HIPAA Disclosure Exception – Payment, Treatment, Health Care Operations

Recall that the HIPAA General rule is:

A **covered entity** may not **use or disclose** protected health information, except as **permitted or required** by this subpart or by subpart C of part 160 of this subchapter. *45 C.F.R 164.502(a)*

In this section, we will define one exception under which a use or disclosure of Protected Health Information ("PHI") is **permitted**, the “Payment, Treatment, and Health Care Operations” exception.

Uses and disclosures of PHI for payment, treatment, and health care operations are the most common, and are often misunderstood even among compliance professionals. Let’s take a look at each of these individually.

**Payment** – The exception for payment means that any use or disclosure of PHI that is legitimately related to requesting or obtaining payment for a health care service is permitted. This can include uses and disclosures to health insurance companies, other providers, or anyone else who requires the information for some payment purpose.

**Treatment** – The treatment exception is an exception that is often misinterpreted by providers. For simplicity, the treatment exception permits PHI to be used or disclosed when it is done for the purpose of providing care or treatment to a patient. HIPAA was never intended to interfere with patient care. For that reason, any activity that is reasonably related to providing health care services to a patient is permitted under the treatment exception; no authorization is required. For example, discussions with pharmacies about patient prescriptions and doses are permitted if the purpose of the discussion is to ensure appropriate care to the patient.

**Health Care Operations** – The exception for health care operations permits a covered entity to use or disclose PHI to improve its operations, and specifically to improve the quality of care provided to patients. Health care operations typically include quality reviews, billing audits, peer review, some graduate medical education, and risk management reviews.

Example:

A patient’s presentation is unusual and may require more specialized care. In order to determine whether more specialized care is required, you would like to contact an old friend who is retired physician, but who specialized in unusual pain disorders. However, because this is not a formal consultation, and because he is retired and not in your practice, you question whether talking with the retired physician would violate HIPAA.

In this case, there are 2 issues: (1) Whether talking with the retired physician would disclose any PHI; and (2) If so, whether talking with the retired physician would meet the treatment exception to HIPAA.
Issue 1: Recall that the definition of PHI is any information about the past, present, or future medical treatment of an individual AND can reasonably identify the individual. In this case, discussions with the retired physician would likely include information about the patient’s condition and presentation, past treatments, medical history, and plan of care. However, it may not be relevant or necessary to identify the patient. Would the retired physician’s analysis and opinion change based on the patient’s name, address, or picture? Probably not. Even though the information provided relates to the past, present and future medical treatment for the patient, the information provided to the retired physician would not reasonably identify the individual. Therefore, the information provided is not PHI.

Issue 2: Even if the information provided to the retired physician is PHI, could the discussion occur under the treatment exception even though this is not a formal consultation and the physician is retired and not part of your medical practice? Recall that to meet the treatment exception, PHI may be disclosed for the purpose of providing care or treatment to a patient. In this case, the retired physician is reasonably likely to provide expertise or a medical opinion that will improve the care and treatment provided to the patient. Even though the request is not a formal consultation, and even though the physician is retired and not part of your medical group, the expertise sought is relevant to the care and treatment of the patient and would therefore fall under the treatment exception.

Based on the above, discussing the patient’s case with the retired physician would not violate HIPAA.

45 C.F.R 164.506(c)