

HIPAA And Your Practice

As the April Deadline Approaches, HIPAA experts prepare you for compliance.

Moderated By Marc Haspel, DPM, Senior Editor

Change is always the one constant in the modern podiatry practice. With each passing year there are endless new programs and initiatives that confront the common practicing podiatrist. This year is certainly no exception. The Health Insurance Portability and Accountability Act of 1996, otherwise known by the acronym HIPAA, is now in force. Initially designed to improve the portability and continuity of health insurance for workers who changed or lost jobs, this next portion of the mandate transforms the way podiatrists as health care providers are expected to conduct their practices with respect to patient privacy and confidentiality, and the management of information.

Podiatry Management has assembled a panel of leading experts ranging from the arenas of medical law, practice management and health care administration to discuss some basic but relevant concepts involving HIPAA. Participating on the panel are;

Harry Goldsmith, DPM of Cerritos, CA, chief executive officer of Codingline, a reimbursement and practice management consulting company, co-founder and past president of the American College of Podiatric Medical Review, author and lecturer on topics of billing and coding, medical review documentation, managed care and standard of care issues, a member of ABPS, ABPOPPM and ABQAURP.

Barry Mullen, DPM of Hackettstown, NJ, member, Health Care Compliance Association, member and compliance advisor, AAPPM, member ABPS, ACFAS.

Tony Poggio, DPM of Alameda, CA, CAC rep for California, member board of directors, American College of Podiatric Medical Reviewers, member of ABPS, ABPOPPM and ACFAS.

Lloyd Smith, DPM of Newton Centre, MA. Dr. Smith is Vice-President of the APMA and Chair, Health Policy Committee.

Isidore Steiner, DPM, JD, MBA of Howell, Michigan, podiatric physician and frequent lecturer on health law, a member of ABPS, ACFAS, ABQAURP, ACHE, AAPPM and ASLMS.

Kevin West, JD of Boise, ID, a partner in the firm of Hall, Farley, Oberrechet and Blanton, P.A., national counsel for the Podiatry Insurance Company of America (PICA), frequent lecturer on health care law and risk management issues and retained by the APMA to draft its HIPAA Privacy Manual sponsored by Dermik.

Podiatry Management: Because it is a relatively new act whose deadline has been extended, many podiatrists may not yet be fully knowledgeable about HIPAA. What is the overall objective of HIPAA?

Isidore Steiner: The primary objective of the Act as it affects physicians is to significantly improve the privacy and confidentiality of patient information. It will attempt to standardize the billing processes that are presently costly and disorganized.

Kevin West: I believe that there are three overarching objectives behind the HIPAA rules and regulations: (1) To move the healthcare industry into an electronic environment in which all participants in the industry can communicate without barriers using standardized electronic formats, code sets and transactions; (2) To protect patient health information, which is believed to be increasingly vulnerable as a result of the Internet and other technologies; and (3) To create a new set of federal patient rights relating to health information.

Harry Goldsmith: Part II HIPAA is what healthcare providers are currently grappling with: administrative simplification. That involves three areas of information management: (1) development of information systems based on a standard method of managing and exchanging data using a uniform electronic data interchange (EDI), (2) implementation of the Privacy Act (April 14, 2003), which protects the healthcare information of patients through a detailed set of requirements that healthcare providers must follow, (3) and establishment of Security Rule requirements (not as yet final) which ensure that covered entities take steps to protect and reduce the risk breaches in security within a practice setting (e.g., measures put into place to maintain the confidentiality of the patient records, development of a security plan that makes certain protected health information is not disseminated to anyone not authorized to receive it.

Barry Mullen: The original impetus of the HIPAA mandate occurred as a result of the wrongful death of a patient at the hands of a former boyfriend when he inadvertently learned about her medical condition from an unauthorized, detailed phone message revealing protected health information left on his answering machine by her Obstetrician-Gynecologist's office. Accordingly, HIPAA was established to simplify data exchange between health care entities. Successful adoption of HIPAA standards is designed to prevent fraud and abuse of the healthcare system through adherence of guidelines pertaining to the transmission, handling, storage and to destruction of protected health information.

