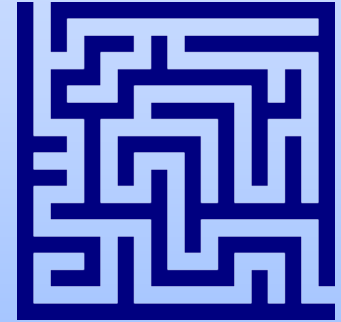


Navigating the Maze:

Tips for Accessing Hospital Records and Communicating with Providers



A Presentation for Equal Justice Wyoming
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Disclaimer

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Agenda

- Alphabet Soup: A review of relevant federal and state laws
- Balancing patient privacy and safety with information requests
- Practical tips

Alphabet Soup – Federal and State Laws

- HIPAA
 - Privacy Rule
- WPRA
- WHRA
- Privileged communications

HIPAA?



- Knock, Knock.
- Who's there?
- HIPAA.
- HIPAA who?
- (laughing) I can't tell you!

Health Insurance Portability and Accountability Act

- Enacted by Congress in 1996, P.L. 104-191
- Summary
 - Provides the ability to transfer and continue health insurance coverage for millions of American workers and their families when they change or lose their job
 - Mandates industry-wide standards for health care information on electronic billing and other processes
 - Requires the protection and confidential handling of protected health information

Privacy Rule



Privacy Rule

- 45 CFR Parts 160 and 164.500 *et seq.*
- Establishes national standards to protect individuals' medical records and other personal health information
- Applies to health plans, health care clearinghouses, and health care providers that conduct health care transactions electronically

Protected Health Information

- HIPAA and the Privacy Rule mandate the security of PHI – Protected Health Information
- Individually identifiable health information - Information collected from an individual by a covered entity that relates to the past, present or future health or condition of an individual and that either identifies the individual or there is basis to believe that the information can be used to identify the individual
- Information created *or* received by covered entity
- Maintained in *any* form or medium, *e.g.*, oral, paper, electronic, images, etc.

Covered Entity

HIPAA applies to “covered entities”:

- Health care providers who engage in certain electronic transactions.
- Health plans, including employee group health plans if:
 - 50 or more participants or
 - Administered by a third party (TPA, insurer)
- Health care clearinghouses.
- Business associates of covered entities

Restrictions on Covered Entity's Use of PHI

HIPAA and the Privacy Rule prohibit:

- Unauthorized disclosure of PHI
- Unauthorized use within the covered entity
- Unauthorized access within the covered entity

Use of Protected Health Information

A covered entity cannot use or disclose PHI *except*:

- For purposes of treatment, payment, or healthcare operations
- For disclosures to family members and others involved in patient's care or payment for care if:
 - Patient has not objected,
 - Disclosure appropriate under circumstances, and
 - Disclosure limited to person's involvement
("need to know")
- Pursuant to a valid written authorization signed by patient that complies with 45 CFR 164.508.
- For certain safety or gov't purposes listed in 45 CFR 164.512.

Disclosure of Protected Health Information – **WHAT** is disclosed?

What is disclosed?

- “Designated record set”
- Be specific about what you’re requesting
- Not *all* items are in the “designated record set”
 - Legal documents (such as involuntary hospitalization – Wyo. Stat. § 25-10-122)
 - Psychotherapy notes

Exception to disclosure: Psychotherapy Notes

Definition of “psychotherapy notes”:

Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

45 CFR 164.501

Exception to disclosure: Psychotherapy Notes

45 CFR 164.524 allows an individual the right to inspect/obtain his own PHI *except for* psychotherapy notes. A covered entity's denial of access of such notes is not reviewable.

*See also Wyo. Hospital Records Act, § 35-2-612(a)
and Mental Health Professionals Licensing Act,
§ 33-38-113(a)*

Disclosure of Protected Health Information – **HOW** is PHI disclosed?

