TMC
TOTAL MEDICAL COMPLIANCE

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OCTOBER 2022

THE ADVISOR

MONTHLY COMPLIANCE COMMUNICATOR

OCR RIGHT OF ACCESS ENFORCEMENTS – A MESSAGE TO DENTAL PRACTICES

The HHS Office for Civil Rights (OCR) recently settled three more investigations in the Right of Access Initiative it started in 2019. All three of the new enforcements involved dental practices, bringing the total number of access initiative enforcements to 41. The enforcements also come with a message directly to all dental practices from the OCR Director, Melanie Fontes Rainer, "These three right of access actions send an important message to dental practices of all sizes that are covered by the HIPAA Rules to ensure they are following the law."

The purpose of these investigations is to ensure patients receive access to their records in a timely manner and at a reasonable cost. The HIPAA Privacy Rule requires practices to provide a patient, or the patient's personal representative, access to requested records (including copies) within 30 days of receiving the request. If the practice needs an extension, it must contact the patient within the first 30 days in writing and explain the reason for the delay and give a date when the patient can expect their records.

IN THIS ISSUE

These enforcements focus on the most common issues patients face when requesting their records and each investigation started in response to just one patient filing a complaint with the OCR. The investigations found the following issues:

- **Timely access.** Patients waited up to 6 months to be provided access to the records they requested. Providing access to all of the records requested by a patient is critical and should not require the patient to make multiple requests.
- **Reasonable, cost-based fees.** HIPAA requires that any fee charged to patients for record requests must be reasonable and cost based. One enforcement focused on a practice that required a patient to pay a $170 copying fee before it would provide the patient a copy of the requested records. Previous guidance from the OCR has stated that copies provided to a patient electronically must be provided at no cost to the patient and may not be based on a per page fee. The guidance outlines a few methods for determining actual costs if the provider must charge the patient a fee higher than the set recommendation of $6.50. The OCR states that amount should cover most routine record requests and any supplies like a USB drive.

Other important aspects to remember are:

- Requests from a patient's personal representative such as a parent, legal guardian, a healthcare power of attorney, etc. falls under the same rule and should be treated just like a request from the patient.
- Access request rules apply to current and former patients.
- A record request cannot be denied because a patient has a balance due with the practice.
- There can be no unreasonable processes or barriers to a patient requesting access to their records. One of the three enforcements found that after a patient's initial request for records via email, the practice then required a written request with a handwritten signature before it would provide the records. If a patient emails a request for their records, it is considered sufficient documentation for the practice to provide those records once the practice confirms the email address belongs to the patient. For example, if the patient's email is not on file, call to confirm the request and email address and document the call in the patient's file.

HIPAA COMPLIANCE

These investigations and enforcements are not slowing down anytime soon and come with additional administrative time and costs to each practice to comply with the corrective action plan that comes with it. Corrective action plans from the OCR require a practice to be monitored closely by the OCR for up to 2 years and comply with any documentation and reporting requirements and deadlines related to the details of the enforcement. In addition to that, the most recent enforcements carried settlement fees between $25,000 - $80,000 to be paid to the OCR. Overall, the average amount assessed to practices for the Right of Access Initiative enforcements is nearly $60,000, with the highest being $240,000.

It's important to have the right resources to ensure your process follows the proper guidelines. TMC clients not only have immediate access to forms and guidance in our Client Portal but they also have a personal consultant as well as easy access to expert support by contacting Client Services. If you would like to learn more about this important subject, visit our website to view Abby Mitchell's "How Does Your Practice Respond to a Patient's Right of Access?" webinar, that was recorded on May 5, 2022.

OSHA COMPLIANCE

CDC UPDATE

On September 23, 2022, the CDC published significant updates to Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic.

While the updates have been long awaited, and it would be wonderful to have received a one size fits all solution, each entity should make decisions based on multiple factors including local rates of community transmission.

Defining Community Transmission of SARS-CoV-2

The Community Transmission metric is different from the COVID-19 Community Level metric used for non-healthcare settings. Community Transmission refers to measures of the presence and spread of SARS-CoV-2. COVID-19 Community Levels place an emphasis on measures of the impact of COVID-19 in terms of hospitalizations and healthcare system strain, while accounting for transmission in the community.

There seems to be a high level of interest in recommendations related to source control and universal use of personal protective equipment (PPE). The recommendations are explained below.

Source control: Defined as the use of respirators, well-fitting facemasks, or cloth masks to cover a person's mouth and nose to prevent the spread of respiratory secretions when they breath, talk, sneeze, or laugh.

A practice/facility can choose not to require source control when Community Transmission levels are **NOT high**. However, there are situations where source control is still recommended for individuals to include those:

- With suspected or confirmed SARS-CoV-2 infection or other respiratory symptoms such as runny nose, cough, sneezing.
- Who had close contact (patient/visitors) or a healthcare worker with a high-risk exposure to SARS-CoV-2 infection, for 10 days after their exposure.
- Who have source control recommended by public health authorities.

If Community Transmission levels **are high**, source control is still recommended for everyone in a healthcare setting in areas where patients could be encountered. Workers may choose not to wear source control when in well-defined areas of the practice/facility where patients are restricted such as a break room or locker room area.

