

# **WEST CARROLL HEALTH SYSTEMS HIPAA PRIVACY COMPLIANCE TRAINING**

## **HIPAA PRIVACY**

The HIPAA Privacy Rule, part of the Health Insurance Portability and Accountability Act, ensures the privacy of our healthcare information. The Rule restricts the use and release of medical records, and it gives us more control over how that information is used.

By law, health care providers, health plans, and healthcare clearinghouses- what HIPAA calls covered entities- are now held accountable for privacy violations with serious penalties for noncompliance. You can make sure you know how to comply by learning the basics of the HIPAA Privacy Rule.

## **HIPAA BASICS**

The Privacy Rule is all about the use and disclosure of Protected Health Information (PHI), including:

- Who uses it
- Who it's released to
- How much information is released
- Why information is released

In most cases, a patient's permission or authorization is required before using or releasing PHI, which includes any patient's information.

- About physical or mental health, healthcare services, and payment for services
- That matches a patient to a record such as name, address, social security number, or physician's notes.

Most releases of paper copies of PHI will be made by the Health Information Department.

## **INCIDENTAL USE AND DISCLOSURE**

There's a certain amount of use and disclosure of Protected Health Information that just goes with the territory. HIPAA calls it incidental use and disclosure. It covers communication needed to provide effective patient care, such as:

- Whiteboards at nurses stations

- Healthcare providers discussing patient care
- Doctors conferring with patients' families

You are required to make reasonable efforts to protect the privacy and dignity of your patients. Examples include:

- When discussing a patient's care, avoid public areas
- When talking to patients, draw the curtain and avoid being overheard

### **THE MINIMUM NECESSARY RULE**

You're also expected to limit the amount of PHI you share to the minimum, or the least amount of information necessary to get the job done right. This Rule doesn't apply to treatment, since healthcare providers need access to the entire record for treatment. In most other cases, you're expected to limit the use and disclosure on a need-to-know basis. Some examples include:

- You are permitted to discuss a patient in a public areas if necessary, but speak quietly and do not use the patient's name
- Hospital employees who do not need PHI to do their job are not permitted to access a friend or relative's PHI
- Healthcare providers are permitted to maintain patients' charts at bedside for monitoring purposes, or outside exam rooms, with patients' names on the chart, with only the information needed for monitoring purposes.
- It is permissible to post key information such as "high fall risk" or "diabetic diet" on patient-care signs at the bedside or on the door
- You are permitted to call a patient about a scheduled appointment, but limit the information you disclose in the message.
- If you must leave a message, leave your name and number to confirm an appointment, or ask for a call back
- If a family member or friend answers, you are permitted to disclose limited information regarding a patient's care, as long as it's in the best interest of the patient
- At West Carroll Health Systems, in most cases, information about a patient's health status should be released only by nursing personnel or health information personnel
- Sign-in sheets are permitted, but limit sign-in data to protect privacy

## **PERMITTED USE AND DISCLOSURE**

Healthcare providers are permitted to use Phi without a patient's authorization for treatment, payment, or healthcare operations. You are expected to limit the amount of information shared except, of course, when it comes to treatment. Some examples of these permitted uses include:

- Healthcare providers discussing a patient's care
- Scheduling a procedure
- Using PHI to file a claim for payment
- Faxing a copy of PHI to a doctor who needs information for the treatment of a patient; however, you must call first to verify the correct fax number and make sure someone is standing by to receive it.

The minimum necessary PHI can be shared without permission or authorization:

- In the interest of public health and safety- for instance, to control and prevent disease, to report victim abuse or to monitor safety of FDA regulated products
- For health oversight activities to ensure quality of care
- For certain law enforcement purposes
- To comply with a HIPAA investigation

PHI can also be used/disclosed for certain purposes as a limited data set – when all personal identifying information has been removed.

## **WHEN AUTHORIZATION IS REQUIRED**

For all other uses, a signed authorization from the patient is required to use or release the patient's PHI. Examples include:

- Use and disclosure or psychotherapy noted about private counseling sessions
- Before use/disclosure of PHI for marketing such as selling patients' names and addresses to third parties for anything used to encourage recipients to purchase a product or service – with some exceptions
- For research purposes such as clinical trials – except when a waiver of authorization is obtained from the Institutional Review Board or a Privacy Board

In some cases, authorization is not required but you need the patient's agreement to use or disclosure PHI. This agreement by the patient should be documented. For instance:

- To inform family members or others involved in the patient's care
- To maintain our patient directory
- To inform agencies during disaster relief efforts

### **PATIENTS' RIGHTS**

The rule allows patients to make informed choices over how PHI is used. Patients can now:

- Find out how their medical information is used
- Request a history of non-routine disclosures (this does not include disclosures for treatment, payment or healthcare operations, or those that were authorized)
- Examine personal medical information
- Request copied and corrections
- Receive a written Notice of Privacy Practices
- Request restrictions on use and disclosures of PHI
- Patients have a copy of the Notice – no later than the date of first service delivery
- In emergency situations, patients receive notice as soon as the emergency is over
- To make good faith effort to get the patient's written acknowledgement of receipt of privacy notice

### **PERSONAL REPRESENTATIVES**

What about patients who are legally or otherwise incapable of exercising their rights? Or patients who choose to designate another to act on their behalf? In these situations, someone else has the authority to make healthcare decisions. Examples include:

- The parent of a minor child or a court-appointed legal guardian of a mentally incompetent or otherwise incompetent patient
- Someone with legal authority to act on behalf of a deceased patient or his or her estate

In these cases, a designated personal representative acts on behalf of the patient and exercise that patient's rights. The personal representative is given all the rights normally exercised by the patient including the right to:

- Inspect the patient's PHI
- Obtain an accounting of non-routine disclosures

Sometimes legal authority is limited to specific healthcare decisions. For example, a personal representative may only have power of attorney regarding use of artificial life support in a medical emergency. That means they only have the right to the PHI needed to make that decision.

Let's review examples of when use and disclosure is permitted, and when it is not

PARENTS – by law the ones with the authority to exercise their children's rights – are permitted to inspect their children's medical records without explanation (although in some cases you may need to verify information). Exceptions include:

- When it is prohibited by state law or a court grants authority to an adult other than the parent (for example, in some states, parental consent is not required for an adolescent to obtain certain mental health services or medical procedures)
- Husbands/wives of patients are not permitted to inspect PHI

It's your job to make sure the patients exercise their rights, including the right to inspect their PHI without explanation as to why, as many times as they wish.

West Carroll Health Systems requires that the request be in writing, and the request documented. If it is believed the information could cause harm to the patient or endanger staff or anyone else, you do not have to agree.

Patients are not permitted to access:

- Psychotherapy noted about private counseling sessions
- Information compiled for litigation

If access is denied, the Health Information Department will issue to the patient a written explanation including:

- Why access was denied
- A description of how the patient can complain to your Privacy Officer of DHH

### **NOTICE OF PRIVACY PRACTICES**

Basically, the Privacy Rule asks healthcare providers to give patients a Miranda – a reading of their rights in written form. It's called the Notice of Privacy Practices and it outlines:

- West Carroll Health System's privacy practices

- The right to adequate notice on how and when West Carroll Health Systems uses and discloses PHI
- A statement that West Carroll Health Systems is required by law to maintain the privacy of patient's PHI
- Patients' rights over their own PHI
- How they can exercise their rights and make complaints

It's your job to make sure:

- You understand the privacy practices fully

If the patient is present and capable of making decisions:

- You can get a patient's agreement first – it can be oral agreement
- Give the patient a chance to object

If the patient is not present, or hasn't agreed prior to disclosure, or in emergency circumstances:

- Use your professional judgement to decide whether it is in the best interest of the patient
- For instance, you can inform relatives or friends who accompanied a patient to the ER and is incapacitated, on the patient's progress.
- If you are unsure whether or not to disclose information, always limit disclosure until you feel confident to disclose. You can disclose information at a later time, but you can't take back what you have disclosed.

If you suspect that the personal representative has subjected a minor or adult to domestic violence, abuse or neglect, or if disclosure could endanger the patient, the Rule allows you to decline disclosure.

### **REPORTING AND IDENTIFYING VIOLATIONS**

HIPAA is a federal law – with civil penalties of up to \$25,000 per year and criminal penalties that can escalate to \$250,000 for conspicuously bad offenses. To help you follow the Privacy Rule:

- Mandy Hibbard has been designated as the Privacy Officer and is available to assist with questions or concerns

- The complaint process outlined in the Notice of Privacy Practices (available in the admission office, emergency room and health information) applies to patients, employees, or anyone else registering a complaint

You can keep mistakes from happening by taking an active role in preventing and reporting privacy breaches like these:

- West Carroll Health Systems' employees who do not need access to PHI to do their job, are not permitted to read patients' charts
- These same employees are not permitted to discuss patients, particularly if they have accessed patients' information when not permitted.
- Reporters are not permitted to access information on the patient, even when claiming to be a patient's family member
- A family member suspected of abuse is not permitted to see a minor child's or an adult's medical record
- A patient with a history of mental instability/violence is not permitted to see his or her records.

In each of these situations, use your professional judgement. If you believe that releasing medical information to anyone – even a legal personal representative – could endanger the patient's life, or anyone else's, you are permitted to deny access. Remember:

- You are the expert on the front lines of protecting patients' privacy
- When you do your job and exercise your professional judgement, you protect everyone's right to privacy and quality patient care.