PM: Several reports have surfaced indicating that many healthcare entities failed to meet the October 16th, 2002 deadline for filing an extension. If a podiatrist missed that deadline, what should he or she do?

Steiner: It is recommended that any podiatrist who has missed the deadline should file for the extension as soon as possible. In most cases the government penalizes those who file late with monetary penalties. In this case, most lawyers believe that the government will ignore late filings because many healthcare providers have missed the deadline.

Lloyd Smith: All providers were expected to be in compliance as of October 16, 2002 unless they filed for the extension. There is no further delay or provision for filing for an extension. CMS will have oversight of the EDI portion of HIPAA. This oversight is complaint driven, meaning they will not send out investigational teams unless a complaint is registered. CMS

has stated it will focus on education rather than punishment. If providers are in fact not compliant and have failed to file for an extension, they should do their best to become immediately compliant.

Mullen: In addition, websites exist to expedite the extension filing process and are available through the APMA.

West: If a podiatrist missed that deadline, and believes that he or she is required to comply with HIPAA, I recommend that he or she simply move towards compliance as soon as possible. By “compliance” I mean being able to transmit HIPAA-compliant electronic transactions. In other words, if a podiatrist bills electronically, he or she should work towards having his or her billing systems ready to submit a HIPAA-compliant health care claim, either directly or by means of clearinghouses or third party billing services. The government has stated that it does not intend to actively pursue those who failed to file for the extension. As a practical matter, the only way that a failure to file will come to the attention of the government is if there is a complaint directed at the podiatrist between now and October 16, 2003. Absent a complaint, the podiatrist will probably not suffer any consequences from a failure to file for the extension. If there is a complaint, the government has indicated that it will seek a “corrective action plan” from the health care provider, which will essentially be a plan to come into compliance. The government has stated it will not seek fines and penalties, unless perhaps there is blatant refusal to cooperate by the health care provider.

PM: Beyond purchasing a HIPAA manual, what should a podiatrist do to become compliant?

Tony Poggio: Having a manual on your shelf that is collecting dust does not constitute HIPAA compliance. Each doctor and staff member should educate him or herself on the basis for this program. All need to be aware of the current electronic transmission criteria. The real process begins with the next HIPAA phase, which affects patients’ information and how it is handled in the office. Every time the chart is touched (and stored) steps must be taken to ensure privacy. This may mean breaking old habits.

Have a person from your office attend reputable seminars. Check with your state podiatry association for assistance as to which seminars to attend. Again, understanding the manual rather than simply possessing it is the goal of this program.

Mullen: Healthcare providers should not purchase a HIPAA manual unless they plan to implement its provisions. Specifically, the first step in order to achieve privacy compliance requires the designation of a privacy compliance officer to oversee all privacy-related issues. A risk-analysis performed by an independent source should be undertaken to identify existing security weaknesses. The entire physical plant should be evaluated for potential security weaknesses with particular attention paid to telephone, photocopier, fax machine, computer terminal and chart storage locations. Safeguards should be established to protect protected health information on the administrative, technical and physical levels.

Privacy staff awareness through privacy training should be initiated and annually updated. Creation of security contracts with identifiable business associates with whom you share protected health information should be established. Annually updated signed consent forms that outline your office’s privacy policy and patient’s privacy rights need to be created.

Establishment of privacy violation reporting systems with appropriate disciplinary guidelines and staff retraining are necessary. Staff privacy attestation sheets should be signed holding all members within your organization accountable for privacy violations. An exit plan for all employment terminations that attempts to secure protected health information should be created. Finally, you'll need to contact computer vendors and electronic billing services, if applicable, to make provisions for purchasing, implementing and testing HIPAA-compliant software.

West: I do not suggest that podiatrists purchase a HIPAA manual given that the APMA will be issuing a HIPAA Privacy Manual to its membership free of charge. The APMA Manual will be a template and a starting point for HIPAA compliance. Merely because podiatrists obtain the APMA HIPAA Privacy Manual, however, they should not believe that they are "in compliance." The APMA HIPAA Privacy Manual will fulfill most of these compliance obligations, but not all. Training of staff on privacy matters is a key requirement of HIPAA, for example, and this must be accomplished before April 14, 2003.

