Participating in the National Survey of Ambulatory Surgery

HIPAA Privacy Rule Questions and Answers

Q. Am I required to comply with the HIPAA Privacy Rule?
A. Health care providers, e.g., hospitals and freestanding ambulatory surgery centers, which transmit certain financial and administrative health information electronically must comply with the Rule as of April 14, 2003. For example, if you submit claims electronically, you are required to comply with the Rule.

Q. Does the Privacy Rule allow my facility to participate in the National Survey of Ambulatory Surgery (NSAS)?
A. Yes. The Privacy Rule permits you to make disclosures of protected health information without patient authorization for public health purposes or for research that has been approved by an Institutional Review Board (IRB) with a waiver of patient authorization. The NSAS meets both of those criteria.

Q. What is protected health information?
A. Protected health information includes all medical records and other individually identifiable information used or disclosed by an entity (e.g., hospital or freestanding ambulatory surgery center) subject to the Privacy Rule. This would include directly identifiable information such as patient names, and other information such as social security numbers that could be used to identify an individual.

Q. How can we participate in the NSAS and comply with the Privacy Rule?
A. There are several things that would assure that you comply with the Rule when participating in the survey. First, the privacy notice that you provide to your patients must indicate that patient information may be disclosed for research or public health purposes. Many of the model notices that have been developed and made available by professional associations provide for this.

Also, we have provided the material you may need to verify under the Privacy Rule that you are permitted to disclose to NCHS/CDC the information requested as part of this survey. The letter provided to you asking for your participation in the NSAS is on official NCHS/CDC letterhead and describes the authority under which the survey is conducted. In addition, the Privacy Rule specifies that in providing information to public health agencies, such as CDC, you may rely on our assurance that the request constitutes the minimum necessary information required.

Finally, you may need to keep track of disclosures made for this survey. If Census Bureau staff perform the abstraction, we will give you a document that contains the information that you need to keep track of the disclosures. If you or your staff do the abstracting of data from patient records and accept the Data Use Agreement provided to you, then you are not required to account for the disclosures.

Q. What is the Data Use Agreement?
A. It is an agreement that describes how the National Center for Health Statistics (NCHS) may use the information that you provide to us. It was developed based on the provision of the Privacy Rule that specifies that certain data elements that are not directly identifiable (referred to as a "limited data set") may be disclosed for research or public health purposes, if the person or entity receiving the data agrees to the necessary elements of the data use agreement. An advantage of this approach is that, since we do not actually access directly identifiable information, you are not required to account for these disclosures.

Q. Is there any other information that I need to assess to assure that my disclosure is authorized under the Privacy Rule?
A. No. The National Survey of Ambulatory Surgery is sponsored by the National Center for Health Statistics, which is part of CDC. The Privacy Rule specifies that you are allowed to disclose information requested for public health purposes to public health agencies such as CDC without patient authorization. The Rule also states that for research projects you may rely on documentation that we have provided indicating that an Institutional Review Board (IRB) has approved a waiver to allow for disclosure without patient authorization of the information collected in this survey.

Q. What demonstrates that you are a public health authority?
A. The survey is sponsored by the National Center for Health Statistics in CDC. CDC is a public health authority whose mission is to protect the health of the public. The letter that we sent you asking for your participation in the NSAS was sent on official NCHS/CDC letterhead and described our authority to conduct this survey. The U.S. Census Bureau is acting as our data collection agent for the survey. Finally, the Census Bureau representative has an official identification badge.

Q. Why do I have to account for these disclosures?
A. Under the Privacy Rule, patients have a right to an accounting of disclosures that have been made of their identifiable information for various purposes, including disclosures for public health and research purposes. We will provide you with the information you need to account for the disclosures made as part of this survey. (If you do the abstracting of data from patient records yourself and accept the Data Use Agreement provided by NCHS, you are not required to account for the disclosures.)

Q. Do I need to worry about whether this is the minimum necessary information for the purposes of the project?
A. No. The Privacy Rule specifies that in providing information to public health agencies, such as CDC, you may rely on our reasonable assurance that the request constitutes the minimum necessary information required. This issue is also considered as part of the Institutional Review Board (IRB) approval process, and the Privacy Rule specifies that you may rely on the documentation of IRB approval that the information requested is the minimum necessary for the research purpose.

Q. Do I have to have an Institutional Review Board (IRB) review this research project?
A. No. For research projects, only one IRB must review the project and CDC's IRB (which has the authority to review such projects under the Regulations for the Protection of Human Subjects) has done so. We have a document that indicates a waiver has been approved by an IRB for this survey, and contains the documentation that is required by the Privacy Rule.

Q. What if I want my Institutional Review Board (IRB) to review this project?
A. Your IRB could verify that our IRB documentation adheres to the requirements of the Privacy Rule.

Q. Is a business associate contract required for me to disclose protected health information to NCHS for the survey?
A. No. A business associate contract is needed only when a person or entity is conducting a function or activity to help a provider carry out its health care function. NCHS is not a business associate of the facility. A business associate agreement is not required.

Q. Where can I find additional information on the requirements of the Privacy Rule?
A. The Office of Civil Rights (OCR) Guidance Explaining Significant Aspects of the Privacy Rule (with a hotkey to the text of the Privacy Rule) can be found at http://www.hhs.gov/ocr/hipaa/privacy.html

The following parts of the rule were referred to above:

Disclosures without patient authorization – 45 CFR 164.512
Disclosures for public health activities – 45 CFR 164.512(b)
Disclosures for research purposes – 45 CFR 164.512(i)
Limited data set and data use agreement – 45 CFR 164.514(e)
Verification requirements – 45 CFR 164.514(h)
Privacy notice – 45 CFR 164.520
Accounting of disclosures – 45 CFR 164.528
Minimum necessary requirements – 45 CFR 164.502(b) and 45 CFR 164.514(d)
Business associate requirements – 45 CFR 160.103, 45 CFR 164.502(e), 45CFR 164.504(e)