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HIPAA and HITECH: Privacy and Penalties

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June 4, 2010

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This paper discusses two issues. The first previews HIPAA laws applied to criminal evidence, outlining patient rights. The second issue provides a brief synopsis of penalties a health care provider faces if it violates the HITECH provisions of HIPAA.

What Rights does a Patient have in Withholding Healthcare Information Requested by Law Enforcement that Could Impact them Legally

With regard to requests by law enforcement, the patient's rights are very limited. In Kansas, which is similar to most jurisdictions in this regard, a patient may refuse to be subjected to a blood test, just as s/he may refuse to take a blood alcohol test. However, if s/he has blood tests taken for any reason, law enforcement may obtain it and use it in court.

The Court ruled that HIPAA does not preclude law enforcement from obtaining medical information pursuant to a subpoena or court order. The patient's specific request that his blood be drawn for medical purposes only, not for law enforcement, has no bearing on this issue.

In a Kansas case, a motorcycle driver crashed and appeared to be under the influence. When he got to the hospital, he refused a blood test. However, he later consented to a blood test for medical purposes only, specifically stating law enforcement was not to get a copy of his results. Law enforcement obtained the results and used it as evidence in his prosecution. The district court ruled in the defendant's favor, claiming he had a right to privacy under HIPAA.

The appellate court disagreed.

HIPAA's privacy regulation specifically provides that information may be disclosed "in the course of any judicial or administrative proceeding" under court order. 45 C.F.R. § 164.512(e)(1)(i). In addition, the regulation provides that information may be disclosed specifically for law-enforcement purposes pursuant to a court order. 45 C.F.R. § 164.512(f)(1)(ii)(A).

("State v. Weilert," 2010)

In *Weilert*, supra, the Court further noted that even if the evidence was obtained in violation of HIPAA, it is still admissible in court. In essence, HIPAA has very little effect in a criminal proceeding. As long as law enforcement follows evidentiary rules, HIPAA provides little, if any, patient privacy in a criminal prosecution.

What are the Ramifications of Violating HIPAA and are they Strong Enough? Why or Why Not?

Violation of HIPAA result in penalties for health care providers (Fremgen, 2006). The Health Information Technology for Economic and Clinical Health (HITECH) Act provides a tiered system for assessing the level of each HIPAA privacy violation and, therefore, its penalty:

1. Tier A is for a provider who was unaware of the violation; an innocent violation. The fine is \$100 for each violation, up to \$25,000 per year.
2. Tier B is for violations due to reasonable cause, but do not involve willful neglect. The fines are \$1,000 per violation, up to \$100,000 per calendar year.
3. Tier C is for willful neglect, but the organization ultimately corrected. Fines are 10,000 per violation, up to \$250,000 per year.
4. Tier D is for willful neglect that the organization did not correct. The fine is \$50,000 per violation, not to exceed \$1,500,00 per year.

(Nicastro, 2009)

The penalties are stiff. Privacy is so important the legislators placed the burden upon health care providers to protect patient health information. Various exceptions are available to protect the health care provider in certain circumstances. Penalties are tiered according to level of culpability and willingness to remedy the situation

Conclusion

HIPAA laws provide adequate protection to patients, while allowing disclosure of patient information in exigent circumstances, such as legal investigations and prosecutions.

References

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