation, up to a maximum of $25,000 for all violations of an identical requirement per calendar year.

But a single act can create multiple violations, Ms. Williams pointed out. That’s because the rule uses three variables to calculate the number of violations:

- The number of times a covered entity takes a prohibited action or fails to take a required action.
- The number of persons involved or affected.
- The duration of the violation, counted in days.

Under the new rule, information about civil monetary penalties, including reason for the penalty and identity of the covered entity, will be made available to the general public. It is not clear, however, whether this happens when the penalty is first imposed, or after legal appeals are completed.

“This provision is a bit worrisome,” Ms. Williams said.

Clinic Experience Influences Medical Students’ Attitudes

ST. PETE BEACH, Fla. — Attending a specialized clinic for pregnant women with substance use disorders helped medical students in a recent study feel more comfortable and less judgmental when working with such patients.

A total of 104 consecutive third-year student rotating on an 8-week obstetrics-gynecology clerkship were enrolled in the study and randomized to attend or not to attend the half-day clinic. Responses to a 36-item survey administered at the start of participants’ clerkship and midway through the clerkship showed significant improvements in the comfort level of clinic attendees in regard to talking with patients about smoking, alcohol use, and other substance use, William A. Ramirez-Cacho, M.D., of the University of New Mexico, Albuquerque, and colleagues reported in a poster that was presented during the annual meeting of the Teratology Society.

The responses also demonstrated that the clinic attendees were significantly less judgmental of patients with substance use disorders and significantly more aware of multidisciplinary therapy approaches for treatment.

Control students’ survey responses indicated a significant decline in comfort level when it came to discussing patients’ habits, and a significant decline in awareness regarding how common substance use disorders are in this population, the investigators noted.