

HIPAA Unhealthy: Are You at Risk?

By Katie Hebeisen, Communications Specialist

Hospitals and their vendor partners can learn valuable lessons from the underlying facts in Health Insurance Portability and Accountability Act (HIPAA) enforcement actions over the past couple of years. The actions underscore that anybody in a company's workforce, no matter their role, can subject the organization to significant fines and penalties if they do not have a "healthy" understanding of HIPAA. Small errors in judgment – like leaving a laptop in a car or failing to log and respond to patients' requests for information – can subject a covered entity or business associate to significant fines and penalties. The enforcement actions taken against covered entities and business associates alike who erred in HIPAA compliance can teach others what not to do and how they can be more careful with their own patient information.

In ACA International's 2012 Spring Forum session, HIPAA Unhealthy: Gambling on What the 2011 Upsurge in HIPAA Compliance Problems Means, Leslie Bender, president of Bender & Radcliffe, P.A. in Timonium, Md., spoke about HIPAA enforcement actions and the potential privacy and security risks that come with new technology.

Significant HIPAA Enforcement Violations

"If we read between the lines in what has happened in various HIPAA violation cases, we see that the Department of Health and Human Services [HHS] has plunged into a new era," Bender said. "The

HHS expects us all to have documented compliance programs, as well as ongoing and meaningful training programs, for all members of our workforce."

Since the enactment of the Health Information Technology for Economic and Clinical Health (HITECH) Act, state attorneys general now also have authority to enforce HIPAA regulations. HHS has run extensive training programs for attorneys general to provide instruction on the details of HIPAA enforcement.

"Attorneys general are zealous consumer advocates and may not be as permissive as the HHS' Office of Civil Rights," Bender said. "As a consequence, we have already seen huge enforcement actions initiated by attorneys general."

The first action taken by a state attorney general involving violations of HIPAA was by the Connecticut attorney general, who brought an enforcement action against a large managed care organization alleging HIPAA privacy and security violations. The attorney general grew skeptical of the practices of the health plan company after the organization misplaced a portable computer disk drive containing significant protected health information (PHI). The attorney general sued the company for failing to secure private patient medical records and financial information and failing to promptly notify endangered consumers about the security breach.

Although there is no evidence that any patients or consumers were victimized by fraud or identity theft, or suffered any loss as a result of misplacing this device, the

action required the company to adhere to a corrective action plan and resulted in over \$7 million worth of costs to the organization.

In another well-publicized enforcement action, the Minnesota attorney general filed a suit against a business associate alleging the company violated both HIPAA and state law. The action stemmed from a laptop stolen from an employee's vehicle that contained information relating to the patients of the business associate's hospital clients.

"These situations are eye openers," Bender said. "Even if it's a trusted employee, accidents can happen."

Bender explained that the HITECH Act requires everyone involved in the health care arena to comply with every standard and specification whether they are the hospital or a business associate.

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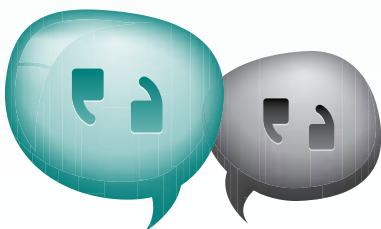
Who's Using a Hospital System's Social Media Page and Why?

Researchers found that more than 71 percent of individuals using Summa Health System's social media platforms already used social media to seek personal health information.

Summa researchers distributed an Internet-based survey on the hospital's Facebook, Twitter and blog and received feedback from more than 150 respondents. The survey sought to map out the user characteristics of a hospital system's social media structure and why users were using the hospital's social media pages.

According to the findings, 95.5 percent of respondents were female and 93.6 percent were Caucasian. Respondents were mostly age 50-59 (33.8 percent) and 40-49 (26 percent). Sixty percent reported having a bachelor degree or higher. Aside from seeking personal health information (71.5 percent), social media was used to seek family health information (29 percent) and for hospital programming (27 percent).

