

New regulations will alter health care, media relations

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In three months, there will be a significant change in the way health care providers interact with public relations firms that market them and media representatives who report news about their patients.

The deadline for compliance with the Privacy Rule of the Health Insurance Portability & Accountability Act (HIPAA) is April 14, and professionals in the health care industry say they are preparing to make the regulated changes to protect patient privacy.

Getting ready to meet the press after April has been minor compared to the costs and time involved in complying with other areas regulated by HIPAA such as standardizing electronic filing of insurance claims or computerizing patient files.

Nonetheless, there are stiff penalties for health care providers who divulge information for which a patient has not given specific consent.

Maureen Demarest Murray, an attorney in Greensboro, N.C., who advises health care providers, says under HIPAA, a health care facility must let the patient know in advance that he or she will be listed in the facility directory by name, location, condition in general terms — such as "fair" or "critical" — and religious affiliation.

The patient may prohibit or restrict the use of this information in the directory, and thus its distribution to the media. This is a change to current laws that have considered acceptable the release of information on conditions as fair, stable or acute, a practice which the federal government ruled not specific enough to protect patients' privacy.

"As a practical matter, most providers will require [permission] in writing to be able to document the patient's choice," Murray says.

The civil penalties are \$100 per person or organization, not to exceed \$25,000 in a calendar year for multiple violations of the same requirement. However, the criminal penalties are much more severe. Wrongful disclosure could cost a health care provider \$50,000 and/or jail for up to one year; penalties for an offense under false pretenses are \$100,000 and/or jail for up to five years; penalties for an offense with intent to sell are \$250,000 and/or jail for up to 10 years.

Easing into enforcement

At least at first, the Centers for Medicare & Medicaid Services most likely will exercise a gradual enforcement of only the most egregious offenses to give providers

time to get acclimated to the new regulation, Murray says.

"Somebody trying to comply won't get slapped with a fine," Murray says.

Providers' reluctance to face those penalties may make news gathering more difficult, says Allison Van Laningham, a North Carolina attorney who represents media entities.

"What has changed is that health care providers will be more aware of not releasing information, for fear of the penalties," Van Laningham says.

After April the press may have to rely on other sources for patient information, such as family members, the police or other reliable sources, she says, and this may slow the process of news gathering.

Incidental photographs of people in public areas outside hospitals or in lobbies, typically not considered private areas, will not require written consent under HIPAA, Murray and Van Laningham say. However, the regulation does stipulate permission in writing for camera shots of patients who are the subject of the news report.

Despite the extra time that may be added, HIPAA may actually provide some benefits to the media, says Michelle Butt, news director at WXII-TV, the NBC network affiliate in Winston-Salem, N.C.

Butt says that the extra few minutes it will take for people to sign a consent form may make them think harder about whether they actually want to be involved.

"We're going to have to really make people understand what our goal is and why it's important for us to do the story," Butt says.

Karen Koutsky, vice president of news for WGHP-TV in High Point, N.C., says the biggest problem for the media will be in covering the condition of accident victims after they have been admitted to hospitals.

Koutsky says she fears HIPAA restrictions may affect the completeness of news reporting.

"People want to know the outcome of an accident, and if we can't get the condition reports, that will leave a big hole in the story," Koutsky says.

Getting follow-up information from a family member, many of whom are unable or reluctant to talk to the media, or from the police after an accident report has been written may not always be a reasonable option, Koutsky says.

"A lot of news reports will say, 'We don't know the condition nor will we ever find out,'" Koutsky says.

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