How an eye doctor's son sees compliance

an interview with Stephen Kiess

Assistant General Counsel for Vidant Health

See page **16**

by Don Hardwick

An enterprise-wide approach to PHI disclosure management

» Advancements in technology create PHI access and disclosure control problems.

» Acquisition of physician practices multiplies a hospital's disclosure points.

» Proposed accounting of disclosure regulations require detailed access and disclosure reporting and tracking.

» Enterprise-wide PHI disclosure management drives system-wide policy enforcement and compliance.

» Standardizing disclosure processes can drive compliance and help minimize liability and financial risks.

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This article outlines the challenges health care organizations face as a result of regulatory changes and increased access to health information, and explains how deploying an enterprise-wide disclosure management solution can standardize disclosure processes, minimize liability and financial risks, and drive system-wide compliance for health care organizations.

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Tightening federal policy

Since the enactment of the HITECH Act of 2009, health care organizations have faced compliance challenges surrounding increasingly rigorous privacy and security regulations and stricter penalties for breach; plus, looming accounting of disclosures (AOD) rules are predicted to create additional challenges.

In 2010, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) published a proposed rule that called for even more stringent access, disclosure, and tracking rules with steeper penalties for non-compliance with the Health Insurance Portability and Accountability Act (HIPAA).

Additionally, in January 2013, HHS announced the final Omnibus Rule that modifies HIPAA's privacy, security, and enforcement rules to implement statutory amendments under the HITECH Act that strengthen the privacy and security of patient health information.

The final rules for the impending AOD requirements have not been released yet. However, once the rules are finalized, hospital and IT leaders will be called to further examine how disclosures are handled, both from within and outside a health care organization. If implemented, AOD rules may require that health care organizations provide patients with details concerning not only which individuals within an organization accessed their records, but also under what circumstances and for what purposes the protected health information (PHI) was provided to outside sources. Additionally, tracking the access to records and disclosures made for purposes of treatment, payment, and operations (TPO) may be demanded of health care organizations. Previously, it was not necessary to track and report TPO instances of PHI access or disclosure. These rules will add to the prudence of managing disclosures across a health care enterprise to ensure that *all* access and disclosures are compliant and properly tracked and reported.

With stricter regulations and steep potential penalties on the line, hospital leaders will need to focus more time and attention than ever before on how they securely, properly, and efficiently handle PHI.

More disclosure points, more challenges

As providers switch to electronic health records and hospitals acquire physician practices, points of disclosure within a health care enterprise are multiplied and the risk of an improper disclosure increases.

The electronic trend

Across the health care industry, there is a general migration from paper to electronic documentation and systems, as well as an increase in electronic exchange of PHI. Policy enforcement across an enterprise is especially challenging, because the digitization of medical documentation has made it easier to access and disclose PHI from multiple points throughout a health care organization. We have graduated from the days of solely housing paper copies of patient records in the Medical Records department. Today, Health Information Management (HIM), risk management, billing, lab, radiology, outpatient physical therapy and occupational therapy, hospital-owned clinics and physician practices, and other departments are accessing and/or disclosing PHI through various electronic methods. In fact, there are as many as 40 disclosure points within an organization where PHI can be disclosed.

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One of the driving forces of the electronic trend is the government's Meaningful Use incentive program that has stimulated the use of electronic health records (EHRs) to improve quality of patient care through the secure use and sharing of health information. Not only does the program encourage the use of EHRs, but it also promotes the electronic exchange of health information. Some of the core objectives outlined in Stage 1 of the Meaningful Use program require health care organizations to produce patient information electronically upon request, and to offer electronic discharge instructions to patients. Additionally, Stage 2 rules now mandate that health care providers allow more patient online access to electronic records, whether downloaded, transmitted, or viewed online or via patient portals. Stage 2 also requires providers to send summary of care documentation to follow-up providers through secure, Direct Project-based email messaging.[1]

In addition to providers and patients, payers and other third-party requesters want to gain electronic access to PHI through portals or other direct connections that allow them to request, check status, pay for, and receive electronic copies of PHI through the Internet—as opposed to using the historical standard of fax, paper, CD, and other portable electronic devices.

