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Navigating HIPAA Compliance

Marketing and Photography Requirements in Healthcare

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Agenda

- Introduction
- HIPAA Overview
- HIPAA & Marketing – Definitions, Rules, and Exceptions
- HIPAA & Photography – Special Considerations
- Enforcement & Real-World Considerations
- Policies, Procedures, and Staff Training
- Authorization Forms – Requirements & Best Practices

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Learning Objectives

- Understand the basic concepts and applicability of HIPAA in your setting
- Identify specific requirements for marketing and photography under HIPAA
- Recognize common examples of non-compliance through recent enforcement actions
- Learn how to properly obtain and document authorization and release forms

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Why This Matters for Marketing Directors

- Resident stories and photos can showcase your community
- But they can also create privacy risks
- HIPAA violations can lead to fines, bad publicity, and loss of trust

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HIPAA Overview

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What is HIPAA?

- Federal law protecting health information
- Applies to covered entities and business associates
- Sets standards for privacy, security, and breach notification

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Who Must Comply with HIPAA?

- Covered entities: healthcare providers, health plans, clearinghouses
- Business associates: vendors, contractors who handle PHI

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What is PHI?

- PHI = Protected Health Information
- Any information that can identify a patient and relates to their health, care, or payment

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PHI in Practice: What Counts?

- Photos and videos
- Audio recordings
- Written stories
- Social media posts

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HIPAA Privacy Rule: The Basics

- Limits use/disclosure of PHI
- Gives individuals rights over their information
- Requires safeguards and breach notification

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HIPAA & Marketing

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What is "Marketing" Under HIPAA?

- "A communication about a product or service that encourages recipients of the communication to purchase or use the product or service" 45 CFR 164.501
- The sale of PHI by a covered entity to a business associate or third party for that party's own marketing purposes. No exceptions.
- Includes most promotional activities

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What is NOT Marketing?

- Communications describing health-related products or services your entity provides
  - Ex: using patient list to announce the acquisition of new equipment
- Communications for treatment
  - Ex: mailing prescription refill reminders
- Communications for case management or care coordination
  - Ex: sharing medical record information with several behavior management programs to determine which best suits the needs of the patient

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Examples of Marketing Activities

- Brochures
- Newsletters
- Website content
- Social media posts
- Testimonials

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Social Media and HIPAA

- Social media posts can easily violate HIPAA
- Even if a patient isn't named, images or details can identify them

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When is Authorization Required?

- Any use of PHI for marketing requires written authorization
- No shortcuts—verbal permission is not enough

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Exceptions to Authorization Requirement

- Face-to-face communications
- Promotional gifts of nominal value

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Business Associates and Marketing

- Business associates must follow HIPAA marketing rules
- Covered entities are responsible for their vendors' compliance

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Common Marketing Pitfalls

- Using images without written authorization
- Sharing PHI in testimonials, videos, or posts
- Assuming de-identified info is always safe

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Interactive Quiz: Is This a HIPAA Violation?

- Scenario 1: Staff posts a group photo from a resident event on Facebook.
- Scenario 2: Resident's first name and recovery story in a newsletter.
- Scenario 3: Staff shares a photo of a resident's artwork, no faces shown.

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HIPAA & Photography: Special Considerations

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When is a Photo PHI?

- If it identifies a patient and relates to care or payment, it's PHI

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Examples of PHI in Photography

- Faces
- Tattoos
- Room numbers
- Unique features

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De-identification of Photos

- Remove all identifiers: faces, name tags, unique features
- Full-face photos must be removed to de-identify PHI

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Storage and Access of Photos

- Photos stored with medical records = PHI
- Photos stored elsewhere but related to care = PHI

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Photography for Internal Use v. Marketing

- Internal use (care, treatment) may not require authorization
- External use (marketing, social media) always requires authorization

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Hypothetical: Social Media Mishap

- A staff member posts a resident's photo on Instagram without written authorization
- Result: Investigation, required breach notification, possible fines

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Interactive: Spot the Risk in These Photos

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Interactive Quiz 2: Is this a HIPAA Violation?

- Scenario 1: Staff posts a resident's birthday photo on Facebook.
- Scenario 2: Resident's story in a printed newsletter with first name.
- Scenario 3: Group activity photo, faces blurred.

