

Confidentiality in School-Based Health Care: EOBs, Billing, & Health Insurance Claims

November 19, 2015



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Today's Presenters



Abigail English, JD

Confidentiality in School-Based Health Care

EOBs, Billing, & Health
Insurance Claims

Abigail English,
JD
Center for
Adolescent
Health &
the Law
english@cahl.org
[g](#)

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Special Thanks!

- Guttmacher Institute
 - Rachel Gold & Elizabeth Nash
- National Family Planning & Reproductive Health Association
 - Robin Summers, Julie Lewis, & Clare Coleman

Overview

- Confidentiality breaches in billing & the health insurance claims process
- Federal & state laws protecting confidentiality
- Federal & state laws requiring disclosures
- Evolving protections in state laws

Poll Question 1

- Do laws protecting confidentiality take precedence over laws requiring disclosure of health information?
 - Always
 - Sometimes
 - Never
 - Not sure

Confidentiality Breaches & Insurance

- Widespread use of consumer communications by insurers
- Potential to breach confidentiality & compromise patient privacy
- Intersection of federal & state laws
- Intersection of confidentiality protections & disclosure requirements
- Differences between Medicaid & commercial insurance

Confidentiality Protection s

- Federal law
 - HIPAA Privacy Rule
 - Title X Family Planning
 - Medicaid
 - Other federal protections
- State law
 - HIPAA implementation
 - General medical privacy & confidentiality protections
 - Confidentiality for minors

Federal Confidentiality Protections – HIPAA

- HIPAA Privacy Rule
- Rights of individuals re protected health information
 - Access to information
 - Control of disclosure
 - Request privacy protections
- Minors considered individuals if ...
 - Authorized to consent & do consent
 - Parents accede to confidentiality agreement between minor and health care provider

HIPAA Privacy Rule: Special Protection s

- Request for restrictions on disclosure of protected health information
- Request for communication by alternate means or at alternate locations

Federal Confidentiality Protections – Title X

- Strong confidentiality protections for all ages
- “All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.”

42 CFR § 59.11

Federal Confidentiality Protection s - Medicaid

- Safeguards against disclosure of confidential information
- Confidential family planning services for beneficiaries including minors “who can be considered to be sexually active”
- Good cause exception to third-party liability requirements

Federal Confidentiality Protections – Other Federal Laws

- FQHCs & Community Health Centers
 - Requirement similar to Title X
- Ryan White CARE Act
 - Strong protection
- Confidentiality regulations for federal drug & alcohol programs
 - Very strong protections including for minors who may consent under state law

Disclosure Requirements

- Federal law
 - HIPAA Privacy Rule
 - Disclosures for treatment, **payment**, & health care operations
 - ERISA & ACA
 - Notice of **denials** of claims
- State law
 - Types of communications
 - EOBs, denials, & others
 - Recipients of communications
 - Policyholder, beneficiary, enrollee, & other
 - Content of communications
 - Provider, type of service, & other
- Insurers' policies & practices

Poll Question 2

- Federal law requires sending an explanation of benefits (EOB) for all health insurance claims?
 - Yes
 - No
 - Not sure

Federal Law re Disclosures – HIPAA

- Disclosures with authorization of individual or personal representative
 - Permitted to anyone
- Disclosures without authorization
 - Permitted for treatment, payment, or health care operations
 - BUT, authorization routinely obtained

Federal Law re Disclosures

– Department of Labor, HHS, & Treasury Rules

- “notice of adverse benefit determination”
- Content: date of service, provider, diagnosis code, etc
- “failure to make a payment in whole or in part” includes “any instance where a plan pays less than the total amount of expenses with regard to a claim, including denial of part of the claim due to the terms of a plan or health insurance coverage regarding copayments, deductibles, or other costsharing requirements” [Preamble to regulation]

Federal Law re Disclosures – Medicaid & Commercial Insurance

- Medicaid
 - EOBs not required by federal law
 - Verification that services billed were provided
 - Medicaid managed care organizations (MCOs) must issue notices of denial
- Commercial insurance
 - Notices of denial/“adverse benefit determination” required
 - Often take form of EOB

Evolving Confidentiality Protection s for Insurance Claims

- HIPAA Privacy Rule
- State laws: significant variation
 - Current law: CA, CO ,IL, MD, NY, OR, WA
 - Pending bill: MA
 - Requests for confidential communications
 - Management of EOBs
 - Restrictions on disclosure
 - Specific protections for adult or minor dependents
- Major challenge
 - Accounting for deductibles, cost sharing, coinsurance

Key States for Evolving Protection S

- California
 - SB 138, enacted in 2013, effective 2015
 - Confidential communications requests
 - Very detailed requirements
 - Minors & adults
 - Sensitive services
- Colorado
 - Regulation, issued in 2013, effective 2014
 - Confidential communications
 - Applies to adults covered as dependents
- Washington
 - Regulation adopted in 2001
 - Minors & adult victims of domestic violence

Poll Question 3

- In every state patients health insurers must allow patients to request that their EOBs be sent to a different address?
 - Yes
 - No
 - Not sure

HIPAA Privacy Rule: Special Protection s

- Request for restrictions on disclosure of protected health information
 - Providers and insurers must allow request
 - Not generally required to comply unless agree
 - Must comply if payment has been made in full by patient or other
- Request for communication by alternate means or at alternate locations
 - Providers must accommodate reasonable requests & may not require statement of endangerment
 - Health plans must accommodate reasonable requests if individual makes statement of endangerment

Management of EOBs

- Requests for confidential communications
 - Incorporation of HIPAA standards
 - Broad definitions of endangerment
- Redirection of EOBs to patient
 - With or without request from patient
- Exclusion of information about sensitive services
- Omission of EOBs when no balance due
- Suppression of EOBs

Restrictions on Disclosure

- Restrictions based on endangerment
 - Statement that disclosure could jeopardize safety of individual
- Restrictions on disclosure of sensitive services
 - Reproductive health, STD, chemical dependency, mental health
 - From whom information should be withheld
 - How payment will be made for cost sharing

Protection s for Adult or Minor Dependen ts

- Adult child or adult dependent covered on a policy
 - Communication between carrier & adult child must remain confidential & private
 - No communication to policyholder without permission of adult dependent
- Restriction on disclosure of sensitive information about services for which minors may consent

EHRs & Web Portals – The Next Frontier

- Who has access?
 - Adolescent minor patient
 - Young adult patient ≥ 18
 - Parent
- Effect of laws?
 - HIPAA
 - Minor consent laws
 - Insurance laws

Conclusion

- Increased number of individuals with Medicaid and commercial insurance
- Increased number of young adults \geq age 18 covered on parents' plans
- Significant potential for confidentiality breaches in billing & health insurance claims process
- Evolving protections at state level build on HIPAA Privacy Rule, face challenges

Thank you!

- Resources
 - English A, Gold RB, Nash E, **Confidentiality for Individuals Insured as Dependents: A Review of State Laws and Policies**, 2012
<http://www.guttmacher.org/pubs/confidentiality-review.pdf>
 - English A, Summers R, Lewis J, Coleman C, **Confidentiality, Third-Party Billing, & the Health Insurance Claims Process Implications for Title X**, 2015
http://www.confidentialandcovered.com/file/ConfidentialandCovered_WhitePaper.pdf

Abigail English, JD
Center for Adolescent Health & the Law
english@cahl.org



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