

## Ask the Insider

### Use and disclosure of PHI for training purposes

**Q** Is it acceptable for a resident to access a patient's PHI for training purposes?

**A** HIPAA has fairly broad rules relating to the use and disclosure of PHI for training purposes. Specifically, the HIPAA privacy regulations allow covered entities (CE) to use and disclose PHI for healthcare operations, which include

- ▶ training of students, trainees, or practitioners in areas of healthcare under supervision to practice or improve their skills as healthcare providers
- ▶ training of nonhealthcare professionals

Therefore, PHI can be used for these training purposes without a patient authorization or an entry on an accounting of disclosures. Even the minimum necessary rule would not restrict such uses or disclosures. In its frequently asked questions, the OCR specifically states that the minimum necessary rule does not prohibit access to PHI for training purposes, and that CEs can shape their policies and procedures to permit medical trainees to access patients' medical information, including entire medical records.

The problem arises when determining what exactly constitutes training. Unfortunately, HIPAA provides no definition of training. Therefore, CEs must look at their training programs to determine whether they fit within the HIPAA definition of healthcare operations.

There is often confusion between research conducted by students or residents and training. In other words, the fact that a student or resident is part of a training program does not allow him or her unfettered access to PHI. Given HIPAA's strict rules, research should not be considered part of training. If students, residents, or faculty wish to access, use, or disclose PHI for research purposes, they must comply with the HIPAA and other legal requirements related to the use of PHI for research. There may at times be overlap between research and

training, but the requirements of each must be met separately, depending on the purpose of each use or disclosure.

In addition, vendors often attempt to gain access to provider staff—under the guise of training—to engage CEs in marketing. The OCR has stated that representatives from equipment manufacturers are permitted to receive a CE's PHI in order to train the CE's staff about a particular device.

Nevertheless, be sure to scrutinize any training session proposed by a vendor. If the vendor describes the use of equipment that is owned or recently purchased by the CE to train the staff of the vendor or provider, it could be considered a training presentation.

However, if the vendor simply provides information about a new product that's not used by the CE, this is most likely marketing, and the CE's PHI cannot be used for such purpose unless there is a specific authorization from the patient. Further, the OCR has specifically stated that when a representative from an equipment manufacturer obtains access to PHI for training purposes, the equipment manufacturer must enter into a BA agreement with the CE.

Finally, questions often arise when high school or college students request to observe operations at a CE to learn more about the healthcare facility. Unless such students are part of a healthcare training program, their observations may not fit within the definition of healthcare operations. However, if such students are part of the CE's volunteer program, they would be considered to be part of the work force and permitted to access PHI, subject to the minimum necessary rule. ■

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#### Insider sources

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