

ROI Compliance

Introduction to Release of Information

1. Introduction

- Importance of medical records in orthopedic practices
- Why compliance matters: patient trust, legal protection, financial risk
- Goals of today's session
 - A better understanding of all aspects of Release of Information compliance

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HIPAA - Health Insurance Portability & Accountability Act

2. HIPAA Privacy Rule – patient right to access (timelines, scope, format)

- Established, for the first time, a set of national standards for the protection of certain health information
- Eliminated any restrictions on de-identified health information
- Office for Civil Rights (OCR) is responsible for enforcing PHI Privacy Rules
 - 30-day fulfillment timeline for providing PHI (Protected Health Information) to patients
 - \$6.50 minimum - not maximum - fee for fulfilling patient record requests
 - Redefined “patient directive” fee obligations for directing delivery of PHI to any entity other than the patient or another provider that has a registered NPI (*National Provider Identifier*)
- Established penalties for violation of privacy rules:

Level of Culpability	Minimum Penalty per Violation Type	Maximum Penalty per Violation Type	Annual Penalty Limit
Lack of Knowledge	\$141	\$35,581	\$35,581
Lack of Oversight	\$1,424	\$71,162	\$142,355
Willful Neglect	\$14,232	\$71,162	\$355,808
Willful Neglect not Corrected within 30 days	\$71,162	\$2,134,831	\$2,134,831

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HITECH - Health Information Technology for Economic and Clinical Health Act

3. HITECH Act – electronic records and fee limitations

- As of 2009, required BAAs - Business Associate Agreements
 - Must contain the elements specified at 45 CFR 164.504(e)
 - Does not address Sub-BAA requirements
 - Does not address Business Associate insurance requirements
- Patient access redefined by 21st Century **Cures Act**
- Patient rights and medical records fees redefined by OCR 45 CFR
- No Longer Defines Medical Record Fee Structures
 - Lawyers often mistakenly quote HITECH in records requests as governing fee structures or mandating electronic delivery

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State-Specific Fee Statutes

4. State-specific statutes – stricter timelines and fee allowances

- No standard national fee structures
 - Most states use per-page fee basis with different fees for paper vs electronic records
 - Paper vs Electronic fees are based on PHI repository type, not delivery method
 - Often no fees specified for documents such as depositions, affidavits, imaging
 - Fulfillment timelines generally shorter than those established by Federal government (30 days) vs Texas (15 business days)
 - No established mandates for or restrictions on methods of PHI delivery
- If state fee for requests from patients is less than \$6.50, state fee takes precedence
 - Several states mandate there is no charge for the first request of a patient record by patient or third party

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CMS (Centers for Medicare & Medicaid Services)

5. Medicare/Medicaid regulations – requests related to CMS audits, reviews, or investigations

- High-risk CPT codes under scrutiny
- Patient complaints that spark investigation
- Electronic submissions of PHI via esMD/FHIR* - *Electronic Submissions of Medical Documentation*
Fast Healthcare Interoperability
 - First action within 72 hours of receiving CMS audit letter
 - CMS Review Contractor validation of receipt of CMS ADR-compliant PHI
 - Late submission of requested records is primary cause of audit failure
 - **60% - 80% of audit appeals are overturned**

Audit Type Comparison Chart

Audit Type	Primary Focus	Lookback Period	Trigger Mechanism	Response Timeline
RAC	Improper payments	3 years	Data analytics	45 days
MAC	Current billing compliance	1 year	Billing anomalies	30-45 days
ZPIC/UPIC	Fraud investigation	Up to 10 years	Complaints, data analysis	14-30 days
CERT	Error rate measurement	Current claims	Random selection	30 days
OIG	Systemic compliance	6 years	Work Plan, whistleblowers	Varies (typically 30 days)

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Risks of Non-Compliance

6. Risks of Non-Compliance

- Fulfillment Timelines
 - 30 days Federal - 15 business days Texas
- Allowable Fees
 - Federal for patients, unless state fee is less than \$6.50
 - State fees for non-patient requests
- Request Fulfillment Delivery Format
 - Medical Records - determined by releasing provider (not federal regs)
 - Images - CD media or digital sharing determined by releasing provider
- Request Fulfillment Documentation
 - Request logging
 - Fulfillment tracking & delivery
 - Detailed audit history from logging to completion to delivery

