

# Business

## INSIDE THIS SECTION

Kaiser, diabetes group team up for online project	23
Contract Language	24
Business Pitch	26

**From talking in the hallways to having patients sign in: How to handle the mundane tasks in your office now that HIPAA has added a new wrinkle.**

**“J**ANE SMITH, WE’RE ready to do your mammogram,” the nurse announces to everyone in the waiting room.

Before April 14, that announcement would have been indiscreet and might have been discomfiting for the patient.

But after April 14, with HIPAA privacy rules in effect, could that kind of public announcement have the feds storming into your office?

The Health Insurance Portability and Accountability Act is so long and legalistic that many physicians still are confused about how to conduct their daily office lives without fear that some HIPAA cop will show up if doctors and nurses share information about patients or if patient files are located anywhere but a locked dungeon. Here’s how experts say you can fine-tune your office routine without going overboard.

### Can I still have someone call out patients’ names in the waiting room?

SURE, BUT DISCREETLY. “YOU CAN be courteous, polite and call people by name. Just don’t go into particulars,” says John R. Christiansen, a health care attorney at Preston Gates & Ellis LLP, Seattle.

It also is OK to call out a patient’s full name, even if you treat specialized populations such as people with sexually transmitted diseases. But it would be better to call those patients just by their first or last names rather than full names, says John C. Parmigiani, national director for regulatory and compliance services practice at CTG HealthCare Solutions, Cincinnati.

To be safe, some practices appear to be taking their cues from the deli counter. Christiansen has heard that some practices are handing out flashing pager devices, the kind that popular restaurants use to let diners know when a table becomes available. “That seems real overkill and pretty unaffordable to most physician offices,” Christiansen says.

A less expensive alternative might be to hand out number slips and call patients by number. But Keith D. Van de Castle, MD, MPH, president of HIPAA Compliance Services, a con-

Continued on next page



# PRACTICING PRIVACY

Continued from preceding page

sulting firm in Crozet, Va., says patients objected when one of his clients did that. The clinic went back to calling patients by name.

## Can I still have a sign-in sheet at the front counter?

THERE IS DISPUTE AMONG THE EXPERTS on this.

Yes, you can keep the sign-in sheet, say Parmigiani, Christiansen and Dr. Van de Castle, even if the names are visible to other patients. But doctors can't ask patients to write down the reason for their visits, they add.

No, get rid of the sheet, says Robert Gellman, a Washington, D.C., privacy consultant. U.S. Dept. of Health and Human Services guidance on sign-in sheets is vague, so physicians should be cautious. "In my view, there are always reasonable alternatives to a sign-in sheet," Gellman says. Those include having patients announce who they are to front-desk employees and having employees maintain the sign-in sheet rather than putting it out on the counter.

Dr. Van de Castle, a family physician, advises his clients to use separate sign-in sheets for morning and afternoon patients and to black out patients' names. He believes that this practice sends a strong message to patients that their doctors care about their privacy, which in turn leads patients to retain their doctors and refer their friends and acquaintances. "I think there is a business proposition for looking out for confidentiality," Dr. Van de Castle says.

## Do charts have to be stored in a locked cabinet or room?

ALL HIPAA REQUIRES IS THAT medical records be kept in an area employees have visual control of, away from the public, Christiansen says. For example, records can be located in an open area behind the reception desk, because outsider could only reach them by vaulting over the counter and past your employees.

But records generally can't be left open in places where outsiders walking by can read them. They can still be placed on the plastic holder outside examination rooms but should be turned around so they can't be read, Parmigiani says.

Also, employees should turn computers away so that patients can't see the screen, Parmigiani says. Doctors should log off computers when they leave exam rooms and overwrite the hard drives when they are ready to toss or give away their computers.

## Can my staff and I discuss patients in the hallway?

A CONE OF SILENCE IS NOT NECESSARY, but discretion is. That means you should be careful not to be overheard, experts say. Still, if a patient hears you discussing someone else's lab result, for example, that is consid-

ered an incidental disclosure allowed under HIPAA.

What if you and your nurse are naturally loud talkers, or your exam rooms have paper-thin walls? You can choose to build thicker walls or otherwise reduce sound in the office — there are companies offering specialized "HIPAA soundproofing" — but the law doesn't require you to take those extreme measures.

"Somebody could say, 'Well, that will show you're doing everything you can to protect patient privacy.' I guess you could do that. You could also put a moat in, put alligators and everything else. But do you really need that?" Parmigiani says.

More reasonable steps under HIPAA include taking loud talkers aside and asking them to keep their voices down or to stay away from the adjacent exam room, Christiansen says. If that's done and the loudmouths still can't help themselves, "at a certain point it's incidental disclosure, because you can say, 'OK, he sure didn't mean to be overheard,'" Christiansen adds.

