

Tools, Strategies & Lessons Learned to Address Unique HIPAA Issues for Universities and AMCS

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Presentation Overview

What's Your HIPAA Structure and When's the Last Time You Evaluated It?

Process for Assessing Your Privacy Program's Needs and Doing More with Less

Tools to Help Perform Privacy Program Assessments

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What's Your HIPAA Structure & When's the Last Time You Evaluated it?

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POLL:

Is your entity a:

- A. Single Covered Entity
- B. Hybrid Covered Entity
- C. Covered Entity that is part of an Affiliated Covered Entity
- D. No Idea – that's why I came this session

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HIPAA Regulations on Hybrid Entities

Hybrid entity

- Single legal entity that is
 - A covered entity (Healthcare Provider, Health plan, Healthcare Clearinghouse)
 - With both covered and non-covered functions and
 - Designate its health care components

Covered functions

- Those functions of a covered entity the performance of which makes the entity a health plan, health care provider or health care clearinghouse.

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Regulations on Hybrid Entities

Business units of the organization that engage in activities that would make them a business associate if they were a separate legal entity must be included in the health care component of the hybrid entity to the extent they engage in those BA activities.

The health care component may include a component only to the extent it performs covered functions.

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What are your health care components?

Key areas of contention

- Research
- Student Health
- Self-pay health care functions
- Shared services

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Defining research activities

Research

- Distinction between research involving treatment that is billable
- Research on healthy subjects with services performed within the health care component
- Is IRB/Privacy Board inside or outside the covered component?
- Committees with dual purposes
 - Radiation Safety
 - Biosafety

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Assessing the Student Health Center

Who are its patients? Students Only?

- If students only, then data is not PHI but covered by FERPA
- Consider what happens if with students take a leave or matriculate but still have student insurance
- **Staff**
 - Health Center Would need to be inside the covered component if billed using standard transactions
- **Student dependents**
 - Health Center Would need to be inside the covered component if billed using standard transactions

What notice is required?

- FERPA for students
- HIPAA NPP for non-students
- Both?

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Assessing Self-Pay Health Care Functions

Are there components that engage in the delivery of health care services that are only self-pay?

- Psychology clinic
- Autism assessment center
- Audiology and Speech Therapy

Will these business units be required to comply with the organization's HIPAA policies?

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Assessing Shared services

Are there components that engage in the delivery of health care services that are delivered by other parties?

- Clinic within the School of Public Health but services are contracted through the faculty practice group and billed by them

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Defining Other Relationships

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POLL:

Do you know if your organization is part of one or more of the following HIPAA relationships

1. Organized Health Care Arrangement
2. Affiliated Covered Entity
3. Business Associate

Answers

- A. 1 only
- B. 2 only
- C. 3 only
- D. At least two of these relationships

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What type of agreements/relationships might exist?

- Affiliated Covered Entity (ACE)
- Organized Health Care Arrangement (OCHA)
- Business Associate

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Affiliated Covered Entity

Legal separate covered entities that are affiliated designate themselves as an ACE i.e. become a single covered entity for purposes of HIPAA

May designate the separate covered entities or any health care component of the CE

Required common ownership or control – What Does this mean? How will you demonstrate it?

Designation must be documented

What about Liability Considerations?

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Organized Health Care Arrangement

45 CFR 160.103 -A clinically integrated care setting in which individuals typically receive health care from more than one health care provider

An organized system of health care in which more than one covered entity participates and all participating CEs

- Hold themselves out as a joint arrangement
- Participate in joint activities that include at least one of the following:
 - Utilization review
 - Quality assessments
 - Payment activities

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Business Associates

Any component of a covered entity that is a hybrid entity must include those business functions performing BA type activities in the health care component of its hybrid entity.

- Thus no business associate agreement is required.

Entities that are part of an OHCA may be a business associate of another covered entity participating in the OCHA

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Business Associates

Need for process to identify external BA relationships before the engagement is entered and to monitor during the engagement to assure

- The risk profile is considered
- The compliance obligations are understood
- Breach notification is properly addressed.