I suggest that all health care providers work with a competent HIPAA consultant or attorney in order to customize the APMA Manual for their practices, as well as to obtain advice regarding potential conflicts with their particular state's law. As a final note, the principle of "let the buyer beware" is particularly applicable here. There is a great deal of marketing by fear that is occurring at the present time with respect to HIPAA. Podiatrists should engage in due diligence before purchasing any product or retaining any individual to ensure that they are not spending their hard-earned money foolishly.

Goldsmith: I agree, much of what is necessary to become compliant for HIPAA will be found in the APMA HIPAA manual. It will be in a practical self-administrative format, especially for solo practitioners or small groups. If there are questions on implementation, then seeking the professional advice of a healthcare attorney or HIPAA compliance consultant would be a good investment. I personally feel that the cost of implementing HIPAA for smaller offices will be relatively minimal, and manageable. A healthcare provider should absolutely not ignore HIPAA and fail to become compliant.

Smith: Purchasing a manual is irrelevant. Without reading and implementing the regulations, a manual will be of no value. A podiatrist must begin understanding the HIPAA privacy standards. APMA is providing at no charge to all members an authoritative manual on this subject, written by Kevin West. Most state societies and meetings will feature privacy tracks during their seminars. Read the manual, attend a seminar and implement the recommendations prior to the April deadline!!

PM: What recommendations do you have for a podiatrist whose practice is not computerized and who files claims by paper?

West: If a podiatrist does not bill electronically and does not conduct any of the other HIPAA electronic transactions, S/he are not required to comply with HIPAA. As of October 16, 2003, Medicare will begin requiring that participating providers bill electronically, although an exception has been allowed for health care providers with less than 10 full-time employees. In the private payor environment, insurance companies may require electronic billing at any

point in the future. As a result, while podiatrists who bill by paper at the present time may not have to comply with HIPAA now, I believe that it is a virtual certainty, at some point in the future, that almost all billing for healthcare services will have to be done in electronic format. Once a provider goes to that electronic format, he or she will have to comply with HIPAA. For that reason, working towards compliance with HIPAA is an appropriate goal even if compliance will not be immediately necessary.

Smith: Being privacy-compliant is imperative. It is good medical practice and without appropriate privacy behavior all podiatrists are vulnerable to a liability suit. Being compliant with the EDI standards is not required when a practice does not bill any claims electronically. Being compliant with the federal privacy standard is also not required in this situation but it is your ethical obligation to your patient, and in fact, your state may have laws that are even more stringent than the federal standards. You must check your state laws.

Steiner: Almost all providers are affected by HIPAA. Those who do not bill electronically but who participate in federal programs such as Medicaid and Medicare HMO's are subject to the provisions involving coding and required data elements. It is just a matter of time before all providers will be required to bill electronically. This is because electronic transactions are cost-effective to both the provider and insurer. It is believed that it costs 11% of paper claims reimbursement to collect the funds. This includes staff time, administration costs and postage. Besides faster turnaround times, electronic claims allow for immediate feedback on errors connected to the claims.

Poggio: Remember, paper claims still need to be protected from an ethical perspective. This again goes back to understanding the basis for this program. The next phase of the HIPAA program applies to all offices. Leaving paper claims, lab results, charts, memos exposed will be a violation. Even though the next phase has not been implemented yet, each office should start the educational process now to reach that goal.

PM: How will HIPAA specifically affect a typical patient visit to a podiatry office? What form or form changes need to be accomplished in order to be in compliance? How should private patient information be passed from one source to another? In addition, will lecturing and other forms of public communication be affected?

Smith: This question requires an answer as long as the manual APMA is presenting. Briefly, you will need to post a privacy notice and get a signature from a patient indicating s/he has read the notice. You will need to sign business agreements with anyone who you do business with that might be able to identify your patients from this activity. You will need to ensure your charts can't be easily read, that you have a firm and written understanding with your patient as to who can have access to their information, etc. You do not need locked filing cabinets, you can call out a patient's name from your waiting room, you can have sign-in sheets provided there is no identifiable health information listed, you can send reminder cards and make reminder calls, etc.