A covered entity may disclose PHI with a valid written waiver from the patient or personal representative. 45 CFR 164.508(c) outlines the *minimum* required components of a valid waiver:

- (i) Specific **description of the information** requested.
- (ii) The name or identity of the **person requesting the information**.
- (iii) The name or identity **to whom the information may be disclosed**.
- (iv) “A description of each **purpose of the requested use** or disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.”
- (v) An **expiration date** of the authorization to release.
- (vi) **Signature** of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

Disclosure of Protected Health Information, “How” *cont.*

The CFR also requires the waiver to notify the individual that:

- The authorization to release may be revoked, and the process to do so
- Whether treatment, payment or eligibility depends on the authorization being signed
- Potential for re-disclosure by the recipient of the information

Disclosure of Protected Health Information, To **WHOM** Is It Disclosed

- Patient or personal representative
- To family/persons involved in patient's care if certain conditions met
- Applies to disclosures after the patient is deceased

Disclosure of Protected Health Information, *To WHOM, cont.*

Who is a “personal representative”?

- An individual who, “under applicable [state] law . . . has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care”
- An individual who has authority to make decisions for a deceased patient’s estate.
- For an unemancipated minor, may include a guardian or other person acting *in loco parentis*

What may a personal representative request:

- Usually may exercise the same rights as the patient:
 - Request restrictions on use or disclosure of protected info.
 - Access protected info.
 - Amend protected info.
 - Obtain accounting of disclosures of protected info.

45 CFR 164.502(g)

Disclosure of Protected Health Information, *To WHOM, cont.*

Exceptions:

- Emancipated minor
- Minor obtains care through court order (or at request of person appointed by court – such as a social worker)
- Parent agrees provider may have confidential relationship with minor
- Provider determines that disclosure to personal representative not in the best interests of the minor (for example, abuse situations)

See also Wyo. Stat. § 35-2-612(a)

Penalties for Noncompliance

- Civil penalties – up to \$50,000/violation
 - *Each inappropriate disclosure is a separate violation*
- Criminal penalties – up to \$250,000/violation and/or 10 years imprisonment
- Patients may be able to sue
- As an employer, the covered entity must impose employee sanctions.
- The covered entity must self-report breach of unsecured protected health information to:
 - Affected individuals
 - HHS
 - Sometimes local media

HIPAA Resources

- <http://www.hhs.gov/hipaa>
 - HIPAA for Professionals link
- <http://www.hhs.gov/ocr/>
 - FAQs
 - Regulations and summary of regulations

Other Laws Governing Disclosure

The Wyoming Public Records Act

- Wyo. Stat. § 16-4-201 through 16-4-205
- § 16-4-203(d) mandates denial:

The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(i) Medical, psychological and sociological data on individual persons . . .

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

Other Laws Governing Disclosure

The Wyoming Hospital Records Act

- Wyo. Stat. § 35-2-605 through 35-2-617
- Basic provision - § 35-2-606(a)

Except as authorized in W.S. 35-2-609, a hospital or an agent or employee of a hospital shall not disclose any hospital health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization shall conform to the terms of that authorization.

The Wyoming Hospital Records Act, *cont.*

Wyo. Stat. § 35-2-609 allows disclosures without the patient's authorization under certain circumstances:

- A current health care provider
- If disclosure is to “avoid or minimize an imminent danger” to patient or others
- Immediate family members
- Public health officials
- Law enforcement

The Wyoming Hospital Records Act, *cont.*

Wyo. Stat. § 35-2-610(a) prohibits disclosure “pursuant to compulsory legal process or discovery in any judicial, legislative or administrative proceeding” unless certain circumstances met.

The Wyoming Hospital Records Act, *cont.*

Disclosure permitted if:

- Written consent of patient
- Patient is party to proceeding & placed physical/mental condition in issue
- Patient's condition relevant to execution/witnessing of will
- Deceased patient's condition in issue by beneficiary
- Involuntary hospitalization process
- "A court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that the interest in access outweighs the patient's privacy interest."