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Lessons from the Trenches

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Process for Evaluating your structure

Look at the organization chart

- Assure it is up-to-date
- Assure everyone understands the functions within the different components
- Don't assume there are not covered functions because based on the name or traditional activity of the business unit, college or school
- Don't assume the business unit engages in covered functions simply because health care services are provided

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Structure Evaluation

Conduct a survey

- Assure it gives adequate descriptors and definitions for the person answering the question to provide meaningful information.
- Remind everyone that simply providing healthcare services does not make one a covered entity healthcare provider under HIPAA
- Talk to legal counsel regarding relationships with third parties and the legal relationships of the AMC.

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Logistics

Don't believe everything you read on your own website.

Membership in the covered entity may be viewed as a status symbol.

Documentation is key!

Remember to keep your materials updated as you make changes to your organization.

Think about Policy Updates and New training.

Fall Out

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Process for Assessing Your Privacy Program's Needs & Doing More with Less

POLL:

How Often DO You Assess Your Privacy Program:

- A. Annually
- B. Quarterly
- C. Monthly
- D. When There's Time

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Process for Assessing your Program

- Effective Compliance Program Elements
 - Standards and Procedures
 - Education and Training
 - Oversight
 - Monitoring and Auditing
 - Reporting
 - Enforcement and Discipline
 - Response and Prevention
- Other Assessment Elements
 - Goals / Objectives of your Privacy Program
 - Challenges / Obstacles
 - Culture / Risk Tolerance
 - Next Review/Assessment Period

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Poll: How do you evaluate the effectiveness of your program?

- A. # of Incidents / Investigations
- B. HIPAA Annual Training Pass Rate
- C. # of Requests – amendment, accounting of disclosures, medical information etc.
- D. # of Reportable Breach Incidents
- E. Incident Trends
- F. All of the Above
- G. It's Complicated

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Doing more with less

- Policy and Procedures
- Training opportunities
- Newsletters and other communication
- Department champions – recognition
- Peer workgroups – share best practices
- Privacy role within the organization
 - Membership on other committees and workgroups
 - Human resources, quality, HIM, research

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Tools to help perform privacy program assessments

Weill Cornell Medicine
Compliance and Privacy Office
Privacy Dashboard
February 2016

Privacy Incidents	
Incident type	Total Incidents
Phone Calls	2
Text	2
Web	1
Mobile Device	1
Research	1
Verbal	1
Other	1
Total Reportable Incidents	10
Total Incidents	12

There were 28 total incidents with 10 reportable. The most common type was:

- Research
- Verbal
- Paper

Business Associate Agreements (BAA)	
Category	Total Count
Health BAA	20
Non-Health BAA	10
Total	30

There are 450 active BAAs and 20 pending BAAs. The top submitting departments are:

Submitting BAA Entity	Requesting Dept.
CCU, INC.	Radiology
CCU, INC.	Medicine
Palmer James Services	Medicine
Medial Care, Inc.	Radiology
Surge Care, Inc.	ENT
Team Relay Consulting	Pathology
Surge Partners, Inc.	Orthopedics
Surge Partners	Medicine
Surge BAA's	Medicine

Amendment Requests	
Status	Total Incidents
Approved	1
Denied	1
Total Requests	2

There have been 2 amendment requests to date.

Outsource Request	
Type	Total Request
Outsource	1

There was 1 outsource request.

Response Authorization	
Implementation date February 2, 2016	Total
PHARMACY	1
LABS	1
NEUROLOGY	1
ENT	1
Pathology	1
Neurology	1
Medicine	1
ENT	1
Pathology	1
LABS	1

There were 15 (100%) responses. The requests to:

- Neurology
- Medicine
- OB/GYN

30 Live Education Sessions were offered during the calendar year		
Session/Department	Department	Total Attendees
HIPAA (Security)	Compliance Liaison	212
HIPAA	Compliance Liaison	15
Release of Information	Cardiac Care	15
Release of Information	Neurology	15
Release of Information	OSD	15
HIPAA Privacy (2)	Stomach/Pathology	139
Release of Information	Multiple	46
Release of Information	Multiple	40
PHI Privacy (2)	Multiple	36
Privacy (Lunch & Learn) (2)	Multiple	33
Privacy & Security	Multiple	30
Privacy (2)	Multiple	20

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Questions?
