Compliance Update:
Can't I Just Be a Doctor?

Joe W. DeLoach, OD, FAAO
CEO, Optometric Business Solutions

First...Are you HIPAA compliant?
To be compliant, you must have:
- Acknowledgement of Notice of Privacy Practice
- Notice of Privacy Practice
- Privacy Manual
- Security Manual with risk assessment that will pass an audit
- Documented staff training

All updated to include 2010, 2013 and 2014 changes and/or additions

Can't I Just Be a Doctor Any More?
Easy answer....
NO!

Let's start with a review of the HIPAA laws
1. The Privacy Rules – in effect since 2004
3. HiTech amendment – 2010
4. Omnibus amendment – 2013
5. Communication rules 2014

Already feeling “out of date”???

Why not...
There are four major compliance areas that impact every health care provider and you MUST, by Federal Law, comply with:
- HIPAA
- Human Resources
- Hazard (OSHA, CDC, CLIA)
- NEW! Fraud and Abuse

What Changed in 2010?
Hi-Tech Amendments 2010
- State Attorney General Offices given prosecution authority
- HIPAA Audit Project – like taking candy from a baby!
- Whistleblower Act – and now Whistleblower Protection!
- Elimination of the “ignorance” excuse – “has reason to know” changed to “should know”
Most Common Causes of Violations

1. NO OR INCOMPLETE COMPLIANCE
2. Lost or stolen laptops, office back ups
3. Whistleblowers (unhappy patients/employees)
4. Loose mouths
5. Snooping
6. Server "hacks" – true criminal activity

In General, What Must We Do To Comply with the Privacy Rules? **STEPS: 1-3**

- Designate a Privacy and Public Information Officers
- Develop policies and procedures on how medical records are handled and transmitted by any means (Privacy Manual, Privacy Notice, etc)
- Meet all documentation guidelines

New 2013 HIPAA Penalties

Mild ($1,000 - $15,000 per violation per day)
Compliant but unintentional mistake

Moderate ($5,000 - $150,000 per violation per day)
Compliant but significant omission or breach

Severe (any amount up to $1.5 Million – PER VIOLATION)
Severe breach; willful neglect; "reckless indifference" (remember the monkeys?)

Criminal Penalties
Up to $500,000 fine and felony jail time

In General, What Must We Do To Comply with the Privacy Rules? **STEPS: 4-6**

- Provide initial, updated, DOCUMENTED training to all employees
- Establish systems to handle any break in privacy and establish sanctions for employees who violate policy
- EDUCATE YOUR PATIENTS! *(HIPAA was their idea but you are charged with training the public!)*

PLEASE NOTE!!!

In the “Mild” and "Moderate" penalty categories, the provider was TRYING to be compliant but wasn’t

NON-COMPLIANCE (“willful neglect” and "reckless indifference”) automatically puts you in the severe violation category

Precedent setting fine - $250,000.00

What Specific Rights Does The Patient Have Regarding Your Privacy Policies ?

- The patient may refuse to verify and agree to the ANPP/NPP
- The patient may inspect and/or ask for a copy of their medical record
- The patient may request you change their medical record
- The patient may make requests for individual privacy accommodations
Laundry List of Other Privacy Issues

<table>
<thead>
<tr>
<th>Authorization</th>
<th>Medical records review</th>
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<tbody>
<tr>
<td>Marketing</td>
<td>Medical records request</td>
</tr>
<tr>
<td>Minimum Necessary Rule</td>
<td>Request to change medical records</td>
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<tr>
<td>Incidental Disclosure Rule</td>
<td>Requests for disclosure documentation</td>
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<tr>
<td>Business Associates</td>
<td>Individual privacy accommodations requests</td>
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</tbody>
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HIPAA Breach
You and your staff must understand all of these issues and they must be addressed in your Privacy Manual.

HIPAA legislation totals 2712 pages of legal mumbo jumbo. You can do this yourself, get the information from a company who offers an incomplete product NOT customized to your profession, or talk to us about how we can make it easy.

Risk Analysis Fact

The OCR and OIG state over and over that the risk analysis has no structured format but MUST be an individual analysis of YOUR office and the way YOU do business.

