



## Delegating Complaint Line Responsibilities

by Dan Rode

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) adds several compliance requirements, with none more daunting than the administrative simplification rule for privacy. The question these privacy rules raise is whether the facility's complaint line should be altered or extended to handle these rules.

### Current Compliance Complaints

Up to now, most of the complaint lines established by facilities were set up to handle internal complaints related to compliance with Medicare, Medicaid, and other similar requirements. It is reported that most facilities have experienced the bulk of the complaints on personnel and human resource questions and the rest on Medicare practices and procedures. Similarly, most facilities have installed a complaint process to cover patient complaints regarding facility services, billing, and the like. How (if at all) this latter process was matched with the compliance process obviously varies by facility.

Like the 504 Access Requirements, the HIPAA privacy regulations are scheduled to be overseen by the Federal Office of Civil Rights (OCR). While we do not know just how OCR will oversee its charge, we can suppose that some type of reporting will be required along with on-site visits based on patient complaints. Most institutions in the past have used their riskmanagement team and patient relations department to handle 504 compliance and OCR questionnaires.

As this article is written, it would appear that privacy complaints might take the form of:

- Questions concerning the facility's privacy and release of information practices, including the facility's privacy disclosure information brochure or packet (Notice of Information Practices) and release of information authorization forms;
- Complaints regarding release of information by the facility;
- Complaints regarding release of information by a plan or payer associated with the care rendered in a particular institution;
- Complaints regarding use or release of information by a subcontractor of the facility; and
- Complaints regarding release of information to government or court officials.

Patently, the best defense is a good offense. All employees should receive an education regarding the facility's response to the privacy requirements. Patients will be required to receive a privacy statement, and it should be expected that they might raise a question at any time. Staff should also know where to direct a question or complaint in an expedient manner.

### Patient Representative

It is this writer's recommendation that organizations should consider having current patient-generated questions related to facility notices, practices, and release of information handled by their patient relations department (called patient ombudsman by some). While the privacy rule presents some new twists, most facilities have found that questions of this type are generally handled with education.

Patient relations departments and individuals have been handling similar problems for years and can often

resolve an issue with a patient without significantly involving other staff. When staff are needed to answer specific questions or complaints, patient relations staff usually know where to go and how to ensure there is a good balance between the staff member and patient's needs. Patient representatives are also usually hooked into the risk management and legal processes of a facility to handle any complaint that might appear to violate a rule or condition.

## External Complaints

External complaints from previous patients should be directed to the facility's privacy officer, most likely a member of the facility's HIM department. Such complaints will most likely concern either a release of information situation, research data concerns, or subcontractor processes. Since release of information and third-party claim and collection practices are most likely to be questioned, an HIM privacy officer should generally be able to handle the bulk of the questions that arise. If a court enters a particular situation, the officer would obviously follow corporate policy and defer to corporate counsel as policy dictates.

## Internal Complaints

There will probably be two types of internal complaints: those involving concerns that the facility is not in compliance and those concerns that the facility's practices are hampering a department or professional's use of data. The former complaint should be addressed through the facility's compliance process. The latter should again be directed to the privacy officer.

## Teaming Up

Both the privacy officer and the patient representative need to be tied into the facility's risk-management process. For a period of time the HIPAA privacy rules will likely generate complaints needing risk or legal review. Both individuals will need to understand the facility's third-party obligations and potential contacts, especially with subcontractors and those in the institution that will be using patient identifiable data.

Presumably, the privacy officer will educate facility staff and audit the facility's privacy practices, beyond traditional release of information. This involvement will facilitate her or his handling of complaints and assist the patient representative in some situations. Given that the privacy rules are a component of HIPAA, it would be advisable for a facility to consider a privacy team that reviews use of all data, internal and external. Requests for data come from a variety of sources and could go to almost any administrative or clinical department, in addition to being outsourced to other departments and subcontractors. On a regular basis, policy and practice review, along with contractual review, can serve as a preventative factor in privacy compliance.

In certain situations, some legal review is needed to define the facility's compliance practices especially as they relate to release of information under various statutory scenarios. You can expect numerous concerns to be raised as the public's attention is given to the implementation of the new rules. There will be those who will want to test your facility's resolve to abide by the rules, and there will obviously be questions that will require a process review (privacy officer and the like) or a legal review. While such initial questions might be a pain, they can also serve as a good education for the questioner as well as the staff.

Finally, don't forget to involve your facility's ethics committee in your discussion on privacy. We don't know where the line is drawn between the legal and the ethical. The more consensus you have to work with, the better off you might be.

While the HIPAA privacy rules might raise a number of legal and ethical questions initially or during implementation, there is no reason to think that major changes might have to be made in your facility's compliance program. Like all other compliance issues, this one just takes on a slightly different character.

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