

## HIPAA News

A breach under the HITECH Act is the acquisition, access, use, or disclosure of PHI in a manner not permitted by HIPAA. The Act provides the following exceptions to the definition of breach:

- Any unintentional acquisition, or use of PHI by an associate of a covered entity (CE) or business associate (BA) made in good faith and within scope of authority not resulting in further use or disclosure of the PHI
- Any inadvertent disclosure of PHI by person authorized to access PHI at the CE, BA, or organized health care arrangement in which the CE participates and the PHI is not further impermissibly used or disclosed
- PHI disclosure where a CE or BA has a good faith belief the

unauthorized person to whom the impermissible disclosure was made would not reasonably be able to retain the information.

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Patients may have easier access to laboratory reports under a proposed rule announced by DHHS on 9-2-11. The rule would allow patients to access results directly from labs which would provide the information directly to the patient or the patient's representative. The DHHS Secretary has said "when it comes to health-care, information is power. When patients have their lab results, they are more likely to ask the right questions, make better decisions, and receive better care. This rule, if enacted, would amend the CLIA '88 regulations and HIPAA privacy regulations to

strengthen patients' rights to access their own lab test reports.

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CE's are required to limit incidental PHI disclosures (those that occur as a part of doing business) as much as feasible. When discussing PHI at an intake desk (such as a desk at a phlebotomy draw site), a buffer zone should be established between the desk and the next patient waiting to check in. Providers will often use a sign in log and have the patient wait in turn for check in—this is allowed under HIPAA. This will not always eliminate PHI disclosure but is an acceptable practice to limit incidental PHI disclosure. Every effort should be made to allow privacy when the patient is waited on.

## Compliance News

Influence is an essential component of leadership. To maintain a strong ethical culture, leaders must be able to influence beyond using supervisory muscle. Six basic elements of influence:

- **Source**—as the source, the leader will be judged on his/her credibility
- **Audience**—know their responsibilities, environment, how they communicate, and what is important to them.
- **Pre-work**—reinforce relationships, fix broken relationships, be a good listener, pre-sell your approach to others who can support your influencing efforts, smile and greet folks, and know people's names
- **Currencies**—know what peo-

ple want and what you are able to give them

- **Reciprocity**—give and take; communicate well and seek beneficial outcomes
- **Follow up**—document and share information to which and others have committed

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HITECH increased the dollar amount of civil penalties which can be levied on a CE. The amount also increases depending on the reason for the violation but the OCR has the authority to levy the highest dollar penalties even on the

lowest level infractions.

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The Medicaid RAC final rule was released 9-14-11. It is modeled after the Medicare RAC program and will target waste.

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Numbers from a recent HIPAA West Summit:

- 1 of 4 organizations report a data breach
- 250,000-500,000 medical identify thefts
- 330 organizations reported a breach of unsecured PHI involving 500 or more individuals since 9-90
- 34,000 reports of breaches submitted to OCR affecting less than 500 individuals

More numbers are given on the next page in "Miscellaneous."

## Safety

A new Texas law prohibits anyone from filing an anonymous complaint against a physician there. The Texas Medical Board will no longer address anonymous complaints from any source. The law also requires the Board to inform the physician when an insurer or pharmaceutical company file a complaint.

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A new OSHA directive outlines the types of businesses and why workplace violence prevention efforts will be evaluated. Healthcare and social service settings are considered high-risk. OSHA does not have a workplace vio-

lance standard but will issue citations under the General Duty clause.

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**Are the new 5 toe shoes acceptable for laboratory associate wear?** While these are ergonomically beneficial, the material on the top of the shoe is thin and does not protect against sharps; they are not recommended for laboratory wear.

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**Does OSHA require a drain for a safety shower?** No. In many instances when this shower is used, an associate is covered in a chemical that should not be flushed down the drain (i.e., formalin, acids, etc.)

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**How is long hair defined in the laboratory?** When dealing with this type of question, the lab should always think "best practice." Most safety guidelines say to tie back hair beyond shoulder length. Wearing a hair net or surgical cap is an alternative to having it tied back. A policy should not be developed for individual situations, but rather for best practice.

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A breaker box should have a 36 inch radius clear around it. A breaker panel should never be blocked by boxes, other items.

## Quality News

**RAC Audit Changes:** The revised RAC statement of work now officially recognizes semi-automated reviews as a method of claims review.

The majority of Medicare coverage policy is defined through Local Coverage Determinations (LCDs). These typically provide the clinical policy framework for RAC Medical Necessity reviews; it is imperative an organization keep a current set on file or available as a resource.

The RAC treatment of the discus-

sion period is also addressed. It now has to be in written format and this period ends if the provider files an appeal during that period.

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Almost 60% of advocacy groups are pushing for hospitals and facilities to make The Joint Commission findings open to the public. Currently, this is not the case because of a provision in the Social Security Act.

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A laboratory's quality performance depends on the expertise of its as-

sociates and the systems in place to maintain that quality. Accreditation is one way for maintenance of quality standards and continued improvement. Each lab accreditation agency has benefits and a laboratory should choose the right agency for it. Many consider CAP the strictest. COLA is approved for core lab specialties only (Chemistry, UA, Hematology, Immunology, Blood Bank). The Joint Commission (JC) accredits hospital and free-standing laboratories. COLA and JC employ lab professional inspectors; CAP uses volunteers.

## Miscellaneous

More HIPAA Summit West numbers on breaches involving 500 or more individuals; HOW:

- Theft (50%)
- Unauthorized access disclosure (20%)
- Loss (16%)
- Hacking/IT (7%)

WHERE:

- Paper records (24%)
- Laptop (23%)
- Portable electronic device (16%)

- Network server (10%)

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The revenues from commercial and federal payers is dropping at the same time mandates for reporting and quality are climbing. Another urgent matter for organization leadership is the cost of purchasing, implementing, and education on ICD-10 software. Many predict the cost of implementing ICD-10 coding will be far higher than estimated.

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Healthcare leaders see collaborative care as an inevitable part of the landscape; doctors are not necessarily on board with relations predicted to get shakier with new models. Most hospital and clinical leaders say doctor support is mixed or unsure, 71% say their organization will participate in these models, and only 36% say their doctors will have a major influence in the decision to participate in these.