Security Rules

Security Rule Requirements

- Appoint a Security Officer
- Conduct a risk analysis and risk management plan to determine threats or risks in your operational systems
- Complete the Organizational Requirements
- Documented policies and procedures for all applicable Security Standards – Security Manual

And that is how involved? Another 1,000 pages of legal mumbo jumbo

Security Rules

<table>
<thead>
<tr>
<th>Measure</th>
<th>Total Number</th>
<th>Required or Addressable</th>
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<tbody>
<tr>
<td>Organizational Requirements</td>
<td>4</td>
<td>4 Required</td>
</tr>
<tr>
<td>Administrative Safeguards</td>
<td>23</td>
<td>11 Required, 12 Addressable</td>
</tr>
<tr>
<td>Physical Safeguards</td>
<td>10</td>
<td>5 Required, 5 Addressable</td>
</tr>
<tr>
<td>Technical Safeguards</td>
<td>9</td>
<td>4 Required, 5 Addressable</td>
</tr>
</tbody>
</table>

Completion of all this is your Risk Analysis!

What’s New? (effective September 23, 2013)

- Breaches
- Business Associates
- Requests for medical records
- Restricted disclosures to health plans
- Marketing communication rules
- Electronic patient communication

Risk Analysis Facts

- Some companies want you to think you have to hire them to conduct a “professional” risk analysis – NOT TRUE
- Some groups will lead you to believe you must complete two dozen pages of check lists to conduct a risk analysis – NOT TRUE (actually the OIG says checklists are NOT good enough!)

You can visit the tipsheets at [www.oig.hhs.gov](http://www.oig.hhs.gov) for confirmation of this and any other clarifications.
Human Resources

One of the most complicated, most dangerous and potentially most financially devastating compliance issues facing doctor employers

There are 15+ agencies and laws that regulate your relationship with your employees. Not playing right with ANY of them can land you in serious trouble, legally and financially

- State Employment Commission
- State Commission on Human Rights
- State Communicable Disease Prevention and Control Act
- State Workers Compensation Act
- Equal Employment Opportunity Commission
- Americans with Disabilities Act
- Department of Labor
- Wage and Hour Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Occupational Safety and Health Administration
- Center for Disease Control
- Federal Privacy Act
- Immigration Reform and Control Act

ALL OF THIS REGULATED BY STATE SPECIFIC LAWS!

GENERIC OFFICE MANUALS ARE NOT SUFFICIENT

And the compliance issues you MUST understand?

- Necessity of employee manual
- Legal hiring / firing
- What you CANNOT ask in an interview
- Checking credit reports
- Criminal background checks
- New Hire reporting requirements
- Discrimination laws
- Smoking laws
- Guns on property laws
- Avoiding embezzlement
- Employee poster requirements

- FLSA – salary vs hourly
- Contract labor laws
- Breaks, meals, time off requirements
- Jury leave, military leave, voting leave
- Employee surveillance
- Disability requirements
- Family Medical Leave
- Harassment – Sexual and more
- Pay requirements
- Social media regulations
- COBRA and many more...

Do you know?

- Can you conduct background checks on job applicants?
- Is “at will” a solid concept in Pennsylvania?
- Who chooses the examining doctor in a workers compensation case?
- Do you have to pay an hourly wage for your staff to attend CE?
- What is the fine for not displaying the correct employee posters in your office?
- Can you mandate pay by direct deposit?
- Are you likely to be sued for harassment?
- How common is embezzlement?

Just a few examples of some new things you should know, but may not

- New discrimination issues
- What law the Department of Labor says is the most serious HR violation in the US?
- Crack down on contract labor

Discrimination

So you all know you cannot discriminate on the basis of age, sex, religion, sexual preference, race, color, creed, national origin, disability status or history, military service status or history….on and on

What are the “new kids on the block”?
EEOC Rulings

Religious Appearance

- Employers may not discriminate against employees who regarding their clothing or other appearance as recommended or restricted by their religious beliefs (pretty broad statement!)
- The only noted exceptions to this ruling are:
  - Wear of such clothing during normal duties of the job would put the employee or client of employer at harm
  - Wear of such clothing would prohibit the employee from completing the assignments of their job

EEOC Ruling

Obesity

What this means to you

If you have 15 or more employees, the Americans With Disability Act applies to you and you cannot discriminate in hiring, employment or firing practices against any individual or employee who meets the definition of overweight or obese. You are required by law, if possible, to make necessary REQUESTED special accommodations for these individuals in their job.

