

Problem 2: It was becoming increasingly difficult to preserve the privacy of medical information because of such changes as the (1) provision of medical care where many persons need access to patients' records, (2) requirements for reporting cases of child and elder abuse, (3) government's monitoring of care paid for with public funds, (4) demands by private insurance and managed care companies for patient records before authorizing payment, (5) computerization of medical record keeping, and (6) development of the Internet (Appelbaum, 2002). These changes were making obsolete the old rules regarding the disclosure of medical information.

The "portability" part of HIPAA addresses *Problem 1* by providing rights and protections for participants and beneficiaries in group health plans. It (1) provides protection for coverage for group health plans that limit exclusions for preexisting conditions, (2) prohibits discrimination against employees and their dependents based on their health status, (3) allows for a special opportunity to enroll in a new plan to individuals in certain circumstances, and (4) gives the right to purchase and continue individual coverage if group health plan coverage has been lost in certain situations.

The "accountability" part of HIPAA deals with *Problem 2*. Its response is quite complex but has the potential for revolutionizing patient information. It has generated extreme reactions from health care providers. Some believe that HIPAA will encourage the development of a national health information system (Coffey et al., 1997); it is also seen as helping to move health care into the electronic age, decreasing the increased risk of exposing individual health information, improving efficiency by cutting down on administrative cost and paperwork, reducing fraud and abuse, and facilitating access to medical information (Brendel & Bryan, 2004). Others have reacted to the enactment of HIPAA with a "virtual collective groan" (Flores, 2005). They hold that the law has added to the financial burden of health care organizations and has created new problems.

The major provisions of HIPAA and the rules, regulations, and standards created under its requirements that affect the policies and protocols of health and mental health organizations and practices of health care and mental health care providers are outlined next. Major sources of this information are Olinde and McCard (2005) and U.S. Department of Health and Human Services (2003).

The *Standards for Privacy of Individually Identifiable Health Information* called the *Privacy Rule* established, for the first time, national standards for the protection of health information. The Privacy Rule addresses (1) the use and disclosure of individuals' health information (called *Protected Health Information*) by organizations subject to the Privacy Rule (*covered entities*) and (2) individuals' rights to understand and control how that information is used. The Office of Civil Rights within the Department of Health and Human Services is responsible for enforcing the Privacy Rule. The Privacy Rule is described as providing a "federal floor" of safeguards for confidentiality of medical information.

The *covered entities* regulated by the Privacy Rule are essentially all health care providers (including hospitals and business associates working for physicians, dentists, and others who electronically transmit health information where patients can be individually identified) and those working with health plans (i.e., health, dental, vision, and prescription drug insurers, health maintenance organizations, Medicaid, Medicare, and Medicare supplement insurers, long-term care insurers, and others).



Practice Contexts

Critical Thinking Question: If you have volunteered in an agency years ago and later become a social work intern there, what might influence the relevant services you provide?

Protected Health Information (PHI) under the Privacy Rule refers to information that identifies the individual and individually identifiable health information that is transmitted or maintained by health care providers (and others fitting the description of covered entities). This includes name, address, birth date, Social Security number, demographic data, and information that relate to the individual's past, present, or future physical or mental health or condition, provision of health care, or past, present, or future payment for provision of health care.

Excluded from protected health information are (1) employment records maintained by the covered entity in its capacity as an employer, (2) education records covered by the Family Educational Right and Privacy Act, and (3) records of students held by postsecondary educational institutions used exclusively for health care treatment.

Under HIPAA, disclosure of PHI by a covered entity is allowed only as (1) required by the Privacy Rule, (2) permitted by the Privacy Rule, and (3) authorized by the individual who is the subject of the information.

1. *Required Disclosures.* A covered entity must disclose protected health information in only two situations: (1) to individuals (or their personal representatives) when they request access to or an accounting of disclosures of their PHI and (2) to the Department of Health and Human Services when conducting an investigation.
2. *Permitted Disclosures.* A covered entity is permitted to disclose PHI without the individual's authorization for treatment, coordination and management of services, payment, and health care operations (i.e., quality assessment and improvement activities, medical reviews, audits and compliance-related legal services, specified insurance functions).
3. *Disclosure Authorized by the Individual.* An individual may authorize the release of his or her PHI, *but* the authorization must contain the following elements to be valid under HIPAA.
 - a. *Core elements:*
 - i. a description of the information to be used or disclosed
 - ii. the name and other specific identification of the person/s authorized to make the disclosure
 - iii. the name and other specific identification of the person/s to whom the covered entity may make the disclosure
 - iv. a description of the purpose of the requested use or disclosure
 - v. an expiration date that relates to the purpose of the use or disclosure
 - vi. signature of the individual and date
 - b. *Required statements* adequate to place the individual on notice of:
 - i. the individual's right to revoke the authorization
 - ii. the ability or inability to condition treatment, payment, enrollment, or eligibility for benefits on the authorization
 - iii. the potential for the disclosed information to re-disclosure by the recipient
 - c. *Plain language:* The authorization must be written in plain language.
 - d. *Copy to the individual:* The covered entity must provide the individual with a copy of the signed authorization.

To learn about other HIPAA requirements, refer to: www.HIPAA.org.