HIPAA — AND HOW IT AFFECTS UOA MEMBERS AND CHAPTERS

UOA chapters and members may begin to hear about something called the HIPAA rules. Yes, it sounds a bit like “hippo”, and in some ways these rules represent a huge shift in how medical providers interact with patients and other parts of the “business” of providing healthcare.

There are two major pieces of HIPAA that you need to know about:

- its impact on preserving the privacy of your personal “protected health information”, and
- its impact on how the healthcare system will interact with UOA chapter visiting programs.

First, a little background.

In 1996, Congress passed a law entitled the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). One feature of this law, the Privacy Rule standards, addresses the use and disclosure of individuals’ health information (called “protected health information”) by organizations subject to the Privacy Rule (called “covered entities”). It also sets standards for individuals’ privacy rights to understand and control how their health information is used.

HIPAA required the Secretary of Health & Human Services to issue privacy regulations governing individually identifiable health information. HHS published the first such rule on December 28, 2000. Modifications were published in final form on August 14, 2002. (A text combining the final regulation and the modifications can be found at 45 CFR Part 160 and Part 164, Subparts A and E on the OCR website: http://www.hhs.gov/ocr/hipaa)

In April of this year a second set of rules was published, which deals with Administrative Simplification and applies to the electronic transmission of health information (billing, etc.) by health plans, health care clearinghouses, and any health care provider who transmits health information in electronic form. It is these rules that seem to have caused the greatest swell of interest and activity.

Privacy Rules and how they affect you as a patient:

A major goal of the Privacy Rule is to assure that individuals’ health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. In the very diverse healthcare marketplace we have, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.

“Individually identifiable health information” is information, including demographic data, that relates to:

- *the individual’s past, present or future physical or mental health or condition,*
- *the provision of health care to the individual, or*
- *the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.*

Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual's protected heath information may be used or disclosed by covered entities. A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing.

So you will more often be asked to sign authorizations to release your information to other parts of the health care system, or you may be asked by your healthcare providers to sign a statement that you have received an explanation of your privacy rights, either verbally or in writing.

Some myths exposed

This link will take you to a page where some of the biggest myths about HIPAA are explained correctly: http://www.chcf.org/healthcurrents/view.cfm?ItemID=20716.

Filing a personal complaint:

A very important part of all this is your right to complain if you feel your right to privacy has been violated. A covered entity must have procedures for you to complain about its compliance with its privacy policies and procedures and the Privacy Rule. The covered entity must explain those procedures in its privacy practices notice. Among other things, the covered entity must identify to whom you can submit complaints at the covered entity and must advise that complaints also can be submitted to the Secretary of HHS.

The Office of Civil Rights (OCR) within the US Department of Health and Human Services handles these complaints. On 4/11/03 the OCR announced a new fact sheet - How to File a Health Information Privacy Complaint with the Office for Civil Rights, along with a new Health Information Privacy Complaint Form. OCR will accept written complaints regarding alleged Privacy Rule violations that occurred on or after April 14, 2003. You will find the complaint filing form at http://www.hhs.gov/ocr/privacyhowtofile.htm.

How HIPAA will affect UOA chapter relations with their visiting referral sources:

Although UOA chapters are not in the normal "business" end of providing healthcare – we don't bill the hospital for our services or take part in electronic record-keeping – in some ways we do meet the definition of a "business associate" as it is spelled out in the regulations.

Business Associate Defined: In general, a business associate is a person or organization that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. Business associate services to a covered entity are limited to legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

In the course of a referral a chapter would receive information identifying the patient and some specifics about their health status. This makes it necessary for each health provider – whether it is a hospital, home health agency or home equipment provider – to take specific actions relative to the referral. Generally, they must assure themselves of two things:

- that they have the permission of the patient to release the patient's "individually identifiable health information" to the chapter, and
- that the information they pass along will **remain** confidential.

The wide variation of health providers, and the wide variation of their interpretations of the HIPAA privacy regulations, does mean that chapters will experience different responses from different institutions on the issue of restructuring the visiting referral process. UOA has already heard from chapters that have received a range of requests.

Health providers generally have appointed someone as their "HIPAA Compliance Officer" – in large institutions this is commonly someone from their Legal Department. It is not necessarily someone who fully understands the services that UOA offers to their patients. As may be expected, the larger institutions will probably have a more complicated process for determining compliance – they are very cautious about protecting themselves from the financial penalties that can be assessed on them if they fail to comply, or if they fail to make sure that all their business partners also comply.

Our partners in the WOC nursing field have advised that they are obligated to ask the patient for permission to release their confidential information to the UOA, and must document their discussions with the patient about that. Please know that the same need for permission applies to discussing the patient's privileged information even with the patient's family members.

However, if the WOC nurse gives the patient information about UOA so the patient can contact UOA directly, that is not an infringement.

None of this makes it impossible for a health provider to refer patients to the UOA chapter.

However, the chapter needs to be aware of the HIPAA requirements now faced by their referral sources, and needs to approach the issue with a professional attitude, flexibility, and a willingness to modify visiting program procedures as appropriate.

Actions that chapters should take:

Each chapter needs to discuss HIPAA rules and activities with the healthcare providers that refer patients to their Visiting Program. These may be hospitals, physicians, home care agencies, ostomy supply vendors, etc.

1. Ask the provider who they have named as their "privacy officer", and make an appointment to speak with that person. (In some cases you may be able to work through the person who normally gives you visiting referrals, such as the WOC nurse).
2. If the "privacy officer" is unaware of the chapter visiting program, explain it to him or her. Make a point of telling them that visitors receive training in line with guidelines from the UOA national organization.
3. Talk about the steps the provider is taking to implement HIPAA privacy rules in their institution, and discuss what changes may be needed in the existing referral process.
4. Give the "privacy officer" a copy of the UOA Patient Referral Form* and ask them to approve it for use in their institution. Explain why we ask for the specific information that is requested (generally in order to make the best visitor match). Discuss any changes they feel are necessary so that the form meets their criteria.

5. Because the issue of privacy does not come up when your chapter information is given directly to the patient, make sure to have chapter literature available to all your referral sources, so they can give it to the patient even when the patient chooses not to give permission for a visitor.
6. Make the most of all your chapters avenues for educating the public about your services, so that patients can refer themselves. Printed information can be given out to suppliers, doctor offices and WOC nurses. It can also be distributed at health fairs or other events. Chapter meeting notices and human interest stories can be placed in community newspapers. (Try using the Media guide that is part of our Advocacy site to contact your local media outlets.)

There is no doubt that the HIPAA rules will change the way we go about the "business" of helping others. They should not stand in our way, however – the help we have to give is too important.

* This form can be seen, and printed out, at http://www.uoa.org/new/files/hipaa_referral.pdf
One nice feature: although you may have only the Adobe Acrobat reader, you can add your chapter's contact information in the box at the bottom of the form, and then print it out to share with your referral sources. If you have the full Adobe Acrobat program, you can save the personalized referral form and attach it to an email communication, if needed.