West: The answer to this question, to some extent, depends on the current practices in a particular office. However, certain generalizations can be made regarding how HIPAA will

affect a typical patient visit to a podiatry office. First and foremost, on a patient's first date of service after April 14, 2003, the patient will have to be provided with a "Notice of Privacy Practices" by the podiatrist. The podiatrist will need to obtain a signed acknowledgment from the patient that he/she has been provided with the Notice.

Second, podiatrists will need to ensure that they are collecting all of the information necessary to generate a HIPAA-compliant claim. More extensive information will be needed than what is currently on the HCFA 1500 Form. For many podiatry offices, these will be the most noticeable changes to a typical patient visit. In some offices, however, they may need to change the way in which the patient is received in the waiting room, how discussions are conducted in treatment rooms, and how that patient's health information is transmitted outside the office. New forms that will be needed for patient encounters will be minimal. However, new forms will be necessary to allow releases of patient information outside the office, as well as for patient complaints and patient requests for matters such as confidential communications and restrictions on disclosures of health information. Podiatrists will need to prepare their Notice of Privacy Practices and create some method for the acknowledgment of receipt of the Notice.

I do not believe that lecturing and other forms of public communication will be affected by HIPAA so long as individually identifiable patient information is not used in those presentations. Showing pictures of a patient's anatomy or an x-ray may continue to occur in presentations so long as there is no way to identify an individual patient from the pictures or slides.

Mullen: Again, staff education and awareness of privacy laws is paramount. Discretion should be utilized in revealing patient identity, particularly in non-secure locations, such as the reception area. Treatment doors should be closed unless otherwise requested. Sign-in sheets and charts should not be left unattended and should be oriented to conceal their view. An initial encounter consent form should be signed with minimum annual update. Telephone conversations involving the exchange of protected health information must only be made in secure locations. Verification of caller ID should be undertaken prior to conversing. Letters containing protected health information should be addressed with recipient specificity and are preferable to faxes. Faxes must be secured prior to transmittal. Disclosure statements should accompany all paper transmittals holding the recipient accountable for the receipt, security, handling, storage, re-transmission and destruction of the protected health information.

Lastly, it is doubtful that public communication(s), lecturing, etc. would be affected by the HIPAA regulations since healthcare providers have, for years, always been held accountable for revealing patient identity through mandatory adherence to existing state healthcare laws.

Steiner: Let me add that the sign-in sheet will have to be modified so that patients cannot read the names of other patients. The staff will need to be careful not to call out names of patients if others are within earshot and the charts will have to be modified so that patients walking down a hallway cannot read other patients' names.

Poggio: One should also have a clear policy as to who has access to a patient's medical records especially with the release of medical information to third parties. Obviously at times a medical history needs to be released to third party payors or to a physician requesting a

medical consultation report about a patient's care. Remember to document who received what information. The patient has the right to request that all information not be released and that should be documented as well.

Goldsmith: I think that the impact on HIPAA to medical practices, on a day-to-day basis, will be less than most practitioners think. Prior to HIPAA, medical practices had their own means of securing confidential patient medical information with release forms, internal policies, and reasonable "need-to-know" procedures. HIPAA will formalize these into an office privacy plan. Many of the authorized entities such as insurers and physicians who have the "need to know" information in order to allow for healthcare provision or reimbursement already have the right to specified relevant patient information, so no releases or separate contracts will need to be developed for them. I do not see much change – except for a formalization of policy – to what responsible physicians prior to HIPAA implemented within their practices for the good and privacy of their patients.

PM: Will HIPAA improve efforts to organize coordination and distribution of benefits by insurance carriers for their patients?

Smith: Yes.

Goldsmith: With HIPAA standardizing the electronic transmission of healthcare data, remittance advice and claims information, it is expected that reimbursement will be quicker, overall will save time in preparation of claims and processing, and will help eliminate payment errors. The standardization of forms itself will save healthcare practitioners money in the time staff spends in processing individual requirements in preparing current claim forms.

