This month’s training session is for physicians, nurses, and clinical staff; public relations staff; HIM and medical records staff; business office and marketing staff; volunteers; and receptionists and front end staff.

Safeguarding PHI that’s Communicated Orally

To deliver prompt and effective health care, you must at times talk with a patient or others about the patient’s protected health information (PHI). Sometimes, these conversations can be overheard. As a result, a patient’s PHI may be disclosed to someone who isn’t authorized to hear it. For example, emergency room physicians often treat patients in joint treatment rooms that are separated only by partitions or curtains. So PHI discussed with one patient may unavoidably be overheard by another patient.

These disclosures—known as “incidental disclosures”—won’t violate the HIPAA privacy regulations, as long as you and your organization make “reasonable efforts” to limit their likelihood. That is, you must make reasonable efforts to limit permitted disclosures of PHI from being accidentally overheard by people not authorized to have access to them.

What are reasonable efforts? The regulations don’t say. But according to the answer to a “frequently asked question” (FAQ) issued by HHS’s Office for Civil Rights, each organization must assess what’s reasonable for it to do to safeguard PHI, based on potential risks to patient privacy, as well as the potential effects on patient care and any administrative or financial burden that implementing a particular safeguard might cause. Organizations also may consider what other prudent health care and health information professionals are doing to protect patient privacy.

To help you understand what you must do to safeguard PHI to minimize the risk that legitimate oral communications of PHI will be overheard by those they’re not intended for, we give you 10 rules to follow. There’s also a Trainer’s Quiz to help you test your knowledge.

10 RULES FOR SAFEGUARDING PHI THAT’S COMMUNICATED ORALLY

Rule #1: If Possible, Don’t Discuss Patient’s PHI in Common Areas

Don’t discuss a patient’s PHI (especially the patient’s name) in common areas if at all possible, advises health care attorney Jeffrey Drummond. Examples of common areas include: hallways, elevators, reception areas, cafeterias, and patient waiting areas.
In these areas, even when you think no outsiders are around, someone may be within earshot, adds health care attorney Todd C. Brower. Such discussions are a common problem, he says. It’s not unusual to hear physicians openly discussing cases in an elevator, or nurses exchanging a patient’s PHI over the telephone in front of other patients in the waiting area, Brower explains.

If possible, you should instead confer about patients in private areas, such as interview rooms, enclosed offices, and conference rooms, Brower recommends. For example, in a hospital or nursing home, you can confer in a staff lounge or in an empty exam room. At a medical practice, you can confer in a physician’s private office, behind closed doors. Other areas where the risk of being overheard is lower include employee-only areas and individual cubicles.

**Rule #2: If You Must Discuss Patient’s PHI in Common Area, Lower Your Voice or Talk Apart from Others**

From time to time, you may need to discuss a patient’s PHI in a common area, notes Drummond. You should lower your voice or talk apart from others, according to the answer to an FAQ. For example, a nurse may speak quietly when discussing a patient’s condition with family members in a waiting room or other public area.

One answer to an FAQ lists the following examples of oral communications that are permissible if the participants use lowered voices or talk apart from others:

- Health care staff orally coordinate services at hospital nursing stations;
- Nurses and other health care professionals discuss a patient’s condition over the phone with the patient, a provider, or a family member;
- A health care professional discusses lab test results with a patient or other provider in a joint treatment room;
- A physician discusses a patient’s condition or treatment regimen in the patient’s semi-private room;
- Health care professionals discuss a patient’s condition during training rounds in an academic or training institution; and
- A pharmacist discusses a prescription with a patient at the pharmacy counter, or with a physician or the patient over the phone.

**Trainer Says:** At times, using a lowered voice or talking apart from others may not be practicable (say, in an emergency situation, in a loud emergency room, or when a patient is hearing impaired). If so, you may engage in communications that are required for quick, effective, and high quality health care, according to the answer to the FAQ.

