

## **A Physician View of Privacy and Security**

### **Physicians Take Privacy and Security Very Seriously**

Starting with medical school physicians are taught the importance of maintaining patient confidentiality. This tradition is reinforced by national HIPAA regulations with large maximum fines, up to \$50,000 per incident and \$1,500,000 per year for even inadvertent disclosure.<sup>1</sup> Ultimately, privacy and security depend on the integrity of the individuals. We do not have computer technology that can completely block a healthcare provider from any unauthorized access. People who violate this trust are fired. For safest best care, physicians would like to see one high standard for all confidential patient information.

### **Patient Feedback**

When seeing multiple physicians, nearly every patient wants their medical condition to be communicated their entire healthcare team. Currently, our medical group uses one medical record for every clinician and only psychiatry records are hidden from everyone in the group outside psychiatry. Every patient aware of this has viewed as positive. With hundreds of patients wanting their information to be communicated with other clinicians, have had only one patient express privacy concerns with a shared medical record.

### **Need for Quality Care**

To provide the safest best care treating physicians need patient key information for best of the patients including HIV status, mental health problems and substance abuse. For example, if medications for HIV or mental health were hidden, potentially fatal drug interactions may be overlooked. Our group has about 250,000 visits a year. If this happens 1 out of 100,000 visits, 2-3 people would die every year.

### **Problems with Current Situation**

To meet the law, the law must be clear and there must be a mechanism to practice medicine legally. We have problems with both.

The laws requiring extra privacy protection in Illinois have different protections by for each medical problem. Unless physicians practice in a very narrow specialty such as a drug treatment center, it is virtually impossible for them to know the law. In addition, attorneys give different interpretations of the laws. The last thing a physician wants to hear is, "That needs to be worked out in court."

In addition, the laws are not written for computers. Most computer systems have 3 options:

- a) Hiding completely
- b) Need special security (i.e. only a psychiatrist can access)
- c) "Break the glass" in which the reason for viewing must be documented.

The computer cannot handle the current law well. For example, one interpretation of the Illinois genetics law is testing to confirm a current genetic disease does not have extra protection, but one to diagnose a patient as a potential carrier of the same disease does have extra protection. The intent of the order is not documented in any standard way and thus impossible for a computerized record to handle properly.

In addition, all software is written to be HIPAA compliant. Virtually no software is written to be compliant with state law.

Another looming problem is exchange of health information across state lines with different legislation. With healthcare mergers, this problem is now occurring within health systems using software with a single database to store information for hospitals in different states.

### **What Should Be Private?**

Disclosure of a disease, can affect a person's livelihood. Patient's with the same disease can have very different views on disclosure. Most patients with diabetes, are not embarrassed or reluctant to disclose this fact. However, the television chef Paula Dean, was very reluctant to state she was affected.

Physicians want to honor patient's requests for privacy regardless of the legal status of the problem. Unfortunately, there is often a gap between what is safe for the patient and what a few patients want. The two main disclosure scenarios are:

1. The medical record should show no evidence the problem is present. Unfortunately, this is impossible to do with a paper or electronic record and attempts to eliminate all hints of a problem such as not including medicines for depression in the medication list create patient safety issues.
2. Specific items are hidden such as mental health visit notes. This can be done if the patient sees a mental health provider, but is virtually impossible to do if the patient is seen by a primary care physician for multiple problems.

We also have problems because of changes in medical technology. Personalized medicine using a complete genome analysis is close to becoming generally available. On the average each of us has 100 genetic errors.<sup>2</sup> In the future, proper treatment will require knowing this information for best treatment such as the best drug to treat high blood pressure.

### **Why Do Physicians Need For Best Care**

Accurate, complete information needed to take care of patients. This includes diagnoses, medications, tests for safe effective patient care including . Would like to see care coordination be an exception for all types of privacy information.

Most physicians outside the mental health field do not need to see treatment notes by psychiatric, drug and alcohol abuse providers. In addition, mental health providers have a tradition of an extra level of confidentiality they want even if not mandated by state law.

Believe making confidential testing sites available for folks who wish an extra level of confidentiality that do not record patient demographics (only a patient number the patient can use to access results) are a better more secure way of allowing patients to receive confidential HIV, genetic disease and other testing that would be most secure.

Ideally like to see state law harmonized with HIPAA so we have one standard. With the rise of regional healthcare, this is even more important.

## Summary

1. One standard for all healthcare information. Physicians believe HIPAA standards are reasonable.
2. Coordination of care an exception for all information and have uniform exceptions for disclosing any information with extra levels of privacy.
3. For patient safety and quality of care all appropriate health information must be available to treating clinicians
4. If some information has a higher level of privacy, would like to see it apply to specialized psychiatric, developmental and drug treatment providers, not primary care providers treating many conditions on one visit. The rationale for this is primary care physicians see less severe problems than specialized providers.
5. Clearer laws written for the electronic age and less subject to multiple legal interpretations

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<sup>1</sup> . <http://www.ama-assn.org/ama/pub/physician-resources/solutions-managing-your-practice/coding-billing-insurance/hipaahealth-insurance-portability-accountability-act/hipaa-violations-enforcement.page>

<sup>2</sup> . MacArthur DG et al: A Systematic Survey of Loss-of-Function Variants in Human Protein-Coding Genes. Science, February 2012; 335(6070): 823-828