



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Every Day"

COMPLIANCE ALERT 12-05

HIPAA Update for HHSC Employees and Staff: Employee to Employee Disclosures

HIPAA breaches by HHSC employees are a serious concern. Besides eroding patient privacy and identity security, breaches undermine the confidence the public and employees have in an organization. ***When a HHSC employee becomes a patient they have the same HIPAA rights as any other patient.***

A just-published study found that data breaches among healthcare organizations in 2010 and 2011 are still growing. On average, the study estimates that data breaches cost most organizations at least between \$200,000 and \$500,000. Unintentional employee actions and intentional non-malicious employee action accounted for significant percentages of the breaches in 2011. Specifically, more breaches are occurring where hospital employees violate the HIPAA rights of other hospital employees.

ACTION NEEDED: Because employee actions are causing more HIPAA breaches nationally, we need to be vigilant as HHSC employees to uphold privacy WHEN OUR EMPLOYEES ARE ALSO OUR PATIENTS. The following guidelines are provided to help us comply with HIPAA:

- ***What medical information is protected under HIPAA?***

HIPAA prohibits the sharing of "Protected Health Information" (PHI) except in specific circumstances. Generally, PHI is any individually identifiable information. Individually identifiable health information includes many common identifiers such as name, address, birth date, social security number. PHI also includes any health information relating to past, present, or future physical or mental health conditions. *PHI does not include information held by Human Resources in official employee records.* However, in most instances, employees should not be sharing or inquiring about any colleague's health information.

- ***When can I review the medical information of other employees?***

The employee-patient's information should be treated exactly like any other patient. In general, you may not review or inquire about protected health information (PHI) of other employees unless the employee-patient has given the Hospital permission to do so, for example by signing an Authorization for Release of Information. Even with such authorization, employees should only review

such information or access an employee's medical information if it is an explicit part of your job description and/or you have a "need" to know.

HIPAA allows sharing of PHI for treatment, payment, or healthcare operations. So, if you learn about a colleague's medical situation because you are a nurse providing treatment, a biller doing the bill, a coder preparing the chart, etc., this is generally not a HIPAA violation. However, you should be aware of HIPAA's "minimum necessary" requirement which means that only the minimum necessary health information to do the job, the treatment plan, the bill, etc. should be accessed. Accessing more than the minimum necessary could be a HIPAA violation. Also employees need to remember that passing on information gained legitimately as part of your job to someone who does not have the need or right to know may be a HIPAA violation as well. If you have questions about how this type of disclosure affects your position, talk to your Regional Compliance Officer or Chief Compliance and Privacy Officer.

- ***One of my co-workers is sick and was admitted to the hospital. I am concerned—can I go find out from the floor what is wrong or what happened?***

Obviously, we have genuine concern and compassion for our colleagues' well-being. However, HIPAA still overrides our curiosity about our co-workers' health. Unless you have a need to know as part of your job, the answer to the question above is generally 'no.' If your co-worker has been admitted to the hospital you may call or visit the room during your break or lunch unless your colleague has registered as "no information."

- ***Staff are saying that my co-worker "Kavika" was seen in the emergency room last night with chest pain. What should I do?***

First, do not continue the spreading of information to others. Once Kavika becomes a patient of your hospital or clinic, you must respect and protect his privacy just as you would for any other hospital patient. If you did not get the information directly from Kavika, discussing his condition or treatment with others may violate Kavika's HIPAA rights and the law. Wait until you hear directly from Kavika or his representative (family member, spouse, partner, guardian, etc.). Ask them first before sharing any information about Kavika with others. Assume that Kavika wants his health status and information to be confidential unless he or his representative tells you otherwise.

Second, if someone is spreading information about Kavika without his permission, remind them that doing so may be a violation of Kavika's HIPAA rights and should be stopped. Or, tell your supervisor or compliance officer of your concerns. In this way, we can all help each other maintain the privacy of all our patients, including our fellow employees when they become our patients.

▪ ***Can my manager ask “what is wrong with me?” or “why I was sick”?***

Generally, the manager should keep questions about well-being to very general questions that don't require the employee to disclose his or her protected health information. Our policies and union agreement provide that employees must provide a doctor's note when reporting sick for more than five consecutive days; however, these notes do not typically divulge any protected information without the employee's explicit authorization. Managers and HR can not inquire about the reasons for these notes without patient permission. They can, however, call the doctor's office to verify the authenticity of the note and signature.

▪ ***When can HHSC (Human Resources, a manager, an administrator, another employee) inquire about my medical condition?***

Generally, employers can inquire about medical condition very rarely without explicit permission by the employee. CFR45 §164.512 (b)(v) *permits (DOES NOT REQUIRE)* a covered entity (such as a doctor's office, clinic, other hospital) to disclose protected health information for the public health activities to an employer, about an individual who is a member of the workforce of the employer, IF:

- the covered entity is a covered health care provider who is a member of the workforce of such employee or who provides health care to the individual at the request of the employer to;
- conduct an evaluation relating to medical surveillance (for public health concerns or issues) of the workplace
- to evaluate whether the individual has a work-related illness or injury
- the PHI disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance.

However, even in these cases above, the covered health care provider must provide written notice to the individual that PHI relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer.

Bottom Line: In most cases, our patients, including employees who are patients, must give explicit permission for any release of PHI. Even in our sick leave abuse program, we have to request permission from the employee to get information from the healthcare provider. All HHSC employees and staff have a legal and ethical obligation to uphold all our patients' HIPAA rights, and this continues to apply when our employees are our patients.

Source:

https://docs.google.com/a/doximity.com/viewer?url=http://www2.idexpertscorp.com/assets/uploads/PDFs/2011_Ponemon_ID_Experts_Study.pdf&pli=1