Frequently asked Questions
Accounting of Disclosures

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DHMH Privacy Office

1. What are our duties if a patient asks for an accounting of how we have used or disclosed that patient’s health information?

An individual has a right to receive an accounting of disclosures (but not uses) of protected health information made by a covered entity in the six years prior to the date on which the accounting is requested. The following types of disclosures are expressly **not** required to be included in the accounting:

- Disclosures to carry out treatment, payment and health care operations (whether for your organization or for another provider or covered entity as permitted under the regulations;
- Disclosures made pursuant to an authorization;
- Disclosures made to the individual;
- Disclosures for the facility’s directory or to persons involved in the individual’s care or other notification purposes;
- Disclosures that are incidental to an otherwise permitted use or disclosure;
- Disclosures that are part of a limited data set;
- Disclosures for national security or intelligence purposes;
- Disclosures to correctional institutions or law enforcement officials; or
- Disclosures that occurred prior to the compliance date of the regulations- April 14, 2003.

2. What information must be included in an accounting?

The accounting must include disclosures of protected health information that occurred during the six years (or such shorter time period at the request of the individual) prior to the date of the request for an accounting (but not before the compliance date), including disclosures to or by business associates of the covered entity. The accounting must include for each accountable disclosure:

- The date of the disclosure;
- The name of the entity or person who received the protected health information and, if known, the address of such entity or person;
- A brief description of the protected health information disclosed; and
- A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure; or, in lieu of such statement, a copy of the written request for a disclosure.

3. Must all disclosures for research be included in an accounting?

Research disclosures of de-identified or limited data set information need not be included in the accounting and disclosures for research made pursuant to an authorization need not be included. All others must be included with the following limited exception. If, during the period covered by the accounting, the covered entity has made disclosures of protected health information for a particular research purpose for 50 or more individuals, the accounting may provide:

- The name of the protocol or other research activity;
- A description of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records;
- A brief description of the type of protected health information that was disclosed;
- The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period;
- The name, address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and
- A statement that the protected health information of the individual may or may not have been disclosed for a particular protocol or other research activity.

4. Are we required to include in the accounting disclosures made to law enforcement and/or health oversight agencies?

Covered entities must exclude disclosures to a health oversight agency or law enforcement official from the accounting for the time period specified by the applicable agency or official if the agency or official provides the covered entity with a statement that inclusion of the disclosure(s) in the accounting to the individual during that
time period would be reasonably likely to impede the agency or official’s activities. The agency or official’s statement must specifically state how long the information must be excluded. At the expiration of that period, the covered entity is required to include the disclosure(s) in an accounting for the individual. If the agency or official’s statement is made orally, the covered entity must document the identity of the agency or official who made the statement and must exclude the disclosure(s) for no longer than 30 days from the date of the oral statement, unless a written statement is provided during that time. If the agency or official provides a written statement, the covered entity must exclude the disclosure(s) for the time period specified in the written statement.

5. Must we give details in an accounting of every disclosure when there are multiple disclosures to the same entity for a single purpose?
The rules allow for a summary accounting of recurrent disclosures to the same person or entity for a single purpose. In these situations the covered entity may provide a summary accounting addressing the series of disclosures rather than a detailed accounting of each disclosure in the series and may limit the accounting of the series of disclosures to the following information: the information otherwise required above for the first disclosure in the series during the accounting period; the frequency, periodicity, or number of disclosures made during the accounting period; and the date of the most recent disclosure.

For example, if a covered entity discloses the same protected health information to a public health authority for the same purpose every month, it can account for those disclosures by including in the accounting the date of the first disclosure, the public health authority to whom the disclosures were made and the public health authority’s address, a brief description of the information disclosed, a brief description of the purpose of the disclosures, the fact that the disclosures were made every month during the accounting period, and the date of the most recent disclosure.

6. Does the accounting provided to the individual need to include disclosures made to our business associates?
An accounting does not need to include disclosures that are made for treatment, payment, or health care operations. To the extent, therefore, that a disclosure of information is made to a business associate for health care operations (i.e., to auditors for auditing, to attorneys for legal services, etc.), the disclosure would not be included in the accounting.

7. Are we responsible for including in the accounting disclosures made by those outside our organization?
Covered entities are required to account for their disclosures, as well as the disclosures of their business associates, of protected health information. According to HHS, the fact that a covered entity uses a business associate to carry out a function does not diminish an individual’s right to know. Business associates will be required to provide the covered entity with an accounting of disclosures upon request. Covered entities are not responsible, however, for the actions of persons who are not their business associates. Once a covered entity has accounted for a disclosure to any person other than a business associate, it is not responsible for accounting for any further uses or disclosures of the information by that other person.