## Can I leave messages on patients' answering machines or share information with patients' family and other treating physicians?

"THE WAY THAT [ALL] WORKS IS that it is left up to the physician's professional judgment, and that is the same way it was prior to HIPAA," says Paul Tang, MD, internist and chief medical information officer at Palo Alto (Calif.) Medical Foundation, a multispecialty group of 500 physicians.

Doctors can leave messages on patients' answering machines or voice mail. They should leave a general message asking the patient to call the doctor's office and avoid leaving detailed messages unless their patients have given them permission to do so.

"Typically, we have a couple of ways of giving people follow-up and feedback," Dr. Tang says. "One way I'll do it is I'll ask patients what number they like me to call them at before they leave the office and ask whether it's OK to leave the message on their answering machine. They commonly will say yes."

Dr. Tang says he refrains from disclosing protected health information over the phone to anyone other than patients unless that's what they want.

That means he won't disclose information to, say, the patient's wife if she answers the phone, but will do so if she is in the exam room with her husband. "If the wife comes in the exam room, for example, that obviously is an implicit agreement by the patient that it is OK to share information with her," Dr. Tang says.

### WEBLINK

<http://www.hhs.gov/ocr/hipaa/>  
Dept. of Health and Human Services'  
Office of Civil Rights' HIPAA  
medical privacy page

Still, some doctors mistakenly think they can't talk with anybody except the patient. Consequently, they refuse to disclose information to other treating physicians without patient authorization.

Getting such authorization is unnecessary. HIPAA gives physicians broad leeway to share information with physicians and others as long as the information is used for treatment, payment and health care operations. Doctors must give a notice of their privacy practices to patients and ask them to sign a form acknowledging that they received the notice. Patients don't have to sign the form, but physicians must make a good-faith effort to get them to do it.

Patients have the right to request that confidential information or communication be sent to them by alternate means or to alternate locations. For example, if a patient asks that a bill be mailed to his PO box rather than to his home, doctors must accommodate the request, Gellman says.

You don't have to remove your name from the return address, but that might not be a bad idea if your practice's name might reveal the patient's illness or condition, he says.

Patients also can request that you withhold certain information from other doctors. For example, they can ask you not to tell a specialist that they are alcoholics and cocaine users, but you don't have to abide by the request. But if you agree and later disclose that information, you will be in violation of HIPAA, Gellman says.

## I've done everything right. So what if there's still a privacy breach?

UNDER HIPAA, ALL PRACTICES are required to designate privacy officers. Ideally, if a breach occurs, your privacy officer can apologize and reassure patients that a breach won't happen again. That will end the matter — unless those actions fail to satisfy the patient.

In that case, several things can happen. Although HIPAA doesn't give patients the right to sue, they can sue under state privacy laws, Dr. Van de Castle says. If you have made a good-faith effort to comply with HIPAA, you'll have a defense, though that doesn't necessarily guarantee that you will win the lawsuit.

Conviction on HIPAA violations carry up to 10 years in prison and a \$250,000 fine.

But the U.S. Health and Human Services Dept. has gone on record saying that it is not looking to fan out across the country to nail violators. Its enforcement of HIPAA will be complaint-driven, meaning HHS will conduct an investigation *after* a complaint is lodged with the agency. If there are problems, HHS' goal is to work with physicians to get them in compliance.

"They are not going to spend any time trying to put somebody in jail unless you're doing something wildly egregious that no legitimate physician would even consider doing — like selling records on the Internet or something like that," Gellman says. ♦

## Yes and no of privacy

# H

IPAA requires that physician offices assess and revise basic procedures to ensure that patient information isn't

inappropriately used or disclosed. There are several things that experts say physician offices can and cannot do under HIPAA since the April 14 compliance deadline:

### Yes, you can

- Call out patients' names and dictate in the office, just try not to be overheard.
- Have sign-in sheets where the names are visible to any patient signing in.
- Leave a message on a patient's answering machine.
- Talk about a patient's case with staff and other colleagues in the office.
- Release health information to specialists without patient authorization as long as the information is used for the purposes of treatment, payment or health operations.
- Weigh patients in the hallway.
- Fax patient information, as long as you verify the fax number is correct.
- Send out anything containing patient-identifiable data to transcription services, collection companies, health insurers, attorneys and other parties as long as they sign business associate contracts.

### No, you don't have to

- Remodel the office so that medical records are stored inside a locked vault, cabinet or room.
- Remove your name from the return address when you mail bills and letters to patients.
- Soundproof the office or otherwise install a cone of silence.
- Ask janitors to sign a business associate contract.
- Deny requests from patients to amend or get a copy of their medical records.