**Rule #3: You Needn’t Use Private Rooms or Talk Behind Soundproof Walls to Avoid Any Possibility that Conversation Will Be Overheard**

The HIPAA privacy regulations don’t require health care organizations to provide private rooms or soundproof walls for staff and patients to discuss patients’ PHI so they’ll avoid any possibility that a conversation will be overheard, says health care attorney Marc Goldstone. In fact, HHS recog-
nizes that oral communications can be overheard in the following situations (and requires only that there be reasonable efforts in place to safeguard PHI, like using lowered voices, as discussed in Rule #2, or limiting the PHI disclosed, as discussed in Rule #4):

- Discussion of a patient at a nursing station that might be overheard by personnel not involved in the patient’s care;
- The use of joint treatment areas;
- The calling out of names in waiting areas; and
- Discussion of a patient’s condition held during training rounds.

Although the regulations don’t require organizations to provide private rooms or soundproof walls, an answer to an FAQ also gives the following examples of adjustments or modifications that may be reasonable for an organization to make:

- Pharmacies could ask waiting customers to stand a few feet back from a counter used for patient counseling; and
- In an area where multiple patient-staff communications routinely occur, use of cubicles, dividers, shields, curtains, or similar barriers may constitute a reasonable safeguard. For example, a large clinic intake area could use cubicles or shield-type dividers, rather than separate rooms. Or providers could add curtains or screens to areas where discussions often occur between physicians and patients or among professionals treating the patient.

Rule #4: Limit PHI Disclosed When Calling Out Patient Names in Waiting Rooms

Health care organizations generally call out patient names in waiting rooms. This is okay, as long as the PHI disclosed is appropriately limited (say, not including the medical problem for which the patient is seeing the physician), according to an answer to an FAQ.

Example: Patient A drops off a prescription at XYZ Pharmacy and waits for it to be filled. When the prescription is ready, the pharmacy clerk announces: “Patient A, your prescription is ready.” This disclosure is permissible under the HIPAA privacy regulations. It wouldn’t be appropriate for the clerk to announce: “Patient A, your birth control pills are ready for pickup.”

Rule #5: Don’t Use Overhead Paging System to Call Patients by Name to Particular Unit

If you use an overhead paging system to contact patients, don’t call the patient by name to a particular unit, warns health information consultant Mary Brandt. Announcing this PHI when paging patients potentially jeopardizes their privacy under HIPAA, as well as other professional standards (say, those of the Joint Commission on Accreditation of Healthcare Organizations), she says.

Rather than use a paging system to call a patient or family member by name to a specific unit or clinic—which might reveal something about the patient’s medical condition to others—use a more private contact method. For instance, you might call the patient by name, but direct her to use an internal phone to dial the operator or a specific extension for a message. For example, instead of announcing: “Jane Smith, please return to the methadone clinic,” you could say “Jane Smith, please call extension 123 for a message.” Another alternative, says Brandt, is to use personal pagers (like those used at some restaurants) to alert patients to return to a particular area. This works well for patients who may have to wait a while for services (say, at a walk-in clinic or diagnostic center), she says.

Rule #6: Limit Amount of PHI in Telephone Message Left with Patient’s Family Member

The HIPAA privacy regulations don’t prohibit health care organizations from leaving a message involving a patient’s PHI with a family member or someone else who answers the phone when a patient isn’t home (say, to remind the patient of an appointment or tell her that a prescription is ready). The HIPAA privacy regulations let health care organizations disclose limited PHI to family members, friends, or other persons regarding a patient’s care or payment for that care, even when the patient isn’t present (see “Disclosing PHI to Relatives, Friends, or Others Involved in a Patient’s Care,” Trainer, March 2004).

But you should use your professional judgment to keep the disclosure in the patient’s best interests and limit the amount and type of PHI disclosed, says Brandt. For example, when leaving a message with a patient’s family member, a provider’s office may want to leave only its name, phone number, and the date and time of the appointment. For instance, you could say: “This is Dr. X’s office. Please have Patient A call our office to confirm his appointment for Tuesday at 3:00. Our phone number is (555) 555-5555.” Or you could say: “I’m calling to confirm Patient A’s appointment with Dr. X scheduled for Tuesday at 3:00.”