Steiner: HIPAA will simplify the administration of claims. It will accomplish this goal by establishing uniform standards for electronic submission of claims, uniform standards for the data elements necessary for all electronic claims, initiating a hierarchy of privacy in claim responsibility, providing each health plan and provider with unique ID numbers and instituting a system where the primary insurer automatically submits the claims to the secondary provider.

PM: What problem do you see as the most difficult for podiatrists to comply with under HIPAA? How should they handle this problem?

Poggio: The hardest part will be to rethink their current office practices and break old habits. It will also take a commitment of time and energy to review the new regulations, understand them and ultimately implement them. There are more and more regulations being imposed on us and more and more office time is spent dealing with insurance companies for authorizations, appeals and collections, so that the workday is very tight. Finding additional time to understand HIPAA and implement it will be a challenge. The actual policies should not be that difficult to adhere to if the basis for the policy is understood.

West: I think the most difficult problem for podiatrists and other healthcare providers will be dealing with the complexity of the HIPAA regulations. Another major problem is dealing with the conflict between HIPAA, a federal law, and the conflicting state laws. HIPAA sets a federal floor, or minimum, for privacy. It does not override state laws that provide greater privacy protections. Determining whether state laws exist, and whether they provide greater privacy protection, can be an extremely challenging process. For this reason, it is recommended that providers have competent health care counsel who can assist them in assessing whether they must follow a particular HIPAA provision versus their state's law.

Steiner: There are two general areas that will cause significant difficulties for all physicians. HIPAA allows a patient to review his records and then make a request to have the record amended. This could have far-reaching consequences in malpractice and workers' compensation cases. I imagine a litigious patient telling a doctor that his dressing was not full of dirt at the first postoperative visit and that the infection he developed was due to the doctor using non-sterile equipment and demanding that the record be amended to reflect the "truth". The doctor can deny the patient's request, but then must provide in writing a reason explaining the denial. Then the doctor may prepare a rebuttal statement and must give that to the patient as well. This process could make an already cumbersome documentation process impossible to deal with.

The second area of difficulty deals with requests for records. It is now believed that a doctor should not give a husband his wife's records unless a release is signed and an affidavit, possibly even notarized by the wife, is available. Furthermore, the scope of the record release to any entity or individual even with a proper form (and who knows what that will eventually look like), needs to be restricted to the information needed to fulfill the purpose of the request or what specific records were authorized by the patient. All this will be very difficult and time-consuming.

Smith: I don't feel most podiatrists will find the implementation of the privacy standards to be challenging. They will need to follow the previous steps to get compliant and they will need to insure that their data is transmitted appropriately. Time and effort will be required and although some of the requirements are onerous, most are based on sound privacy standards.

PM: What will be the lasting effect of the HIPAA mandate?

Goldsmith: I believe that healthcare providers and their practices will find that overall HIPAA will be very positive for their practices in terms of business transactions. The "onerous" requirements will turn out to be minimal to non-existent, while the demands of HIPAA in terms of patient rights, polices for handling privacy and security issues will be seamlessly integrated within internal practice policies. Five to ten years from now, no one will understand why there was fuss or aggravation. Until then, it is a new regulation with requirements that practices did not ask for – so, of course, there is anger, frustration, resentment, and worry surrounding it.

West: In the area of transactions and code sets, I believe the long-term benefits will be significant once everyone in the industry becomes compliant. The elimination of local codes in favor of a single set of national uniform codes and transactions is a revolutionary and

much needed change. In the area of privacy, I have some concerns as to whether the new regulations will accomplish the stated objectives of enhancing patient privacy and protecting patient rights. I am also concerned that the administrative burden created by HIPAA will increase health care costs and the “regulatory hassle” that is already enormous for health care providers.

Poggio: Ultimately it is to insure the patient’s privacy. I do not think anyone disagrees with that. There is so much information access available in today’s world that restrictions need to be put in place to protect patients. Keep in mind that even doctors and staff will at some point become patients themselves so the regulations implemented will benefit us all. As long as the eventual rules are well thought through, hopefully this will also translate into better patient care.