EDITORIAL

HIPAA–Are We Over-reacting?

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Y2K came and went relatively uneventfully. Of course, many preparations had been made, but none of the devastating disasters predicted occurred. We were quickly back to life as usual with no dramatic changes. Not so after April 14, 2003…

April 14, 2003 was the date that healthcare systems had to be in compliance with the HIPAA Privacy Rule (Health Insurance Portability and Accountability Act). Even with all the HIPAA training programs in place, there are still many questions and more than a few surprises.

The intention of HIPAA is to allow portability of health insurance, while protecting the privacy of the consumer. There has been some excellent coverage of what HIPAA is and how we THINK it might affect laboratory operations and education.[1,2] I am not proposing to debate that information in this column, and I certainly respect a patient's right to privacy, but I'd like to give you my personal perspective and pose some questions.

A scenario was related to me recently. Clinical laboratory science (CLS) students at a university based program had been assigned case studies as part of their capstone experience. These case studies were to be prepared for a 15-minute presentation to the class, as well as a paper suitable for publishing in their professional journal *Clinical Laboratory Science*. For the past eight years this scenario had been used without any problems. For this assignment, students at the institution work with a CLS faculty member and a pathology resident as advisors. The usual preparatory work had been done: coordinating with the chief resident for the assigning of residents, sending a class picture to Medical Records Research, and even sending copies of documentation of HIPAA training for all students.

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Until April 14, 2003 students were able to access a patient chart and take notes in the medical records department. As of April 14, 2003 more forms were needed before charts could be used. The first form was an "Authorized Medical Record Request for Research Purposes". The institution would only honor that form if it was signed by a physician, and so it was done. The chief resident requested all of the records. The next day, the instructor received a call that an Institutional Review Board exemption or approval was needed. The instructor contacted the director of compliance at the institution and was told that the student project would fall under Health Operations and not research. Medical records still would not release the records until they received authorization from the privacy officer. Finally after almost a week, the students were allowed to review charts. In one case, a copy of the discharge summary had been made and the identification had been removed. The student was asked to return the information since they were not supposed to de-identify records. Hmmm—we can't *identify* information, but we can't *de-identify* it, either… so where does that leave us?

Having been to multiple HIPAA presentations–at the Clinical Laboratory Educators Conference meeting (great job, Ed Peterson), at the hospital on campus, at the university, and one at our state meeting presented by an attorney, it appears there are several inconsistencies and many 'gray' areas. Currently the guidelines are vague and common sense is not always being used to implement the intent of the legislation. The fact that privacy is a multidisciplinary issue complicates the issue because each discipline has to interpret the issue from its own perspective and that can be very different from one department to another.

Some of the situations that either have occurred or could be encountered include:

- High on my list is what will happen to case studies for the clinical practice section. My thoughts are that education and training at an academic medical center would be considered healthcare operations, so that access to protected health information (PHI) of patients would be allowed. Of course, only the minimum information necessary to accomplish the intended purpose should be accessed.

- Some laboratories are breaking the ends off of glass slides, because they contain bar codes or patient identification. This will definitely protect the privacy of the patient, but is it overkill and does it create a dangerous situation to those breaking the slides? How likely is it that someone will pry the top from a sharps container at a medical waste facility, take the slide to a microscope, and examine it to discover that patient XYZ has chronic lymphocytic leukemia? Shouldn't discarding microscope slides as sharps satisfy the intent of HIPAA?
- Other laboratories are blacking out the identification on the end of a slide. Is that necessary if slides are properly disposed of in a sharps container and taken to a licensed medical waste management facility?
- What about side by side instrument comparisons? That would be using patient specimens for other than the purpose collected. Would this then be considered research and thus need IRB approval or exemption, or would it fall under quality assurance and be considered healthcare operations?
- When we give results out over the telephone, how can we verify the identity (ID) of the caller–will we need caller ID on every telephone–what if a cell telephone is being used? Caller ID identifies the telephone from which the call is being made–but not the individual making the call.
- When we fax results, how can we be sure that they reach the correct location and that *only* authorized persons see them? If they do reach an incorrect location, what is our responsibility to see that they are destroyed? If an incorrect fax reaches the laboratory, what is our responsibility to notify the sender of the error?
- Will we eventually have to encrypt *all* PHI? How much expense will that add?
- One of the purposes of HIPAA was to reduce paperwork–so far I personally have received or signed forms at the pharmacy, dentist, health insurer, and physician. I'm sure I am not yet finished with them. Where will all this paper be stored (in an age of paperwork reduction)?
- Can we continue to take photomicrographs of patient slides, since there may be identification on the slide itself, although the patient ID will not be on the image? Will this fall under healthcare operations for educational purposes? Some feel that specific permission of the patient will be needed to allow their specimen to be used for any educational purposes, identified or not. Will this request for permission be added to the form that patients sign on admission? If they refuse to sign, how will we separate their specimens from others that *can* be used for teaching purposes?
- Just last week I rode in an elevator with a physician who was carrying an X-ray envelope with the patient's name and area X-rayed clearly visible. Common sense would suggest that the materials at least be turned so that they are not visible to the public. When one is in a hurry, however, that fact can easily escape one's attention. Perhaps hospital staff will need to be more careful about shielding PHI while using public elevators, or be more conscientious about using staff elevators. Whose responsibility is it to remind an individual that they are violating patient privacy?
- What will happen to shadowing opportunities for pre-CLS students? Will each facility have to develop a student observation form that is signed by the student and kept as a record of compliance?

Gary Gill, who is the corporate compliance officer at DCL Medical Laboratories in Indianapolis suggests that we address the HIPAA Privacy Rule in a practical, common sense manner, not literally black and white. Some solutions to protect privacy may only be adding expense without adding any advantage, and as Mr. Gill stated, "Adding cost without benefit is not a good thing".[3]

A recent article by Ham and Boothe gives suggestions on how to give your laboratory a privacy checkup and addresses some of the situations that I have mentioned.[4] The next few months/years should prove interesting in the arena of HIPAA. We look forward to receiving more and varied articles about how HIPAA has impacted the patient, the practice of medicine, and education in CLS.

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