

Q&A: Ask the Lawyer

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HIPAA Ruling Regarding Correspondence Through Text Messages & Emails: Is My Practice Compliant?

Q: I am concerned that my practice is not in compliance with HIPAA. The physician's text and email patients routinely. Should I be concerned?

A: Yes; you should be concerned. Electronic communications with patients fall under HIPAA and the HITECH Act. Generally, communications that include protected health information (PHI) should be transmitted in a secure or encrypted manner. Remember, protected health information includes lots of different types of information. The definition is far beyond medical diagnosis. Simply a patient's name and contact information is considered protected health information under the law.

In my head I can hear the "boos" and "hisses" from your physicians when you deliver this unpleasant piece of news. After allowing your physicians to vent about "damn lawyers," offer some helpful suggestions. If patients give their permission to be communicated with in an unsecured or unencrypted fashion, then you may do so. This gives you the opportunity to preemptively get patient permission on your intake forms. If the patient asks to be communicated with via text or unencrypted email, you are free to move ahead.

You may also want to mention to your physicians the April, 2015, statement on texting issued by the Joint Commission. Chairman of the Joint Commission raised not only HIPAA/HITECH Act problems with texting, but also medical charting issues. Stopping shy of an all out prohibition of texting, the Joint Commission clearly does not support routine texting with patients. I agree with the Joint Commission in that many text messages never make into the patients' chart. This does create a medical records situation that is separate from patient privacy concerns.

I recommend that your practice utilize a patient portal for communicating with patients. Portals are generally a secure platform. Additionally, it will help with medical record documentation. The additional bonuses that will help with your Phase II Meaningful Use are requirements.

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