

Course

Health Science

Unit III

Ethical and
Legal

**Essential
Question**

How does
confidentiality
and HIPAA
affect you and
your client?

TEKS

130.204(c) 9A,
9B, 9C, 9D

**Prior Student
Learning**

Basic
understanding of
ethics.

Estimated time

3 hours

Rationale

Strict confidentiality is essential for a patient to tell medical professionals everything relevant to his/her health. The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) required the Department of Health and Human Services (HHS) to establish national standards for electronic health care transactions and national identifiers for providers, health plans, and employers. It also addressed the security and privacy of health data. As the industry adopts these standards for the efficiency and effectiveness of the nation's health care system will improve the use of electronic data interchange.

Objectives

Upon completion of this lesson, the student will be able to:

- Understand the history and origin of HIPAA
- Interpret the meaning and intent of privileged information
- Assess principles of confidentiality
- Critique the ethical and legal implications of a breach of confidentiality

Engage

Imagine that you are taking care of a patient and a lady claiming to be his daughter calls on the phone to see how the patient is and what is going on with him. What do you say? The patient in this scenario is asleep.

Do you answer her questions, what do you do? Would it go against HIPAA if you do??

It is definitely in violation of HIPAA, unless that patient listed that family member as approved to receive medical information about them.

Many experts consider HIPAA to be the most significant new health care legislation since the introduction of Medicare in 1965.

Key Points

- I. Confidentiality as related to health care dates back to the Hippocratic Oath: *“And whatsoever I shall see or hear in the course of my profession, as well as outside my profession if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets.”*
- II. Confidentiality is a precept of the Hippocratic Oath and the

American Medical Association's Code of Ethics. Not only is a breach of confidentiality unethical, it is also illegal.

- III. All information concerning patients is referred to as *privileged information* and should only be shared with the hospital employees who are caring for that patient.
- IV. "HIPAA" stands for the Health Insurance Portability and Accountability Act of 1996. Congress passed this landmark law to provide consumers with greater access to health care insurance, to protect the privacy of health care data, and to promote more standardization and efficiency in the health care industry. While HIPAA covers a number of important health care issues, this informational series focuses on the Administrative Simplification portion of the law – specifically HIPAA's Electronic Transactions and Code Sets requirements.
 - A. There are four parts to HIPAA's Administrative Simplification:
 - 1. Electronic transactions and code sets standards requirements
 - a. Transactions are activities involving the transfer of health care information for specific purposes. Under HIPAA Administration Simplification if a health care provider engages in one of the identified transactions, they must comply with the standard for that transaction. HIPAA requires every provider who does business electronically to use the same health care transactions, code sets, and identifiers. HIPAA has identified ten standard transactions for Electronic Data Interchange (EDI) for the transmission of health care data.
 - b. Code sets are the codes used to identify specific diagnosis and clinical procedures on claims and encounter forms. The CPT-4 and ICD-9 codes that you are familiar with are examples of code sets for procedure and diagnosis coding. Other code sets adopted under the Administrative Simplification provisions of HIPAA include codes sets used for claims involving medical supplies, dental services, and drugs.
 - 2. Privacy requirements - the privacy requirements govern disclosure of patient protected health information (PHI), while protecting patient rights.
 - 3. Security requirements - the security regulation adopts administrative, technical, and physical safeguards required to prevent unauthorized access to protected health care information. The Department of Health & Human Services published final instructions on

security requirements in the Federal Register on February 20, 2003. The deadlines for compliance are April 20, 2005, and April 20, 2006 for small health plans.

4. National identifier requirements - HIPAA will require that health care providers, health plans, and employers have standard national numbers that identify them on standard transactions. The Employer Identification Number (EIN), issued by the Internal Revenue Service (IRS), was selected as the identifier for employers and was adopted effective July 30, 2002. The remaining identifiers, such as the national patient identifier, are expected to be determined in the coming year.

B. Who is affected by HIPAA? - The law applies directly to three groups referred to as "covered entities."

1. Health Care Providers: Any provider of medical or other health services, or supplies, who transmits any health information in electronic form in connection with a transaction for which standard requirements have been adopted.
2. Health Plans: Any individual or group plan that provides or pays the cost of health care.
3. Health Care Clearinghouses: A public or private entity that transforms health care transactions from one format to another.

C. Penalties If You Do Not Comply

1. Non-compliance is a civil offense that carries a penalty of \$100 per person per violation and a maximum of \$25,000 per year per incident.
2. Unauthorized Disclosure or Misuse of Patient Information under false pretenses or with the intent to sell, transfer, or use for personal gain, or malicious harm is a criminal offense. Penalties for criminal offenses can be up to \$250,000 in fines and up to 10 years in prison.
3. THE OFFICE OF CIVIL RIGHTS (OCR) within the Department of Health and Human Services (HHS) enforces the civil penalties.
4. THE DEPARTMENT OF JUSTICE is responsible for enforcing the criminal penalties.

