

Patient Portals and HIPAA Compliance

By **Margie Satinsky, M.B.A.**

A patient portal that allows patients to communicate securely with your practice is an effective way to actively involve patients in their own health. A growing body of evidence demonstrates that patients who are actively involved in their own health and in the care they receive have better outcomes and less costly care than patients who are uninvolved.

In this article we'll review two important aspects of patient portals, functionality and Health Insurance Portability and Accountability Act (HIPAA) privacy and security issues.

With respect to functionality, a patient portal can enhance patient engagement by creating an easy and secure way to communicate electronically. Although not all portals offer the same options and not all providers use all of the options available to them, here are the most common:

- Exchange secure email with the health care team
- Request (and sometimes make) non-urgent appointments
- Receive appointment confirmation and reminders
- Request prescription refills
- Check benefits and coverage
- Update contact information
- Download (and sometimes fill out and return) forms for patient demographic information and medical history
- View patient balance and pay bills online
- View normal test results
- Obtain visit summary information
- Obtain patient education materials recommended by the practice

In our experience, portal functionality receives far more attention than portal com-

pliance. At the June 2016 NCHCA Conference on Managing Security & Privacy in an Environment of Increased Risk & Threats, portal compliance issues were a significant concern. We'll share the highlights with you.

Patient Requests for Information

HIPAA grants patients the right to access their protected health information (PHI) in a "designated record set" or snapshot of the complete medical record. Here's the reasoning behind the concept:

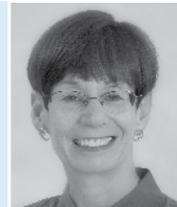
Patients don't always need the entire medical record. More often than not, they need information related to a specific visit, condition, test result or situation. Patients also have the right to request that their information be sent in a particular electronic format, provided that it is "readily producible." An example might be a thumb drive. The covered entity retains the right to deny access to the requested information for numerous reasons, among them the potential to endanger the life of the patient or another individual.

Given these rules, the covered entity must recognize that a patient may request more than he/she might automatically receive through the portal. The patient also may request information in a format other than what appears in the portal. Finally, not all patients use the portal, so the covered entity must offer other options.

Authorization to Access Information through the Patient Portal

What about authorization to access information through the patient portal? In some instances, only the patient accesses the portal. In other instances, the patient gives access

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to PHI – including but not limited to PHI that is available through the patient portal – to others. Covered entities are required to ask each patient to sign an authorization to use and disclose PHI. That form might include a specific item about portal access.

Covered entities can take additional precautions to protect portal access. They might require that portal registration be done in the office and/or under the supervision of staff. They also might require that every portal user, including patients and others authorized by patients, register separately in order to track portal usage. And finally, they can confirm portal signup by a method called out-of-band communication, i.e. by sending an email to verify that portal signup has occurred.

Patient Restrictions on Using and Disclosing PHI

Patients have the right not only to authorize access to their PHI, be it available or not on the patient portal. That same authorization to use and disclose PHI gives patients the

opportunity to restrict the sharing of their PHI by category of information (e.g., behavioral health, HIV status, pregnancy) and by the patient's relationship to an individual (e.g., spouse, parent, child). Patients who pay out-of-pocket for a service also have the right to request that information on the care delivered not be sent to an insurer.

Given these patient rights, covered entities must be able to segregate specific information, so it remains outside of the "designated record set." It's best to work with the software vendor(s) to determine the best method to segregate information upon patient request.

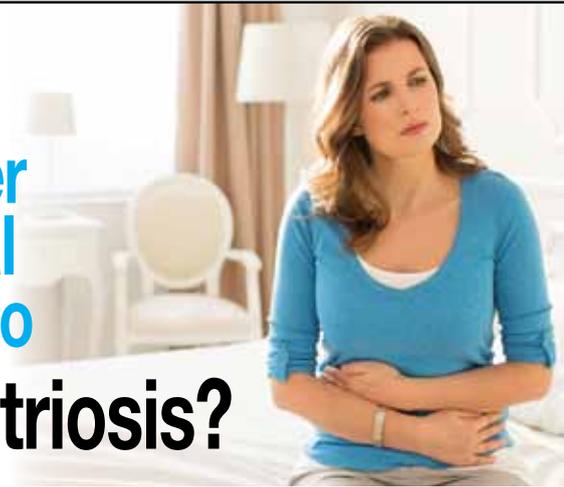
Suggested Action Steps

Here are four proactive steps that covered entities can take to ensure their patient portal meets HIPAA compliance requirements.

- Include the patient portal in the security risk analysis that is performed each year in order to identify and correct any problems.
- Be thoughtful in vendor selection and vendor management. Most vendors swear they are HIPAA compliant, but don't take their word! Probe more deeply by reviewing the security specifications of the vendor contract and by maintaining careful oversight.
- Include specific language about the patient portal in the HIPAA authorization to use and disclose PHI that each patient signs.
- If the patient portal is available on mobile devices, as is the current trend, make sure precautions, like authorization, encryption and password-protected login, are in place.
- Finally, audit the use of the portal on a regular basis in order to identify suspicious patterns and correct problems.

The print version of the October issue of *The Triangle Physician* included an article on changes in Medicare reimbursement that was written prior to CMS' issuance of the Final Rule on Oct. 14, 2016. The Final Rule made important changes in clinician eligibility for participation, timing and weighting of quality measures. For an updated article, please contact margie@satinskyconsulting.com, and we'll provide a PDF of the corrected information. We apologize for the inconvenience.

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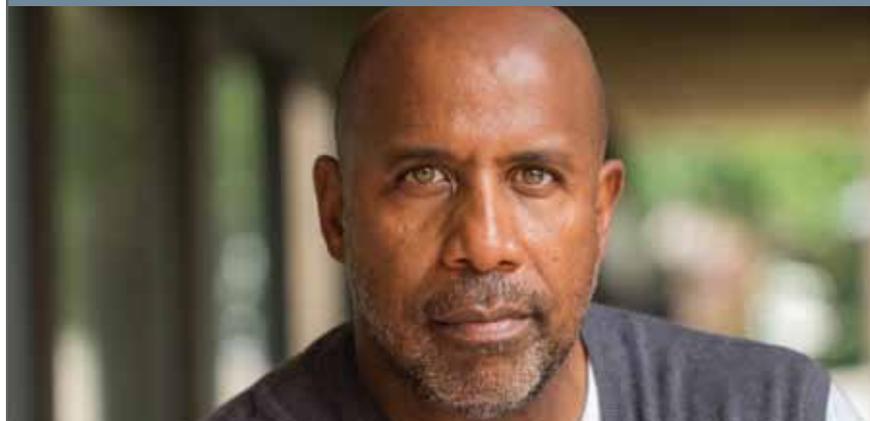
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