The study's author concluded that hospitals have a huge opportunity to discuss health issues with patients using social media platforms. Hospitals, however, must still be cautious of HIPAA concerns and online professionalism.



U.S. Outspends 12 Countries in Health Care

The U.S. spends more on health care than 12 other industrialized countries, yet does not provide “notably superior” care, according to a new study from The Commonwealth Fund released on May 3, 2012. The U.S. spent nearly \$8,000 per person in 2009 on health care services, while other countries in the study spent between one-third (Japan and New Zealand) and two-thirds (Norway and Switzerland) as much.

Higher prices and greater use of technology appear to be the main factors driving the high rates of U.S. spending, rather than greater use of physician and hospital services. U.S. health care spending amounted to more than 17 percent of gross domestic product (GDP) in 2009, compared with 12 percent or less in other study countries.

Higher U.S. Spending Linked to Higher Prices for Goods and Services, Not More Services

High U.S. spending on health care does not seem to be explained by either greater supply or higher utilization of health care services. There were 2.4 physicians per populations of 1,000 in the U.S. in 2009, fewer than in all the countries in the study except Japan. The U.S. also had the fewest doctor consultations (3.9 per capita) of any country except Sweden. Relative to the other countries in the study, the U.S. also had fewer hospital beds, shorter lengths of stay for acute care, and fewer hospital discharges per 1,000 population. On the other hand, U.S. hospital stays were far more expensive than those in other countries—more than \$18,000 per discharge. By comparison, the cost per discharge in Canada was about \$13,000, while in Sweden, Australia, New Zealand, France, and Germany it was less than \$10,000.

Health care in the U.S. also seems to involve greater use of expensive

technology than in many other countries. The U.S. performed the most MRI and CT exams among countries for which data were available.

High spending in the U.S. might be explained, in part, by the nation's high rates of obesity and the associated medical costs. However, at the same time, the U.S. also has a very young population and few smokers relative to the other study countries—factors that could offset higher spending linked to obesity, the report notes.

Health Care Quality Varies Widely Despite High Spending in the United States

High spending in the U.S. does not always translate into high-quality care. According to the report, the U.S. had the highest survival rates in the study for breast cancer, as well as the best survival rates, along with Norway, for colorectal cancer. However, cervical cancer survival rates in the U.S. were worse than average and well below those of Norway.

Compared to other countries in the study, the U.S. had high rates of asthma-related deaths among people ages 5 to 39 and, along with Germany, very high rates of amputations resulting from diabetes. U.S. rates of in-hospital deaths after heart attack and stroke were average.

All of the countries in the study, except for the U.S., provide universal health care, and all struggle with rising health costs. The level of health care spending in the U.S., however, stands apart. If the U.S. were to spend the same share of its GDP on health care as the Netherlands—the country spending the next-largest share of GDP—the savings would have been \$750 billion in 2009.

Preliminary 2011 Not-For-Profit Hospital Medians Point to Low Revenue Growth

According to a report released by Moody's on April 30, 2012, preliminary financial medians for U.S. not-for-profit hospitals and health systems for fiscal year 2011 indicate the likelihood of low revenue growth for the year and tend to confirm the negative outlook for the sector held by Moody's Investors Service.

Although revenue growth based on the preliminary medians data shows some improvement to 5.3 percent from 4.5 percent the prior year, this median remains much lower than the over 7

percent that was historically typical for the sector.

Despite the low growth in top-line revenue, operating performance showed stability and hospital management teams extracted expense reductions that resulted in improvement to bottom line profitability, says Moody's. Also, liquidity measures strengthened as the capital markets remained relatively strong in 2011 and hospitals delayed capital spending.

Payer pressure continues to be felt as Medicare and Medicaid now represent 43.7 percent and 12.8 percent of gross

patient revenues, respectively, based on the preliminary median data, and represents an increase from 42.3 percent and 11.6 percent in FY 2009 and 42.5 percent and 12.2 percent in FY 2010, according to Moody's.

