

HIPAA or HYPE?

Top Five Activity-related HIPAA Misconceptions

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How things are done in the world of activities **changed dramatically** after April 14, 2003 for some of us. I've heard countless statements beginning or ending with "HIPAA says," and "Now we can't" Some of the identified changes have been based on incomplete or incorrect information related to HIPAA (Health Insurance Portability and Accountability Act of 1996) requirements. This "misinformation" has resulted in agencies making limiting and even unnecessary changes to the provision of their Activity Services.

In an effort to remedy some of these misconceptions, let's examine how HIPAA really impacts five of the most common activity-related issues. First, let's look at what we can and can't do. Then, we'll look at how we can implement any necessary changes. (*Location of information cited in the actual HIPAA law is listed in parentheses.*)

■ CALENDARS AND BIRTHDAY LISTS

Can we use names and dates (birth, anniversary, etc.) on our activity calendars? Can we still post birthday lists with names and birthdates? The short answer - yes. The long, HIPAA-based answer: HIPAA requires that each person be "informed" (*Notice of Privacy Practices: 164.520*) of how his/her Protected Health Information (PHI) may be used and disclosed by the facility (*Use & Disclosure: 164.502*) and that he/she is given the "opportunity to restrict" (*164.506, 164.522*) or "object" (*164.510*) to its use/disclosure as permitted by law. As long as each person does NOT object to the use of his/her personal information being used in this manner, we may include his/her name and approved dates on our calendars, birthday lists, etc. **Note:** *This includes residents, staff, volunteers, etc.!*

■ NEWSLETTERS

Can we use names, pictures, and other personal information to do feature stories on anyone in our newsletter? Briefly, yes. The long answer: We can still feature our residents, volunteers, and staff in our newsletters. Each person must be informed in advance and given the opportunity to restrict or object to the use/disclosure of any information considered protected or individually identifiable. If a person requests a restriction (*Right to Restrict: 164.522*) or refuses permission to use such information, that information must be altered accordingly or removed from the newsletter, per the request.

■ ACTIVITY BULLETIN BOARDS

Can we still take pictures of our residents doing things and post them on bulletin boards around the home? Answer - yes, again. As photographs are listed within HIPAA's "18 Areas of Protected Health Information," we still need to comply with HIPAA requirements as stated in the two previous sections. We must be sure the individual is informed in advance and has an opportunity to restrict or object to the use of his/her picture.

■ FACILITY DIRECTORY AND ACCESS FOR CLERGY

Can resident information be posted on our facility directory? Can our priest or minister be told who is in the hospital? The answer to both - Yes! HIPAA permits a facility to maintain a directory of individuals (*Facility Directories: 164.510*). Directories may disclose the individual's name and location in the facility. When/if a resident is asked for BY NAME, his/her "general condition" may also be shared; however, no specific medical information may be conveyed. Clergy ARE allowed to receive the following information: resident names, location in facility, general condition of each, and religious affiliation. Clergy are NOT required to ask for the individual by name.

■ VOLUNTEERS

Can we still use our volunteers? Can they help us with programs and 1-to-1s? Can they use our computers? Again, the answers are YES, YES, and YES. We don't have to give up our volunteers! From the beginning, HIPAA acknowledges the inclusion of volunteers in its definition of an agency's "workforce" (*Definitions: 160.103*). However, to comply with HIPAA, volunteers MUST be included in your education and training efforts (*Training: 164.530*). Your agency's Notice of Privacy Practices (*164.520*) must be shared with a signed acknowledgment received from your volunteers. And, like paid staff, they need to be informed and updated on any Privacy and Security policies and procedures that impact them.

HOW DO WE IMPLEMENT HIPAA CHANGES?

- Begin by reviewing your agency's current Notice of Privacy Practices (*164.520*). Does this document identify ANY possible uses of PHI related to Activity Services? If not, bring this to the attention of your agency's HIPAA officer and/or committee. Consider updating the document by adding specific "examples" under "Treatment" or "Health Care Operations." Content could read: "the use of names, photographs, and dates of birth on activity birthday lists, calendars, bulletin boards, and/or in facility newsletter or directory; sharing (disclosing) your health status with a volunteer providing one-to-one visits."

Note: *Changes to your Notice of Privacy Practices must also follow HIPAA requirements:164.520).*

- Seek permission before using or disclosing PHI in each newsletter or news article. Show each individual the information that is to be included about him/her before printing, especially pictures. (We all like to look our best!) Hopefully, your agency was doing this prior to HIPAA. Consider using authorization forms (*Authorizations: 164.508*), being sure to document and follow through on any requested restrictions (*164-522-528*).

- Review and update your activity policies and procedures. Do you address what type of "protected health information" may be used on your calendars, birthday lists, and in your newsletters? How and when is the information reviewed with individuals, and what should be documented? Are volunteers identified in your computer usage policy - can they or can't they? If they can, how is access limited and security maintained?

- Initially educate and then periodically update your volunteer force on HIPAA issues and any changes that impact them (*Staff Education:164.530*). Each one needs to receive and acknowledge receipt in writing of your agency's current Notice of Privacy Practices (*164.520*). Keep in mind that you can address the amount and type of information to be shared with different volunteers in your department policies (i.e., adults versus preschoolers).

- Take a proactive role in your agency's HIPAA compliance. Monitor your department. Offer suggestions and input regarding possible changes to policies and procedures and even phrases to be included in the Notice of Privacy Practices.

For more help with HIPAA, consider HIPAA Made Easy for Activity/T.R. Services © 2003 from T.R. – T.I.P.S., Inc. This time-saving resource provides a variety of HIPAA-specific tools and educational materials to address Privacy and Security requirements. Contents include educational overview of HIPAA, ready-to-copy staff/volunteer training handbook, Pre-Post tests, department-specific Privacy and Security policies and procedures, checklists, and forms for monitoring your Activity/T.R. department's ongoing compliance. You can easily modify information or forms for your agency with the included CD. Cost \$75. To order or for more information, contact T.R. – T.I.P.S., Inc. at (712) 322-0026 or e-mail: trtips@trtips.com. ☒