Don’t leave detailed information like the type of specialist, treatment, or procedure to be performed. For example, don’t say: “This is XYZ Cardiology Associates calling to confirm Patient A’s stress test scheduled for Monday at 2:15.”
The same limits should apply when medical test results are involved. You shouldn’t leave a detailed message about the results, cautions Brandt. Besides limiting the amount of PHI others may overhear, you avoid the risk that the PHI could be misheard, related incorrectly, or misunderstood—which could cause the patient unnecessary concern. A more prudent approach would be for an organization to simply state that the test results are in and leave a message for the patient to call, she suggests.

Note that if your organization contacts patients by phone to provide appointment reminders, it must give patients advance notice of this practice in its notice of privacy practices, says health care attorney Juli Shields. For example, your organization’s notice of privacy practices could say the following: “We may use and disclose medical information to contact you as a reminder that you have an appointment for treatment or medical care at our facilities.”

**Trainer Says:** Patients have the right to request that you communicate their PHI to them by alternative means (say, by e-mail rather than telephone) or at an alternative location (say, an office number instead of a home number). Your organization should tell you if it has agreed to such a request. Then, you must generally accommodate that request (see “Handling Patients’ Requests to Have Their PHI Communicated to Them by Alternative Means or at Alternative Locations,” *Trainer*, May 2002). For example, if a patient asks your organization to call him at the office rather than at home, and your organization agreed to that request, you can’t leave a message at the patient’s home, according to an answer to an FAQ.

**Rule #7: Limit Amount of PHI When Leaving Message on Patient’s Answering Machine**

Similarly, it’s okay to leave a message involving a patient’s PHI on an answering machine. But again, limit the amount and type of PHI disclosed, says Brandt.

You shouldn’t include details like the type of specialist, treatment, or procedure to be performed. For example, it’s not a good idea to say: “This is XYZ Oncology calling to confirm Patient A’s appointment on Thursday morning at 10:00 for a skin biopsy.” Instead, you might say: “This is a reminder that Patient A has an appointment scheduled with Dr. X on Thursday morning at 10:00. If you have any questions, please call (555) 555-5555.”

**Trainer Says:** Your organization should tell you if it has previously agreed to a patient’s request to communicate PHI to him by alternative means (say, by e-mail rather than telephone) or at an alternative location (say, an office number instead of a home number). You must generally accommodate that request. For example, if a patient asks that messages not be left on her home answering machine but only on her cell phone voicemail, you must honor that request.

**Rule #8: Don’t Use Speakerphone Function on Telephones Located in Common Areas**

Don’t use the speakerphone function on phones located in or near common areas in two situations, says Brower:

- For all incoming calls; and
- For outgoing calls whenever PHI is likely to be discussed.

Using a speakerphone in these situations creates a high risk of accidentally revealing patients’ PHI to people not authorized to have access to it.

For instance, when a receptionist’s phone is located within earshot of people in the waiting room or examination rooms, the receptionist shouldn’t answer incoming calls with the speakerphone function on, says Brower. The receptionist is unlikely to know who’s calling or what type of PHI the caller may disclose, he warns. A patient could call, state his name, and describe a medical problem or ask
about the results of a confidential test. If the receptionist answers the call on the speakerphone, this PHI easily could be overheard by everyone nearby before the receptionist can turn off the function or warn the caller.

Using the speakerphone function may be less of a concern when employees work behind closed doors or in areas inaccessible to the public. But even in those areas, doors may be left open. So you should take precautions to prevent others from overhearing PHI, suggests Brower. A better practice, he says, is to avoid using the speakerphone function altogether.

**Rule #9: Don’t Discuss PHI During Telephone Call Until You’ve Asked Whether Other Party Is Using Speakerphone Function**

Similarly, don’t discuss a patient’s PHI when placing or answering a phone call without first asking the person on the other end of the call if she’s using the phone’s speaker function, suggests Brower. If the speakerphone function is in use, you should ask that it be turned off before discussing a patient’s PHI.