V. Confidentiality means keeping all privileged information private. This includes information pertaining to a patient's:

- A. Diagnosis
- B. Medical history
- C. Lifestyle

- VI. While at work, discussion of patient records should not be discussed in elevators, gift shop, cafeteria, hallways, and/or parking lots.
- VII. In all states, certain patient information is exempt by law and reports to proper authorities are required without patient consent:
 - A. Births and deaths (filed with state registrar)
 - B. Emergencies
 - C. Injuries caused by violence
 - D. Threats of serious bodily harm to another that may reasonably be believed
 - E. Child abuse (physical/sexual)
 - F. Vehicular accidents involving drug/alcohol
 - G. A reportable communicable or sexually transmitted disease
 - 1. The list of reportable communicable diseases varies with state, but those most likely to mandate reporting by state statues are: tuberculosis, hepatitis, AIDS, rheumatic fever, typhoid fever, tetanus, meningococcal meningitis, diphtheria, anthrax, malaria, poliomyelitis, smallpox, brucellosis, leprosy, rubella, plague
 - 2. Reportable sexually transmitted diseases generally include: gonorrhea, syphilis, chlamydia, genital warts
 - 3. Some states require non-communicable diseases reported in order to track incidence, (suspected) causes and treatments: cancer, congenital metabolic disorders, epilepsy
- VIII. Disclosure of medical information to insurance companies is made only with patient consent.
- IX. Pre-employment physicals do not signify a doctor-patient relationship (unless the physician renders treatment).
 - A. the doctor may release medical information relevant to employer's decision to hire
- X. Health professionals should respect confidentiality when treating competent minors
 - A. Allow minors to verbally consent to medical care
 - B. Confidentiality of minors may be ethically breached when parents need to be informed of treatment or serious illness.
- XI. Physicians who perform autopsies or have access to autopsy reports should maintain confidentiality of HIV status except when state laws regarding disclosure to public health and at-risk third parties are appropriate.
- XII. It must always be remembered that medical records are legal documents.
 - A. All information must be factual
 - B. Questionable information should be labeled as opinion or assumption
 - C. Information that is not relevant to care of patient should not be

- recorded
- D. Erasures are not allowed—
 1. errors should be crossed out with single line so that mistake is still readable
 2. correct, legible information can be inserted, initialed, and dated
 3. explanation for correction may be included
- XIII. Computers and Confidentiality
 - A. Computerized patient data has led to attempts by some firms to use the information for marketing purposes.
 1. Health professionals are offered incentives to participate.
 2. Participation violates confidentiality and ethical codes concerning gifts to health professionals from industry.
 - B. Many different individuals who work in hospitals have access to patient's records and health care providers must create stringent safeguards to maintain computer confidentiality:
 1. Limited personnel who have access to records
 2. Use of codes to prevent access to certain information
 3. Requirement of passwords to access specific information
 4. Constant monitoring of computer use
- XIV. Ways in which medical professionals can guard patient confidentiality:
 - A. Never disclose information to a third party without signed consent (this includes insurance companies, attorneys, employers, curious neighbors)
 - B. Do not decide confidentiality on the basis of personal approval of thoughts and actions of the patient.
 - C. Never reveal financial information about a patient including account balance—this is confidential!
 - D. When talking on the telephone to a patient, do not use the patient's name if others in the room might overhear.
 - E. When leaving a message on a home answering machine or at a patient's place of employment, simply ask the patient to return a call. No mention should be made concerning results of medical tests. It is inadvisable to leave a message with a coworker or receptionist for the patient to call an oncologist, OB-GYN specialist, etc.
 - F. Do not leave medical charts or insurance reports where patients or office visitors can see them.

Activity

- I. As a class, discuss Confidentiality Questions.
- II. Complete the Confidentiality Activity in small groups.

Assessment

Quiz: Patient Confidentiality

Materials

Case Studies in Allied Health Ethics, Robert M. Veatch and Harley E. Flack, Prentice Hall, ISBN-0-8359-4995-8. (Great little book that includes real-life case studies.)

Quiz Key : Patient Confidentiality

<http://www.med.upenn.edu/bioethics/> - Web site for the Internet Bioethics Project, sponsored by the Center for Bioethics at the University of Pennsylvania.

Law and Ethics for Medical Careers, Second Edition, Karen Judson and Sharon Hicks, Glencoe/ McGraw-Hill Companies, ISBN0-02-804755-9. (This is a small, but thorough text. An instructor's manual that includes student assessments and activities is also available.)