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Risks of Non-Compliance

(continued)

7. Risks of Non-Compliance

- OCR Penalties and Fines
- Litigation Risks
 - Malpractice
 - Denial of claims
 - Patient disputes
- Operational Inefficiency and Lost Revenue
- Issues with TMB - Texas Medical Board

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Case Examples & Scenarios

8. Case Examples & Scenarios

- Delayed Release of Post-op Records
 - Patient complaint & OCR investigation
- Attorney Requests
 - Incorrect affidavits & depositions
- Reputation Damage
 - With community and referring providers
- Operational inefficiency and lost revenue
 - Payers & CMS
- Issues with TMB - Texas Medical Board

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Request Types

9. ROI Request Types

- Audit - Payers
- Audit - CMS - Medicare-Medicaid
- **Continuing Care (also known as Continuity of Care)***
- Disability Determination Services
- Disability Non-DDS
- Government Agencies
- Insurance
- Law Enforcement
- Legal (Attorney)
- Legal (Non-Attorney)
- **Patient/Personal Representative***
- **Third Party Facilitators***
- **Social Security Appeals***
- Workers' Comp

Non-Billable
Restrictions
Problematic

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Non-Patient Request Issues

10. Non-Patient Request Issues

- Attempts to Circumvent Fee Statutes - Lawyers & TPFs
 - Quote fixed fee limits that are lower than state and federal fee statute allowance
 - Request fulfillment cost pre-approvals
 - Claim to be patient representative
 - Must be named in patient chart or provide MPA (**medical/healthcare** power of attorney)
 - Attorneys are primary offenders
- Claims to be “Continuing Care” Entities
 - Must be listed in the NPI (National Provider Identifier) registry - NPPES
 - <https://npiregistry.cms.hhs.gov/search>

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Patient Request Issues

11. Patient Request Issues

- Mandates from Other Providers
 - Requiring patients to undertake the burden to supply medical records and images
 - Insisting on CD media for imaging
 - Systemic lack of knowledge about digital image sharing convenience
 - 25% of Ortho patients' requests for records include imaging
- When Patients request records & images, they are ordering “products”
 - They expect an “Amazon Prime” online experience
 - Simple, quick, and intuitive request process
 - Fewer than 10 minutes beginning to end
 - Responsive 24-hour product delivery and support
 - <https://patrrs.trimsnet.net/patient/home/carrell>

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ROI Best Practices

12. ROI Best Practices

- Establish a records request/fulfillment workflow
 - Clearly documented ownership and responsibilities
- Utilize a centralized log or ROI Software tool
 - Track request status, deadlines, and fulfillment completion
- Establish response templates and document all fee schedules
 - <https://www.tmb.state.tx.us/resources/for-the-public/patient-information-and-medical-records>
- Streamline image requests (X-rays, MRIs - DICOM format)
 - Digital delivery options - direct weblink or account login
 - PACS integration is not required
 - pims.mediqportal.com/s/pd
- Perform request audits
 - Turnaround times and compliance metrics
 - ROI processing reports library

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Technology & Process Improvements

13. Technology & Process Improvements

- Role of EMR in compliance and automation
 - Improved ability to locate and export requested records
 - Weblink access vs need for VPN is emerging
 - No EMR is designed with ROI in mind - hence no ROI automation (no “button” to push)
- Secure EMR Patient Portals for requesting & delivering PHI
 - Cell phone is the “**computer of choice**” for all age groups
 - EMR patient portals should be well integrated into the cell phone footprint
 - Patients have false expectations about records available from EMR patient portals
- ROI Outsourcing vs. In-House ROI Processing
 - Outsourcing frees up FTEs for more strategic roles
 - Outsource companies are reimbursed via fee collections - no cost to provider
 - In-house processing requires ROI-specific software tools
 - In-house processing requires trained and dedicated FTE(s)

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Action Plan for Administrators

14. Action Plan for Administrators

- Assess Current Compliance Gaps in Your Orthopedic Practice
- Update or Create a Records Request Policy - (*we have a sample*)
- Designate a Compliance Champion or Records Officer
- Monitor and Report Compliance Metrics to Leadership

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Q & A Discussion