As we enter the age of health information exchange (HIE), these processes will become more automated. To date, CMS's electronic submission of medical documentation (esMD) program has been one of the most successful HIE programs in health care. Providers can

rapidly and securely deliver all Medicare- and Medicaid-based review documents to CMS though an esMD gateway to the Nationwide Health Information Network (NwHIN). As we progress in the age of HIE and electronic communication between providers, payers, and patients, ensuring privacy during the exchange of PHI will be progressively challenging for hospitals and health care systems.

Hospital acquisitions of physician practices

Another emerging trend that is creating more challenges in managing the disclosure of PHI is the recent increase in physician practice acquisitions by hospitals. Alone, the sheer volume of records in a physician's office adds to the hospital's liability. Physician practices not only house their own records, but they often maintain records that have been received from various hospitals under the presumption of care. With additional disclosure points, there is a growing need for subsequently stronger policy enforcement across the health care enterprise.

The enterprise-wide solution

An enterprise-wide approach to disclosure management is the optimal solution to the imminent challenges that health care professionals face as the industry experiences fundamental changes in the way PHI is accessed, exchanged, tracked, disclosed, and reported. Through this approach, health care organizations can have more confidence in their compliance, because disclosures are properly documented and managed across a health care system, doors are opened to the communication

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needed among all departments and hospital-owned physician practices, and enterprise-wide policy enforcement is possible.

By implementing a sophisticated disclosure system as a common tracking platform across a health care enterprise, providers can securely, efficiently, and compliantly disclose PHI from numerous locations, including HIM, radiology, outpatient, the business office, hospital-owned physician practices, and the variety of other points of access and disclosure. Compliance professionals should identify the many points of access and disclosure (specific to their own organization) by performing thorough due diligence.

It's important to note that EHRs alone cannot offer the sophisticated systems, expertise, or services needed for managing PHI disclosure across a health care system; however, compliance, risk, and HIM professionals can work together with industry experts to design and implement a centralized disclosure platform that provides the secure technology, comprehensive workflows, and related services needed to comply with disclosure policy.

Designing the blueprint

When designing a blueprint for enterprise-wide disclosure management, it's important that the plan allows providers to coordinate workflow, process documentation in one location, and benefit from centralized database tracking and reporting for all points of disclosure. Systems should be able to synchronize with master patient indexes (MPIs) for easier data capture, patient consent restriction monitoring, and improved reporting quality and turnaround time.

Additionally, to properly manage the disclosure of PHI and determine if a breach has occurred, options for embedded compliance tools and breach assessment capabilities should be considered. Systems that include these types of options protect health care organizations against various risks (e.g., breach, financial risk, lawsuits and reputational damage) and allow providers to respond quickly and effectively when necessary.

It is also important that the system tracks the way PHI is disclosed. As technology evolves, organizations will be provided with a range of disclosure options, including paper, thumb drives, film, CDs, patient and provider portals, esMD delivery, and today's more advanced disclosure services, such as secure Direct Project email messaging.

As the exchange of health information continues to move online, and federal policy continues to tighten, using a sophisticated disclosure management system (designed with all of the above specs in consideration) will be vital to the success of a health care enterprise.

Key benefits of enterprise-wide disclosure management

- ▶ Increased communication between departments
- ▶ Policy consistency across the enterprise, including physician practices
- ▶ High level of oversight
- ▶ Quality assurance and compliance across the enterprise
- ▶ Centralized database tracking and access to PHI
- ▶ Centralized audit management
- ▶ Centralized workflow management
- ▶ Faster turnaround times
- ▶ Discovery of areas requiring continued education on proper PHI disclosure ◪

1. For more information, see http://wiki.directproject.org/file/view/DirectProjectOverview.pdf