HIPAA information at the Department of Health and Human Services - <http://www.cms.hhs.gov/HIPAAGenInfo/>

Link to case studies -

<http://nursingworld.org/MainMenuCategories/EthicsStandards/Resources>

Accommodations for Learning Differences

For reinforcement, the student will identify the breach in confidentiality for the four scenarios.

For enrichment, the student will describe the implications of a confidentiality issue from the Internet Bioethics Project web site.

National and State Education Standards

National Health Science Cluster Standards

HLC08.01 Ethics and Legal Responsibilities

Health care workers will understand the legal responsibilities, limitations, and implications of their actions within the health care delivery setting.

HLC08.02 Ethics and Legal Responsibilities

Health care workers will understand accepted ethical practices with respect to cultural, social, and ethnic differences within the health care environment. They will perform quality health care delivery.

TEKS

130.204(c)(9)(A) research and describe the role of professional associations and regulatory agencies;

130.204(c)(9)(B) examine legal and ethical behavior standards such as Patient Bill of Rights, Advanced Directives, and the Health Insurance Portability and Accountability Act;

130.204(c)(9)(C) investigate the legal and ethical ramifications of unacceptable behavior; and

130.204(c)(9)(D) perform within the designated scope of practice.

Texas College and Career Readiness Standards

English Language Arts

II. B. Understand new vocabulary and concepts and use them accurately in reading writing and speaking.

III. B. Develop effective speaking styles for both group and one on one situations.

IV. A. Apply listening skills as an individual and as a member of a group in a variety of settings.

Science

I. A. 1. Utilize skepticism, logic and professional ethics in science

Social Studies

I. F. 1. Use a variety of research and analytical tools to explore questions or issues thoroughly and fairly.

I. F. 2. Analyze ethical issues in historical, cultural, and social contexts.

Cross-Disciplinary

I. C. 1. Analyze a situation to identify a problem to be solved.

I. C. 3. collect evidence and data systematically and directly relate to solving a problem

Quiz: Patient Confidentiality

TRUE/FALSE: Write a "T" or "F" in the space provided.

- _____ 1. Confidentiality of minors may be ethically breached when parents need to be informed of treatment or serious illness.
- _____ 2. Insurance company representatives are privileged to certain medical information without consent from the patient.
- _____ 3. In a routine pre-employment physical, there is not physician-patient relationship.
- _____ 4. If an individual is famous, it is acceptable for the physician who is rendering services to release medical information to the media.
- _____ 5. Patient confidentiality can be legally breached if the patient has gonorrhea.
- _____ 6. It is all right for a medical professional to disclose information to a patient's neighbor.
- _____ 7. Mistakes made on medical records should be carefully "whited" out.
- _____ 8. Not only is a breach of patient confidence unethical, it is illegal.
- _____ 9. Only medical information is held in strict confidentiality—not the patient's personal life.
- _____ 10. Reportable communicable diseases are those that must be reported to proper health authorities.
- _____ 11. Physicians who obtain a deceased's HIV status from autopsies always have a legal duty to report this information to at-risk third parties.
- _____ 12. Erasures on medical records are allowed only if the inserted correction is initialed and dated.
- _____ 13. Moral disapproval does not give a medical professional the right to breach confidentiality.
- _____ 14. When leaving a patient a message on the answering machine, simply ask that he/she return your call.
- _____ 15. Due to advanced technological safeguards, computers have made patient confidentiality easier to protect.

Teacher's Key: Patient Confidentiality Quiz

1. F
2. F
3. T
4. F
5. T
6. F
7. F
8. T
9. F
10. T
11. F
12. F
13. T
14. T
15. T

Confidentiality Questions for Discussion

Some real stories that the class may want to discuss and find solutions for:

Q: You see Aunt Millie at the hospital. Can you tell your mom about it?

A: No. Aunt Millie may be visiting; but then again, she may be having tests done. She may not want the family to know about the tests until she knows the outcome. She has the right not to tell the family. It is up to her to tell the family – not you. A simple statement like “I saw Aunt Millie at the hospital today” can lead to a major breach of Aunt Millie’s right to privacy.

Q: Your cousin was admitted to the emergency room during your shift at the hospital. He is in critical condition. Your mother is very concerned about him, but she has not been able to reach your aunt and uncle. You know about your cousin’s condition. Do you tell your mom?

A: No. This is probably the hardest of situations, but you must not tell. You must not even let on that you have any information. Instead, encourage your mother to keep calling your aunt. You might even see if your aunt is at the hospital and arrange for her to call your mom. Even doctors can only release information to the immediate family—in this case, your cousin’s parents. It is up to your aunt and uncle to inform the rest of the family. That way, they can determine how much information family members should have.

Q: A baby is brought into the emergency room. It is obvious that the baby has been physically abused. There are cigarette burns and bruises all over its body. The hospital is swarming with media. A reporter has asked you for details. What do you do?