Universal use of PPE

For healthcare settings located in counties where Community Transmission is not high, if patients do not present with indication of COVID-19 infection, the use of PPE should be based on standard precautions. Standard precautions do not require the use of a face shield or goggles, therefore, for routine patient care these items would no longer be needed. However, for dental procedures or other procedures which may cause splash or splatter to the face, a level 3 mask and eye protection, or a mask and the use of a face shield provide the higher level of protection.

When located in an area with high community transmission levels the following use of PPE should be considered:

- Use of a NIOSH approved N95 respirator or higher level of respirator for:
  - ◊ All aerosol generating procedures.
  - ◊ Surgical procedures which would pose a higher risk of transmission if the patient had COVID-19, such as the nose, throat, mouth, and respiratory tract.
- Eye protection (i.e., goggles or a face shield that covers the front and sides of the face) worn during all patient care encounters.

Additional guidance was provided on managing workers who have a high-risk exposure to the SARS-CoV-2 virus, even if outside of the workplace. If the worker is not symptomatic there is no need for work restrictions. The following actions should be taken to determine if the worker has COVID-19.

- Test obtained, but not earlier than 24 hours after the exposure.
- Testing again 48 hours after the first test, and if negative, test again 48 hours after the second negative test. This usually looks like testing on day one, day three, and day five.
- The individual should wear source control and self-monitor for ten days.

OSHA COMPLIANCE

This update provided a review of return-to-work criteria for those with COVID-19. Once returning to work, the worker should self-monitor and seek additional medical care if symptoms should recur or worsen. For workers with mild to moderate illness and who are not immunocompromised, use the following to determine when the worker may return to work.

- Five days have passed *since symptoms first occurred (day 0)* and COVID testing is performed.
  - ◊ If a NAAT (PCR) test is negative on day five, then return to work on day seven.
  - ◊ If an antigen test (home tests are an example) is negative on day five, then repeat the test 48 hours later. If both tests are negative return to work. Example: Test at 8 am on day five. If negative, test at 8 am on day seven. It both tests are negative return to work on day seven.
  - ◊ If any test is positive on day five or day seven, return to work on day ten.
- If testing is **NOT** performed, then return to work on day ten.
- The worker must be fever free for 24 hours without the use of fever-reducing medications and symptoms have improved.

The updated guidance also provided a reminder to ensure that anyone entering the building is aware of the current infection control practices. These measures may reduce the risk of virus transmission.

Each practice should establish a process to identify individuals who have a positive viral test for SARS-CoV-2, symptoms of COVID-19, or close contact with someone with the virus. In many cases practices will delay non-urgent care until the individual is considered no longer contagious. This process could include messaging on the business website, communicated when scheduling appointments or provided as a sign posted on the entries into the practice.

For practices that treat patients who are either suspect or confirmed to have COVID-19, patients should be reminded of the importance of hand-hygiene and the need for masking when entering the building. Posting at all entries is an effective way to communicate this safety message.

While it is true that hospitalizations and deaths are decreasing, the SARS-CoV-2 virus is still circulating in our communities. Additionally, influenza cases are already being reported. Remain diligent in monitoring cases of respiratory illness in your communities and apply protections as needed. And as always, don't forget to focus on hand-hygiene compliance as this activity is still the number one measure to reduce the spread of infection.

To read the complete infection control update click here.

COMPLIANCES

IT'S YOUR CALL

OSHA:

Does OSHA require our office to have written policies and protocols about workplace violence?

HIPAA:

True or False: Using the same password for multiple systems at work is not a problem because it saves time.

Click Here

OCTOBER IS NATIONAL CYBERSECURITY AWARENESS MONTH!

TMC's Security Scout wants you to be **Cyber Savvy**!

Did you know?

- 43% of cyber-attacks target small businesses.

How you can be Cyber Savvy:

1. Use long, strong passphrases or passwords and different passwords for different programs and devices. Review page 8 for tips on creating stronger and more secure passwords.
2. Watch out for phishing emails and text messages!
3. Keep practice software and antivirus software up to date. Most software can automatically update. Check your settings.

CLICK HERE TO

START YOUR TRAINING TODAY!

HIPAA OSHA INFECTION CONTROL BUSINESS ASSOCIATES

DOs AND DON'Ts

PASSWORD DOs AND DON'Ts

DO
Use different passwords for every account.
Consider using a passphrase or the longest password allowed.*
Consider using a password manager program to keep track of your passwords.
Always sign out or log off and close your browser when exiting an account.

DON'T	BECAUSE
Share accounts, usernames, or passwords.	It cannot be determined who is responsible for activity in the account.
Create passwords based on personal information.	Using combination of an anniversary, birthday, address, or phone number is easier for hackers to guess because that information is easy to find.
Write your password down or keep it taped to your computer, in your desk, or next to your computer.	Others can find your password and use it.
Tell anyone your passwords.	Attackers try to trick you by requesting your password by phone calls or in email messages.

*Example to create a password from a sentence:

1. "I like chocolate covered strawberries"
2. "[I] [l]ike [t]o [e]at [c]hocolate [c]overed [s]trawberries"
3. "!L2eCcS"

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INSTRUCTIONS

Print and post newsletter in office for staff review. Each member should sign this form when completed. Keep on file as proof of training on these topics.

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