

# In compliance...

## ...with HIPAA rules

by Tom Loughrey, Pittsburgh, PA

The College and Economedix recently completed a series of teleconferences about the new Health Information and Privacy Accountability Act (HIPAA) privacy standards. The following is a sample of questions raised and answered during the conference.

- *We understand we were to be in compliance with the HIPAA privacy standards by April 14. We have not sent any notices or enacted any new policies. Are we too late? What should we be doing now?*

It is not too late to comply with the HIPAA regulations. The most important things to do right now are to send out the required notice of privacy practices to patients, establish policies and procedures with regard to privacy, and arrange for staff to be trained in the policies and procedures.

- *We assist other surgeons from time to time without ever seeing the patients in our office. Can we rely on the privacy notice the primary surgeons give their patients?*

Unless you are specifically mentioned in it, the primary surgeon's notice is unlikely to cover your practice. A good policy in this instance is to send a copy of your notice to the patient with an acknowledgment of the notice for the patient to sign. Check with the hospital or ambulatory surgery center to see if the notice it is using protects surgeons providing services to patients covered by an organized health care arrangement.

- *We're still confused about the definition of a "business associate." Are attorneys and accountants considered business associates?*

To be considered a business associate for privacy purposes, the individual or firm must have access to protected health information (PHI). If an attorney working on contracts never accesses patient records, there are no privacy issues requiring a contract. However, a billing service, collection agency, and outside transcription service would need access to PHI and, therefore, must have a contract obligating them to the same privacy standards as the practice meets.

- *Our practice has an answering service. Should an answering service be HIPAA compliant?*

### Around the corner

#### August

- ACS-sponsored practice management course for surgeons August 23 in St. Louis, MO. Visit the ACS Web page at <http://www.facs.org/dept/hpa/workshops/pmworkshop.html> to register.

#### September

- ACS-sponsored basic and advanced coding workshops for surgeons in St. Louis, MO, September 18-19, 2003. Visit the ACS coding workshop webpage at <http://www.facs.org/dept/hpa/workshops/cdworkshop.html> to register.

*If not, what forms should the service sign for my protection?*

Answering services are not covered under HIPAA. However, if they are provided with protected health information as part of their duties, they would be classified as business associates, and a contract covering their responsibilities for the privacy of your patients should be created. Check to see if they already have suggested language for a contract or use the model language available from Economedix. (Web site listed on page 40.)

- *Our office collects data from a particular surgical procedure that the surgeon performs. Does this count as research, and do we have to address this in our policies and procedures beyond stating that we don't use identifying patient information, such as name or social security number? We collect data on age, gender, procedure performed, and success of the procedure and use this data for presentations.*

Using PHI for research purposes requires a written authorization from the patient specific to the research project unless the information is sufficiently deidentified. Based only on age, gender, procedure and outcome, this information would lack identification of individuals and would not

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require an authorization. Be careful that the research documents do not track back to the underlying data. Information on privacy and research is available at: [http://privacyruleandresearch.nih.gov/pdf/HIPAA\\_Privacy\\_Rule\\_Booklet.pdf](http://privacyruleandresearch.nih.gov/pdf/HIPAA_Privacy_Rule_Booklet.pdf).

- *If another physician's office requests the records of one of our patients for treatment purposes, must we get authorization from the patient?*

You do not need authorization. This is part of the health care operations of your office and the release of PHI for this purpose is covered by the notice to the patient.

- *If a patient requests confidential communications, do we include this information in the chart, or just on the log? Also, if we forward the chart to another provider, do we have to provide the confidential communications information, or is it the patient's responsibility to let the other provider know his or her wishes?*

Such a request from the patient should be noted prominently on the chart so that staff see it every time they access the medical record. It also should be entered into the computer record of the patient so that if staff contacts the patient by phone they know not to leave messages with anyone other than the patient. Records sent to another office should also prominently note that the patient requests confidential communications.

- *We understand the HHS Office of Civil Rights (OCR) is hiring agents to investigate practices. Is this true? Can they just come into our practice without any complaint to check on our compliance?*


While the OCR is hiring staff for investigations, the agency maintains it only will initiate investigations based on complaints. The OCR also says its focus will be on education, resolution of complaints, and compliance. A final interim rule on sanctions and penalties was published on April 17, 2003, and is available at: <http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=51031612436+0+0+0&WAIAction=retrieve>.

- *Where can we get more information on the HIPAA privacy rule?*

A summary of the HIPAA privacy rule is available at: <http://www.hhs.gov/ocr/privacysummary.pdf>.

A fact sheet on HIPAA is available at <http://www.hhs.gov/news/facts/privacy.html> and an extensive list of frequently asked questions that is

updated regularly is available from the OCR at: <http://www.hhs.gov/ocr/>.

A CD-ROM containing the transcripts of the entire teleconference presentation with model forms, policies, and procedures can be purchased directly from Economedix at: <https://yourmedpractice.securelook.com/ACS-HIPAA-Reg.html>. 

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This column responds to questions from the Fellows and their staffs and provides useful tips for surgical practices. Developed by the College staff and consultants, this information will be accessible on our Web site. If you like to see specific topics addressed in future columns, please contact the Division of Advocacy and Health Policy by fax at 202/337-4271, or e-mail [ahp@facs.org](mailto:ahp@facs.org)

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**Mr. Loughrey** is chief executive officer of Economedix, a national practice management consulting and education company with offices in Pittsburgh, PA, and Southern California. He can be reached at tel. 714/633-2251 or via e-mail at [tloughrey@economedix.com](mailto:tloughrey@economedix.com)