**Example:** A laboratory employee calls a physician’s medical practice with a patient’s test results. The caller doesn’t know who’s answering the call, whether anyone else is within earshot, or whether the room is located close to a patient waiting room or public area. If the medical practice employee has the speaker function turned on when answering the call, any PHI discussed may be overheard by others. So the lab employee could say: “Are you on speakerphone?” If the answer is yes, the lab employee should ask that it be turned off.

**Rule #10: Dictate PHI in Private Areas**

It’s common for healthcare providers (such as physicians, nurses, and physical therapists) to examine and treat many patients in one day and then dictate (rather than write) their notes between patient encounters. If so, the dictation should be done in a private area, suggests Karen G. Grant, corporate director of health information services. This means that dictation should take place in an area that’s not accessible to visitors or passersby, such as an examination room with the door closed or a physician’s private office, she adds.

**Example:** Physical Therapist X examines and treats many patients in one day. He often dictates his notes in the hallways of the hospital while walking to and from patient rooms. To minimize the risk of an incidental oral disclosure, Therapist X should wait and dictate his notes in a non-public area, such as his office.

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TRAINER’S QUIZ

We’ve given you an overview of what you must do to safeguard PHI to minimize the risk that oral communications will be overheard by those they’re not intended for. Now let’s see if you can apply these 10 rules to real-life situations that health care organizations like yours are likely to encounter. The TRAINER’s Quiz, below, will give you an opportunity to test your knowledge. Take it, and see how well you do.

INSTRUCTIONS: Analyze the questions below according to the 10 rules we’ve given you for safeguarding PHI that’s communicated orally. Circle the answer you think is right. The correct answers (with explanations) appear after the quiz. Good luck!

QUESTION #1

Patient A is treated at XYZ Hospital. Nurse X and Nurse Y need to discuss Patient A’s treatment. True or false: To safeguard patient privacy, XYZ Hospital must provide a private room or soundproof walls where they can talk.

a. True.
b. False.

QUESTION #2

Dr. X and Dr. Y are discussing a patient in an elevator filled with people. In the conversation, the physicians mention the patient’s diagnosis and prognosis. What steps should the physicians have taken to safeguard the patient’s PHI?

a. None.
b. They should have used lowered voices.
c. They should have discussed the case in a room that wasn’t open to the public.
d. Either b or c.

QUESTION #3

XYZ Fertility Clinic leaves the following message on Patient A’s answering machine: “Patient A, this is a reminder that you have an exam scheduled with Dr. X for tomorrow morning at 10:00 AM.” Did XYZ Fertility Clinic do anything wrong?

a. Yes.
b. No.

QUESTION #4

XYZ Pharmacy calls Patient A’s home and leaves a message with his wife. The pharmacy clerk says: “Please tell Patient A that his urologist called in a prescription for his prostate infection this morning and the medication is now ready for pickup.” Did the pharmacy clerk do anything wrong?

a. Yes.
b. No.

QUESTION #5

Patient A goes to XYZ Medical Clinic for treatment. While in the waiting room, Nurse X calls out the patient’s name and says: “Patient A, the doctor is ready to see you now.” Did Nurse X do anything wrong?

a. Yes.
b. No.

QUESTION #6

The receptionist at Dr. X’s office answers the phone with the speakerphone function on. A glass partition separates the receptionist from the waiting room. But the receptionist is within earshot of patients in examination rooms. Patient A calls, states his name, and describes a medical problem he’s having. The receptionist then turns the speakerphone function off. Did the receptionist do anything wrong?

a. Yes.
b. No.
**QUESTION #1**

**Correct answer:** b

**Reason:** Rule #3 applies here.

Rule #3: You Needn’t Use Private Rooms or Talk Behind Soundproof Walls to Avoid Any Possibility that Conversation Will Be Overheard

The HIPAA privacy regulations don’t require a health care organization (like XYZ Hospital, here) to provide private rooms or soundproof walls so that staff can discuss patients’ PHI to avoid any possibility that a conversation be overheard.

