

Disclosures for the Purposes of Treatment, Payment and Health Care Operations Under HIPAA*

The HIPAA privacy regulation previously required physician practices to obtain an individual's written permission for the physician practice to use or disclose the individual's protected health information to carry out "treatment, payment, and health care operations." This written permission was referred to as "Consent." The government, however, has changed that requirement and made it optional for a physician practice to obtain consent to use and disclose protected health information for treatment, payment and health care operations.

HIPAA does not, however, impact current state ethical requirements for physicians. The Code of Medical Ethics, Opinion 5.05 says that physicians "should not reveal confidential communications or information without the express consent of the patient, unless required to do so by law." To assist in protecting physicians from violating this standard, practices should still consider obtaining some form of consent from a patient in order to use or disclose information for treatment, payment and health care operations. Such a form only has to be signed one time by a patient to allow for all uses and disclosures related to treatment, payment and health care operations. The regulation allows medical practices that choose to have a consent process complete discretion in designing that process. The KMA has drafted a sample form entitled Sample Privacy Consent for Use or Disclosure of Patient Information for the Purposes of Treatment, Payment and Healthcare Operations which also contains the required patient acknowledgment regarding receipt of a physician practice's Notice of Privacy Practices.

In addition to HIPAA, Kentucky law recognizes a patient's right of privacy in the content of a patient's record and a patient's communication with a health care provider with regard to mental health or chemical dependency. If these records are to be released, the consent should mention these areas specifically rather than attempting to include them within the scope of a consent to release "all the patient's records," or some

similar general language. Also, records containing reference to sexually transmitted diseases should not be released without specific consent.

Having the patient sign a consent form allows a practice to use and disclose the patient's information for the purposes of treatment, payment or health care operations. It also allows physician practices to use and disclose protected health information for the treatment and payment activities of another health care entity or provider, and for certain health care operations of another entity. "Payment" refers to activities conducted to obtain or provide reimbursement for health care services. These activities include:

- Billing and collection activities;
- Reviews undertaken to determine eligibility and medical necessity;
- Disclosure to consumer reporting agencies of the following information:
 - Name and address;
 - Date of birth;
 - Social security number;
 - Payment history;
 - Account number;
 - Name and address of health care provider

"Treatment" includes the provision of health care services by one or more health care providers, including the coordination of health care by a health care provider with a third party. It also includes consultation between health care providers or the referral of a patient from one provider to another.

Physician practices may also use or disclose protected health information to conduct the "health care operations" of the practice, which refers to the general business activities of the practice including quality assessment activities; reviewing the competence of health care professionals; legal services; auditing services obtained by the practice; business planning and development; and general administrative activities such as customer service. In addition, physician practices may use or disclose protected health information to another entity in order for that entity to conduct specific health care operations, which include quality assessment activities and reviewing the

competence of health care professionals. Uses or disclosures for that entity's other health care operations are not allowed without a patient's valid authorization.

* The source of this document is the Kentucky Medical Association.