8. Are there any requirements for how quickly we must act on a request for an accounting?
Yes. Covered entities must provide a requested accounting no later than 60 days after receipt of the request. If the covered entity is unable to meet the deadline, the covered entity may extend the deadline by no more than 30 days. The covered entity must inform the individual in writing, within the standard 60-day deadline, of the reason for the delay and the date by which the covered entity will provide the request. A covered entity may only extend the deadline one time per request for accounting.

9. Can we charge the patient for preparing an accounting?
The regulations state that the covered entity must provide the first accounting to an individual in any 12 month period without charge. The covered entity may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the 12 month period, provided that the covered entity informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.
10. What documentation is required to be prepared and retained regarding the right to an accounting?
A covered entity must document the following and retain the documentation for six years:
- The information required to be included in any accounting (i.e., dates of disclosures, name of entity receiving disclosures; description, etc.)
- The written accounting that is provided to the individual; and
- The titles of the persons or offices responsible for receiving and processing requests for an accounting by individuals.

11. Must we always provide an accounting for disclosures for six years?
No. An individual may request an accounting of disclosures for a period of time less than 6 years. In addition, you are not required to provide an accounting for disclosures that occurred prior to the compliance date of the regulations (April 14, 2003).

12. Are we required to maintain some type of registry of all disclosures that would be included in an accounting?
The HHS commentary states that this documentation is not required to be maintained in a central registry. A covered hospital, for example, could maintain separate documentation of disclosures that are made from the medical records department and the emergency department. At the time an individual requests an accounting, this documentation could be integrated to provide a single accounting of disclosures made by the covered hospital. Alternatively, the covered entity could centralize its processes for making and documenting disclosures.

13. Does the accounting need to include disclosures relating to computer upgrades when protected health information is disclosed to another entity solely for the purpose of establishing or checking a computer system?
No. This type of activity falls within the definition of health care operations and is excluded from the accounting requirement.

14. Can we ever deny a request for an accounting?
Requests can only be denied when made by the personal representative of the individual and the covered entity has a reasonable belief that:
- the individual has been or may be subjected to domestic violence, abuse, or neglect by such person or treating such person as the personal representative could endanger the individual; and
- the covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

15. Our state law may differ in what is required for the release of certain information. How do these laws relate to the accounting requirement?
According to HHS, nothing in this regulation invalidates or limits the authority or procedures established under state law and in these instances, state law would control.

16. Can we ask patients to waive their right to an accounting of the disclosures of their information?
No. The rules state that a covered entity may not require individuals to waive their rights under the regulations, including the right to an accounting, as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

17. To provide individuals with an accounting for disclosures, does a covered entity have to document each medical record that may be accessed by a public health authority in the course of surveillance activities that involve all patient records?
The Privacy Rule does not require a notation in each medical record that has been accessed by public health authorities, as long as the information required under the Privacy Rule is included in the accounting for disclosures. Where, as with many public health disclosures, access to an entire universe of records is involved, tracking disclosures can be accomplished without the need for documentation in each record. This flexibility in the manner of documentation facilitates complying with the accounting requirement.

By way of background, a covered entity may disclose protected health information (PHI) without the patient's
authorization to a public health authority that is legally permitted to collect or receive such information for public
health surveillance or related activities (45 CFR 164.512(b)(1)). A covered entity is also required by the Privacy
Rule to account to the patient for such disclosures of PHI, if the patient asks (45 CFR 164.528). Further, under
the Privacy Rule, making a set of records available for review by a third party constitutes a “disclosure” of the
PHI in the entire set of records, regardless of whether the third party actually reviews any particular record. See
45 CFR 164.501, for the definition of disclosure. Thus, mere access by a third party, such as a public health
authority, to PHI is a disclosure and subject to an accounting for disclosures.

Public health surveillance activities often involve a retrospective review by a public health authority of a universe
of patient records to identify reportable events. When a reportable case is identified, the specific data items
pertinent to the public health surveillance activity are extracted and reported to the public health authority. For
example, retrospective review of the medical charts for all patients treated by a health care provider or all charts
of patients treated in the entity’s emergency department may be required to identify cases of new or previously
unknown infectious agents, clinical conditions associated with the use or abuse of illicit or prescription drugs, or
adverse events or reactions associated with pharmaceuticals or medical devices.

In these cases, as noted above, all records to which access was provided to the public health authority are
deemed to have been disclosed under the Privacy Rule. Because of the universal nature of the access
provided, the documentation required for the disclosure can be easily maintained. The covered entity need only
document the identity (and address if known) of the public health authority to which access was provided, a
description of the records and PHI subject to access, the purpose for the disclosure, and when access was
provided. This documentation need not be noted in each record. It would be sufficient, for instance, for the
covered entity to maintain a separate notation of such disclosures, applicable to all records so accessed. Then,
if an individual requests an accounting, the covered entity need only determine whether the individual’s records
were among the universe of records to which the public health authority was granted access. All individuals
whose records were accessed in this fashion would receive the same accounting for the disclosure.