The Wyoming Hospital Records Act, *cont.*

Notice required: § 35-2-610(b)

[I]f health care information is sought under paragraph (a)(ii), (iv) or (v) of this section or in a civil proceeding or investigation under paragraph (a)(ix) of this section, the person seeking discovery or compulsory process shall mail a notice by first class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least ten (10) days before presenting the certificate required under subsection (c) of this section to the hospital.

The Wyoming Hospital Records Act, *cont.*

- Written certification identifying each provision pursuant to which compulsory process or discovery is being sought *and*
- Must also certify that notice provisions fulfilled

Wyo. Stat. § 35-2-610(c)

The Wyoming Hospital Records Act, *cont.*

Hospital may deny access to information – even by patient – in certain situations

- Imminent threat to life/safety of patient or others
- Information could lead to patient's identification of an individual who provided information in confidence
- Access is otherwise prohibited by law

Wyo. Stat. § 35-2-612(a)

The Wyoming Hospital Records Act, Enforcement

- Court may order hospital to comply
- If court determines hospital violated the act, “aggrieved party” may recover damages and attorneys fees
- Action must be brought within two year
- Presumably a violation could be either improper disclosure or a refusal to disclose

Wyo. Stat. § 35-2-616

Other Laws Governing Disclosure Privileged Communications

Privileged communications – Wyo. Stat. § 1-12-101

(a) The following persons shall not testify in certain respects:

(i) An attorney or a physician concerning a communication made to him by his client or patient in that relation, or his advice to his client or patient. The attorney or physician may testify by express consent of the client or patient, and if the client or patient voluntarily testifies the attorney or physician may be compelled to testify on the same subject;

Other Laws Governing Disclosure Privileged Communications, *cont.*

Mental Health Professionals –

Wyo. Stat. § 33-38-113(a)

- Allows patient to prevent disclosure of confidential information communicated to a mental health professional
- Applies to civil, criminal and juvenile judicial proceedings

Other Laws Governing Disclosure Privileged Communications, *cont.*

Statute *prohibits* professional from disclosing information absent “an express waiver” except:

- Abuse or harmful neglect is known or reasonably suspected
- “Immediate threat” of physical violence against a readily identifiable victim (*Tarasoff*)
- “Where the patient or client alleges mental or emotional damages in civil litigation or otherwise places his mental or emotional state in issue in any judicial or administrative proceeding concerning child custody or visitation”

See also 45 CFR 164.524

Balancing Patient Privacy with Permitted Disclosure



What's A Lawyer to Do?!?



Accessing Hospital Records: Practical Tips

- Use the provider's own release form
 - Will facilitate efficient release of records
- Link to Cheyenne Regional's form –
<http://cheyenneregional.org/patients-visitors>
 - First link on left side is “authorization for release of health information”

Accessing Hospital Records: Practical Tips

- **Provide all necessary information requested**
 - Patient name, date of birth, date(s) of service
- **Be as specific as possible**
 - Electronic health records can be voluminous!

Accessing Hospital Records: Practical Tips

- **Ask questions!**
- **Call hospital records department**
 - **CRMC Health Information Management**
 - **Director Steve Willoughby 307/633-6061**
 - **Operations Manager Alex Chacon 307/633-3048**
- **Call Legal Department**
 - **Sylvia Hackl, Associate Counsel, 307/633-7414**

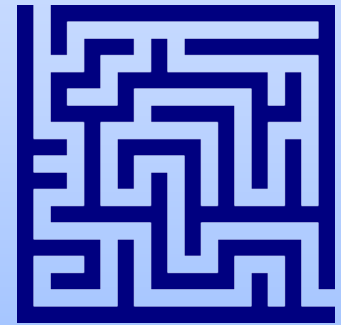
Accessing Hospital Records: Practical Tips

- **Serving subpoenas**
 - **For CRMC, call Legal**
 - **Sylvia**
 - **Executive Assistant Renee Conner 307/432-6621**
 - **Saves you time and expense**

Communicating with Providers: MoreTips

- **Same requirements apply as with obtaining PHI**
- **Call Legal first!**
- **Treating providers vs expert witnesses**

Navigating the Maze: Questions?



Thank you for attending!