**Wrong answer explained:**

a. As explained above, the HIPAA privacy regulations don’t require XYZ Hospital to provide private rooms or soundproof walls for staff to discuss patients’ PHI.

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**QUESTION #2**

**Correct answer:** d

**Reason:** Rules #1 and #2 apply here.

Rule #1: If Possible, Don’t Discuss Patient’s PHI in Common Areas

Rule #2: If You Must Discuss Patient’s PHI in Common Area, Lower Your Voice or Talk Apart from Others

The physicians should have made reasonable efforts to lower the risk that they would be overheard discussing the patient’s PHI. Ideally, they wouldn’t discuss the patient’s PHI in a common area like the elevator, but instead go to a room that wasn’t open to the public. If that wasn’t practicable, the physicians should have used lowered voices to avoid being overheard.

**Wrong answers explained:**

a. As explained above, the HIPAA privacy regulations require the physicians to make reasonable efforts to safeguard patients’ PHI.

b. & c. As stated above, d, which includes both of these actions, is the correct answer.

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**QUESTION #3**

**Correct answer:** b

**Reason:** Rule #7 applies here.

Rule #7: Limit Amount of PHI When Leaving Message on Patient’s Answering Machine

When leaving a message involving a patient’s PHI on an answering machine, a health care provider (like XYZ Fertility Clinic, here) must make reasonable efforts to safeguard a patient’s privacy by limiting the amount and type of PHI disclosed. Here, XYZ Fertility Clinic made reasonable efforts to protect the patient’s privacy by leaving only the physician’s name, the clinic’s phone number, and the date and time of the appointment.

**Wrong answer explained:**

a. As explained above, XYZ Fertility Clinic took steps to reasonably safeguard Patient A’s privacy by limiting the amount of information disclosed on the answering machine.

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**QUESTION #4**

**Correct answer:** a

**Reason:** Rule #6 applies here.

Rule #6: Limit Amount of PHI in Telephone Message Left with Patient’s Family Member

A health care provider (like XYZ Pharmacy, here) may leave a telephone message about a patient’s PHI with a patient’s family member. But if it does so, it must make reasonable efforts to safeguard the patient’s privacy by limiting the amount and type of PHI disclosed. Here, the pharmacy clerk didn’t make reasonable efforts to safeguard the patient’s privacy by limiting the PHI disclosed to the family member. Instead, the clerk not only disclosed the physician’s specialty but what condition the patient’s prescription was for.

**Wrong answer explained:**

b. The pharmacy clerk should have made reasonable efforts to safeguard Patient A’s privacy by limiting the amount of information disclosed to his wife.
QUESTION #5
Correct answer: b
Reason: Rule #4 applies here.
Rule #4: Limit PHI Disclosed When Calling Out Patient Names in Waiting Rooms
Nurse X properly limited the PHI disclosed when she called out Patient A’s name in the waiting room. She didn’t disclose any PHI not necessary for the purpose of calling the patient to the exam room.
Wrong answer explained:
a. As stated above, it was okay for Nurse X to call out Patient A’s name in the waiting room.

QUESTION #6
Correct answer: a
Reason: Rule #8 applies here.
Rule #8: Don’t Use Speakerphone Function on Telephones Located in Common Areas
The receptionist’s use of a speakerphone to answer incoming phone calls created a high risk of accidentally revealing a patient’s PHI (like that of Patient A, here) to people not authorized to have access to it. In fact, there was a high likelihood that someone in the exam rooms would have accidentally overheard Patient A’s PHI. To protect patient privacy, it would have been reasonable for the receptionist to turn off the speakerphone function when answering incoming calls.
Wrong answer explained:
b. The receptionist should have made reasonable efforts to safeguard Patient A’s privacy by turning off the speakerphone function when answering incoming calls.