For example, if on August 1, 2003, a hospital began providing a public health authority ongoing access to the
medical charts of all patients treated in its emergency department to identify reportable cases and extract
relevant information required for a particular surveillance activity, it would be sufficient, under §164.528(b)(2), for
the accounting to include the following:
• the identity, and address, if known, of the public health authority;
• a statement that the public health authority had access to medical charts for patients treated in the emergency
department;
• the date (or approximate range of dates) when the individual’s record was subject to access (e.g., access
provided within a week of treatment in ER on [fill in date of individual visit]); and
• a statement of the purpose of the access (e.g., identify the particular public health surveillance activity).
The same basic statement could then be provided in response to a request for an accounting by any individual
who was seen in the emergency department of the hospital on or after August 1, 2003.

18. Must a covered entity provide an accounting for disclosures if the only information disclosed to
a public health authority is in the form of a limited data set?
No, a covered entity is not required to provide an accounting for a disclosure where the only information
disclosed is in the form of a limited data set, and the covered entity has a data use agreement with the public
health authority receiving the information. (See 45 CFR 164.514(e) for limited data set and data use agreement
requirements.) Moreover, a covered entity is not required to provide an accounting when it uses protected health
information to create a limited data set. For example, when a covered entity’s workforce member – whether a
paid employee or volunteer – reviews medical records to identify reportable cases and extracts facially
unidentifiable information to be reported as part of a limited data set to the public health authority, the covered
entity is using, rather than disclosing, protected health information. In that case, the covered entity does not
have to provide an accounting for its uses of protected health information. Further, even though a disclosure
occurs when the limited data set is received by the public health authority for its own public health purposes, the
covered entity is not required to account for this disclosure. Limited data sets are excepted from the accounting
requirement at 45 CFR 164.528(a)(1)(viii).

19. How can a covered entity account for the date of access if it is not known for certain?
Accounting for disclosures requires an individual to be informed of the date the disclosure was made (45 CFR 164.528(b)(2)). If access to a universe of records was provided for a discrete period of time, OCR interprets this provision to permit the accounting to include the range of dates (e.g., access was provided from August 1 to August 3, 2003; or during the week of August 10, 2003). If the disclosure is routinely made within a set period from an event, OCR, likewise, interprets this provision to permit the accounting to provide the date of the event and the normal interval (e.g., gun shot wound reported within 48 hours of treatment and provide date of treatment; hospital discharges reported on 15th of the following month and provide date of discharge; or access provided to public health authorities within 30 days of treatment in emergency department and provide the date of treatment).

20. Are covered entities required to document incidental disclosures permitted by the HIPAA Privacy Rule, in an accounting of disclosures provided to an individual?

No. The Privacy Rule includes a specific exception from the accounting standard for incidental disclosures permitted by the Rule. See 45 CFR 164.528(a)(1).

21. Does the HIPAA Privacy Rule require a business associate to provide individuals with access to their protected health information or an accounting of disclosures, or an opportunity to amend protected health information?

The Privacy Rule regulates covered entities, not business associates. The Rule requires covered entities to include specific provisions in agreements with business associates to safeguard protected health information, and addresses how covered entities may share this information with business associates. Covered entities are responsible for fulfilling Privacy Rule requirements with respect to individual rights, including the rights of access, amendment, and accounting, as provided for by 45 CFR 164.524, 164.526, and 164.528. With limited exceptions, a covered entity is required to provide an individual access to his or her protected health information in a designated record set. This includes information in a designated record set of a business associate, unless the information held by the business associate merely duplicates the information maintained by the covered entity. Therefore, the Rule requires covered entities to specify in the business associate contract that the business associate must make such protected health information available if and when needed by the covered entity to provide an individual with access to the information. However, the Privacy Rule does not prevent the parties from agreeing through the business associate contract that the business associate will provide access to individuals, as may be appropriate where the business associate is the only holder of the designated record set, or part thereof.

Under 45 CFR 164.526, a covered entity must amend protected health information about an individual in a designated record set, including any designated record sets (or copies thereof) held by a business associate. Therefore, the Rule requires covered entities to specify in the business associate contract that the business associate must amend protected health information in such records (or copies) when requested by the covered entity. The covered entity itself is responsible for addressing requests from individuals for amendment and coordinating such requests with its business associate. However, the Privacy Rule also does not prevent the parties from agreeing through the contract that the business associate will provide access to individuals, as may be appropriate where the business associate is the only holder of the designated record set, or part thereof.

Under 45 CFR 164.528, the Privacy Rule requires a covered entity to provide an accounting of certain disclosures, including certain disclosures by its business associate, to the individual upon request. The business associate contract must provide that the business associate will make such information available to the covered entity in order for the covered entity to fulfill its obligation to the individual. As with access and amendment, the parties can agree through the business associate contract that the business associate will provide the accounting to individuals, as may be appropriate given the protected health information held by, and the functions of, the business associate.

Sources:
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