



## HIPAA Do!! (Or Else)

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By John Ostrich, MD

**It's just a wee bit tardy, but here's a glimmer of what you need to know to properly protect your patients' privacy.**

I KNOW ALL OF YOU ARE SICK AND TIRED of hearing about HIPAA.

We have all been inundated with journal articles, notices from AMA and CMA, Internet spam and even real live salesfolk coming to our offices promising software that will help avoid being "HIPAA non-compliant."

Well, by the time you read this, it will be too late, and some of you might be reading this in your cell at Lompoc or Leavenworth. We here at *SSV Medicine* are very sorry that we did not get this vital information out to you sooner, but it is a very complicated subject, and even though I volunteered to write about it in May of 2001, it took me this long to research the subject and boil it down to a few hundred words.

In any case, it is free with your membership, and full of practical information and advice. So when you get out of Lompoc, you will be up to speed.

Here goes.

First, you need to know what the acronym HIPAA stands for. It derives from The Health Insurance Portability and Accountability Act of 1996, also known (if you are a Democrat) as the Kennedy-Kassebaum Act or (if you are a Republican) the Kassebaum-Kennedy Act. It was passed as Public Law 104-191 on August 21, 1996, and grew to become over 1000 pages long after all of the definitions and legalese were plastered over the skeleton of the original bill.

The part that applies to us docs in our everyday practices is in Title II of the act, which is headlined as "Preventing Health Care Fraud and Abuse; Administrative Simplification; Medical Liability Reform." Very lofty goals indeed. The general purpose of that section of the law is to encourage electronic data exchange among health practitioners and between health care providers and those who pay for health care. As Section 1173-1-(B) states, such rules are "consistent with the goals of improving the operation of the health care system and reducing administrative costs." Sounds good.

As soon as these targets were set, it became obvious that Uncle Sam could not let all sorts of private personal and medical data fly willy-nilly all over cyberspace. After all, it has become obvious that private personal cyber-data are purloined every day, often by people who are high school dropouts, so how tough can it be for your would-be employer to discover that your father had Huntington's chorea or that you once had a nasal swab done that was positive for methicillin resistant Staph aureus?

So layers and layers of new rules were written to guarantee that every person's "Protected Health Information" (PHI) would never, never, ever, ever fall into unauthorized hands.

The definition of PHI, by the way, is not straightforward, and is best elucidated by the Code of Federal Regulations (CFR), specifically 45 CFR para 164.501.502. You might want to read it before you go on, because "PHI" pops up all over the place when you read about HIPAA.

Go ahead and read 45 CFR para 164.501.502. I'll wait for you.

Got it? Good. Oh, another thing. PHI does not simply refer to electronically transmitted medical data. It also subtends written records and even vocal person-to-person communications.

You mean I can't call Mr. Distelfink's house and leave a message with his cousin visiting from Denver that his cholesterol is all right? That is correct.

How about if I leave the message on the answering machine? Better watch out. You might want to consult a lawyer about that one. After all, you cannot be sure that only Mr. Distelfink has access to that machine, right?

Perhaps the best way to learn how to deal with the workaday issues stirred up by HIPAA is to study some vignettes. That way you can get the flavor of the law's impact on the daily routine in your office and your very style of practice. Once you look at these vignettes, you will appreciate the genius of the law and how much more efficient and humane it will make your professional life, similar to the experience Yuri Zhivago had when he returned from the war to see that his old family house in Moscow had been expropriated by the Communist authorities and was now occupied by several families. He knew that it was indeed a more just and equitable use of the old mansion, even if he could almost never get into the bathroom.

So pay attention. There will be a quiz, or maybe a grilling...

### **Pre-HIPAA:**

The scene is a small waiting room with about ten chairs along the walls and a table in the center on which lie assorted magazines. Five of the chairs are occupied and a small child sits on the floor preoccupied by a coloring book. Mrs. Buforington enters and is loudly greeted by the receptionist.

*RECEPT:* "Hi there, Mrs. Buforington. It's good to see you looking so well after your cancer surgery. Did they get it all?"

*MRS. B:* (Smiling broadly) "They sure did. Take a gander at this!" (She pulls up her blouse and exposes a vertical central abdominal scar with a few Steri-strips still attached. The other waiting room occupants break out in applause.)

*RECEPT:* "Wow! Sure looks good! You here for your Pap smear?" (Mrs. B. nods yes.) "I'll tell Dr. Pooka that you're here."

Dr. Pooka appears at the door and gives Mrs. Buforington a booming greeting.

*DR. P.:* "Mrs. B., how the hell ARE you?" (He meets her halfway across the waiting room and gives her a big hug.) "Uh, oh, guess I'd better not squeeze too hard, don't want to pop those new stitches, eh? Ha Ha!" (He takes her by the arm and begins to escort her to the entry to the back office area. They continue to talk as they move towards the door.)

"And how's Mr. B. these days? Last time I saw him was at the bar after the charity tournament at the club. Is that prostate problem of his clearing up? Anyway, come on in. We'll get that Pap smear done and you can bring me up to date."

### **Post-HIPAA:**

Same scene. Except now there is a little machine at the entry to the waiting room similar

to the ones at the Post Office or the deli section at the market that serially dispenses flimsy pieces of paper with numbers imprinted. There is a red-lighted sign on the wall over the entry door that says, "Now Serving # \_\_\_\_". A little sign on the number dispenser says "Please pass the numbered slip and a photo I.D. to the receptionist."

The receptionist sits, unidentifiable, behind a frosted glass panel under which is a little well into which Mrs. Buforfington dutifully places her driver's license and numbered slip of paper. She takes her seat. There are no magazines on the table in the center of the waiting room, only brochures concerning various cancers, osteoporosis, STD's, depression and spousal abuse.

Mrs. Buforfington looks up and sees her number appear on the annunciator. A clinic assistant opens the door and says softly, "Number 42? The doctor will see you now." She is escorted to the exam room. Dr. Pooka enters seconds later.

*DR. P.:* "You're here for your Pap smear, aren't you Mrs. Buforfington? Why aren't you disrobed? "

*MRS. B.:* "Well, as I told the young lady who showed me in, I lied to your appointment person about the purpose of my visit to you, and I'm not here to talk about myself, but about my husband. You saw him a few days ago about his prostate problem and his trouble sleeping, I believe?"

*DR. P.:* "Mrs. Buforfington, I cannot discuss my findings regarding your husband's problems unless he expressly lets me know that it's all right to do so."

*MRS. B.:* "What? Why you've known us both for years!"

*DR. P.:* "I am very sorry, but that's the law."

*MRS. B.:* "That's ridiculous. His problems have a direct impact on MY health too! Plus, our daughter, who is a naturalist in Borneo, asked me to e-mail her to let her know how he is doing. He never communicates with her, and she's worried sick about him."

*DR. P.:* "I once again am very sorry, Mrs. Buforfington. I have to ask that you take one of these release of information forms home with you for your husband to sign. He needs to spell out exactly what information he is willing for me to discuss with you, and it must be notarized."

So that's basically all you need to know about the day-to-day impact of HIPAA and PHI issues on your daily professional life. Things are a little different, of course, if you are a pathologist or a radiologist.

Remember when your Uncle Arnie told you not to go into clinical medicine?

Or to go to law school in the first place?

*[Ed. note: The author is aware that he has exaggerated the impact of HIPAA on the clinical practice of medicine, and fully realizes that such unfunded mandates are often marvelous stimuli for bureaucratic innovation as well as ingenious individual subterfuge.]*

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