A: Do not even let on that you know anything. If they think you do not know anything, they will leave you alone and you will not risk letting something slip. In a case like this, it is up to the hospital’s media relations person to answer reporter’s questions.

Q: A patient asks you about his treatment. He wants to know how long the treatment will take and if there are any side effects. What do you do?

A: Politely tell him that the doctor will be in shortly to discuss his treatment. Even if you know the answer to the question; it is only the doctor’s responsibility to discuss treatment options with the patient. No one else on the treatment team should discuss treatment options with the patient.

Q: You see a co-worker at the supermarket. She wants to talk about a particularly difficult patient. She is being very specific, using the patient’s name and condition. She even goes as far as to say a nuisance this patient is because the patient is so demanding. What do you do?

A: Cut this conversation off as soon as possible! You may have to be blunt and tell your co-worker that the whole conversation is inappropriate and you do not wish to discuss it. You can never tell who is listening.

Q: You work in admitting. A friend who works in the ER tells you that she just saw a famous movie star get on the elevator with some men who looked like bodyguards. Your friend is curious about this famous person. She read in the paper that the actress has cancer. Your friend asks you to find out what floor the star is on. “What harm can it do?”

A: According to HIPAA, if you tell your friend, it is the wrong thing to do..

Q: You are a file clerk. One of the managers in your unit has been trying to get pregnant. While opening lab reports, you see her lab results. Her pregnancy test was positive! That night at an office dinner, you see her with some friends, and congratulate her on her pregnancy. Later you hear that she did not know about the test results. You were the first person to tell her! Did you do the right thing?

A; Do not look at, read, use or tell others about an individual's information unless it is a part of your job.

Q: As part of your job, you work with protected health information every day in the hospital's business office. One day you were so tired from working late that you left patient files open on your desk so you could work on them early the next day. Why clean up? Isn't it your co-worker's responsibility not to look at what is on your desk?

A: It is your job AND your co-worker's job to protect the privacy of a person's protected health information!

Confidentiality Activity

Goal: To encourage students to think of the serious consequences that a breach in confidentiality could raise.

Directions: Read the following scenarios and describe potential consequences that may result.

Scenario I:

Melanie was a small-town girl who married her high school sweetheart. Two weeks before Christmas, Melanie discovered a lump in her abdomen just under the ribcage. She and her husband went to the local doctor who immediately put her into the hospital for a biopsy. The news the following day was not good—she had a rare form of liver cancer. How was she going to explain this tragic news to her young children? How would she tell her parents? Her father had a serious heart condition and her mom had a blood pressure problem. This news would devastate them. As it turned out, Melanie didn't need to tell her second grader or her parents. One of the nurses at the hospital where the biopsy was performed went home and told her neighbors and children. The following day at school children came up to Melanie's daughter and told her, "Your mom has cancer and is going to die." What consequences might result due to this breach of confidentiality?

Scenario II:

Paul was a RN who worked in the cath lab at a fast-paced heart center in Houston. His father, who was a renowned surgeon at the hospital, was still struggling with the fact that his son had chosen nursing over medical school. After a period of lethargy and night sweats, Paul decided to visit the employee clinic. His tests revealed that he was HIV positive. The med tech who processed his lab results decided to share this information with her best friend in radiology. Before the week was over, many hospital employees including those in the cath lab knew Paul's diagnosis. What consequences might result due to this breach of confidentiality?

Scenario III:

Amy was on her way to high school when a car ran a red light and broadsided her. Later when an ambulance pulled up to the hospital and brought her into the ER, a clinical rotation student from Amy's school was stunned to see someone she knew. Soon an X-ray tech arrived to begin taking films. "Is there any chance you could be pregnant?" he asked Amy. "I don't know," she responded. The clinical rotation student held Amy's hand while the doctor stitched her face and head. As soon as the clinical student returned to campus she began alerting all of her friends—"An ambulance brought Amy Stevens into the emergency room during my clinical rotation this morning! She was in an accident on the way to school and her face is all messed up. And guess what you guys—she might be PG—it's true, I heard her telling the doctors! She's up for homecoming queen you know. Oh my gosh—wait until people know. What consequences might result due to this breach of confidentiality?

Scenario IV:

Bailey was a dynamic junior executive at a high profile marketing company. She began noticing that she became easily winded when climbing stairs. After series of medical tests, her doctors determined that she had a secondary lung condition as a result of chronic hepatitis C. She didn't even know that she had hepatitis! Her patient history revealed a different life style than the one she presently lived. During her college years she had abused alcohol and drugs. She probably contracted the hepatitis from a shared needle. Since then she had turned her life around and now this! When her business office at work requested information for insurance purposes, the doctor's office sent her entire patient history. Soon, her past was common knowledge. What consequences might result due to this breach of confidentiality?