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Enforcement & Real-World Cases

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How HIPAA is Enforced

- HHS Office for Civil Rights (OCR) investigates complaints and breaches
- Can audit, fine, and require corrective actions

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Penalties for Non-Compliance

- Fines: up to $50,000 per violation
- Corrective action plans
- Public reporting

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Case Study: Cadia Healthcare (2025)

- "Success Stories" Program => 150 patients' PHI posted online without authorization
- $182,000 fine, 2-year monitoring
- Required policy overhaul ("Corrective Action Plan")

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What Went Wrong at Cadia?

- No valid patient authorization
- Failure to notify all affected individuals
- Inadequate policies and training

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Cadia's Corrective Action Plan

- Policy revision
- Staff training
- Annual reporting
- Document retention and production to HHS for the next 6 years.
- Breach notification to all affected

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Case Study: Elite Dental Associates

- Elite disclosed patients' last names and other PHI in replies to Yelp reviews
- $10,000 fine, 2-year monitoring
- Required policy overhaul ("Corrective Action Plan")

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What Went Wrong at Elite?

- No valid patient authorization
- Failure to notify all affected individuals
- Failure to implement policies and training relating to PHI and social media

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Elite's Corrective Action Plan

- Policy revision
- Staff training
- Annual reporting
- Document retention and on-demand production to HHS for the next 6 years.
- Breach notification to all affected

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Lessons Learned

- Always get written authorization
- Train staff regularly
- Review and update policies
- Respond quickly to breaches

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Policies, Procedures, & Staff Training

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Building HIPAA-Compliant Marketing Policies

- Written policies on use/disclosure of PHI
- Include marketing and photography guidelines

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Staff Training Requirements

- Train all staff, including marketing department, on HIPAA and your policies
- Document all training sessions

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Internal Reporting and Sanctions

- Procedures for reporting violations
- Apply sanctions for non-compliance
- Document all actions taken

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Annual Review and Updates

- Review and update policies, forms, and training annually
- Stay current with HIPAA changes

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Authorization Forms – Requirements and Best Practices

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Reminder: When is Authorization Required

- Before using PHI in marketing or external communications
- No exceptions for “good intentions”

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Elements of a Valid Authorization

- Description of information to be used/disclosed
- Purpose of use/disclosure
- Expiration date or event
- Right to revoke
- Statement about redisclosure
- Statement that granting authorization is not a prerequisite to treatment, enrollment, etc.

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Heightened Risk: Social Media, Redisclosure, and Authorization Revocation

- Social media can be widely shared, screenshot, and republished
- Limiting the real power of a patient's right to revoke and expanding chance of redisclosure
- Be clear, specific, and detailed about the risks

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Sample Authorization Language

"I do give my permission for [Covered Entity] to use my name and share details of my treatment and experiences in marketing communications by or on behalf of [Covered Entity] and to the news and electronic media including, but not limited to, internet/online publications, TV, radio, newspapers and/or magazines, and to allow the news media to make images (digital, video, or otherwise) of me."

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Sample Authorization Language

Section 7 - Purpose of the Release or Use of Health Information
❑ Healthcare ❑ Research ❑ Marketing ❑ Sale ❑ Legal
❑ Other (please specify): _____
Note: The sale of PHI authorized by this HIPAA Authorization Form will result in remuneration to the party specified in Section 2.

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Sample Authorization Language

2. I have the right to revoke this authorization. To do so I understand I must submit my revocation in writing to the party specified in Section 2. The revocation will prevent further disclosure of my health information by the party specified in Section 2 from the date of receipt. I understand a delay may exist if the party specified in Section 2 is not the covered entity authorized to disclose Protected Health Information to the party specified in Section 2. I also understand that a written revocation is not effective with respect to actions the covered entity or party specified in Section 2 took in reliance on a valid Authorization, or where the Authorization was obtained as a condition of obtaining insurance coverage.

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Best Practices for Authorization Forms

- Be specific about information and use
- Keep signed forms on file
- Review forms regularly
- Ensure staff compliance

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Sample Checklist for HIPAA Compliance in Marketing

- Do you have written authorization?
- Is the photo/story de-identified if not authorized?
- Have you trained staff?
- Is your policy up to date?

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Questions?

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