The report, "Medians Drive Expectation of Low Revenue Growth Given Flat Volume Trends, Payer Pressures," voices concern over the rise in Medicaid as a percentage of gross hospital revenues as numerous states are making cuts to the program to help balance their budgets.

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"It's very damaging to a company's reputation when every patient in a hospital system is alarmed by receiving notification that their personal information may be at risk," Bender said. "We're not talking about sophisticated hackers or dishonest people conducting espionage; we're talking about human beings making simple mistakes that can end up costing businesses money and reputational damage while increasing the anxiety of affected patients."

Technology Risks

The rising use and reliance on portable technology devices raise further concerns with HIPAA and patient privacy. Portable technology devices attract consumers because they are convenient, affordable and efficient. People want information available at their fingertips, and the Internet is available 24/7.

"The convenience of using these tools may present an enormous opportunity for corruption and cyber risk; therefore, we need to be very careful about training staff on what they're doing and how they're using these tools," Bender said. "Ground rules need to be set now because if employees unknowingly engage in harmful

activity and we fail to set expectations in the work force, we are at risk."

One of the latest, most popular trends with the Internet is the use of social media. Social media uses web and mobile-based technology to turn communication into interactive dialogue between parties.

"Many of my health care clients are moving to social media as an easy way to train and attract patients," Bender said. "Patients want to blog about their symptoms and find out from other people how to treat their conditions or how to receive financial assistance."

Social media platforms present a whole new avenue for potential viruses and phishing scams to enter into electronic networks, especially when the platforms consist of chat and instant messenger tools. While some social media applications are safe and harmless, others may provide a tunnel for harmful software to enter computer systems, resulting in damage that the user may not even know has occurred.

According to Bender, traditional security parameter controls are supposed to keep harmful things from coming in, but what if the "bad guys" are already "in" and are trying to send data out?

"We need to focus some of our

security energy on stopping data theft from leaving our corporate gateways from the inside out; not necessarily from the outside in," Bender said. "More resources are available for people to sell private data today, so we need to keep it inside our private networks."

Bender also noted that the industry is starting to see companies warn their employees against certain types of Internet use, especially when it comes to personal electronic devices.

"When you allow people to bring their own devices to work, you need to think about what the operational challenges are and if they're exposing you to future risks," Bender said. "You can restrict your employees' access on company computers, but they can still access anything they want on their smartphones."

Bender predicts changes may be made to the HITECH Act yet this year to include regulations for security and technology.

"We don't have a crystal ball to understand the implications of the technology we use and like to take advantage of," Bender said. "Technology makes us more efficient, but it also makes the information most sensitive to us vulnerable to risks we cannot necessarily foresee."

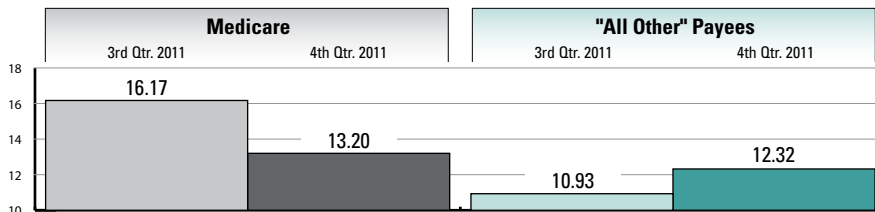


DATA WATCH

Average Days Discharge to Bill

In the fourth quarter of 2011, discharge-to-bill time for Medicare was down, thereby driving the improvement in this key metric. Providers reported taking 13.20 days to generate a Medicare claim, nearly a three-day improvement over the previous quarter.

As for other payers, it took providers more than one additional day to prepare a claim in the fourth quarter. According to the data, hospitals needed 12.32 days on average from discharge to bill, compared to 10.93 days in the third quarter.



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