EEOC Ruling - Obesity

First, the history:

- Pre-2008
  - Courts upheld that obesity did NOT qualify under the definition of disability
- 2008
  - Bush Administration passes ADA Amendments Act of 2008 –loosens the definition of disability to include chronic conditions including “disease”
- 2010
  - EEOC wins EEOC vs Resources for Human Development – further confirming obesity was not a disability
- 2013
  - American Medical Association classifies obesity as a disease, forcing EEOC to reverse their prior rulings and include obesity as a disability

EEOC Ruling on Obesity

AMA, CDC, WHO Definition

“Overweight and obesity are defined as abnormal or excessive fat accumulation that presents a risk to health. A crude population measure of obesity is a body mass index, a person’s weight (in kilograms) divided by the square of height (in meters). A person with a BMI of 30 or more is considered obese. A person with a BMI equal to or more than 25 is considered overweight.”

Who says it’s a problem?

The United States Department of Labor!

In May 2014, DOL estimated that 70 percent of employers are not in compliance with FLSA. So they have teamed with the American Bar Association to form what THEY call a “sue your employer system” called “Bridges to Justice”

FLSA – the most overlooked HR law on the books

Just in…July 2014

Pregnancy Discrimination Act

- Extends rulings of the Anti-Discrimination Act to pregnancy and “related complications”
- Related complications - “complications related to pregnancy, a prior childbirth or a woman’s potential to become pregnant”
- Extends anti-discrimination to spouse
- Cannot discriminate against them, cannot make any decision related to pay, benefits or ANYTHING based on these complications or their need for additional accommodations
- Applies to any employer with 15 or more employees
FLSA Facts
What does FLSA control?
Lots of things – but the danger referred to are the laws controlling the classification of employees as exempt (salaried) or non-exempt (hourly).
BOTTOM LINE – It is next to impossible for employees working for most doctor’s offices to be classified as exempt (paid on salary basis).

Contract Labor Tests
- What is the level of control the employer has – hours worked, location(s) worked, services offered, method of pay. Basically, does the employer define the work?
- Does the person receive a scheduled and steady pay?
- Does the person use their own equipment, advertising services or are these supplied by employer?
- Can the person choose to not come to work at any time without consequence from the employer?
- Is the work temporary or permanent? And more….

BOTTOM LINE – it is difficult for optometric associates to be classified as contract labor except for occasional fill in work.

Fooling with this law recently cost one of your San Antonio colleagues $108,000.00!
(yes….it was the Office Manager!)

The Hazard Players
Office of Health and Safety Administration (OSHA)
They are all about maintaining a safe working environment for your employees and your patients

Center for Disease Control (CDC)
They are all about preventing spread of infection

Clinical Laboratory Improvement Amendments
They are all about assuring quality of lab test results

Why Employers Want to Use Contract Labor
If employed individual is classified as independent contractor, the employer does not have to pay state/federal unemployment tax, SS tax, and workers compensation premiums on the independent contractor
Nice idea, but…get it wrong and the penalties and fines are very significant!
OIG doesn’t like it because it costs the government money!

Hazard Requirements
- Must have written policies that comply with OSHA safety and CDC Universal Precaution standards
- Must have documented evidence that your staff is trained on Federal and YOUR policies in these two areas
ODs Must Comply?

- YES!! Per Federal law – NO health care provider is exempt from OSHA and CDC regulations
- There are civil AND criminal penalties for non-compliance $1,000 to $10,000 PER VIOLATION PER DAY
- OSHA has the authority to close your business down until you can demonstrate compliance
- Yes…ODs have felt the sting of OSHA

And What’s New???

EVERYTHING
OSHA and CDC have totally re-written the standards under what is called the Globally Harmonized System.

And, did you know, Per VSP Provider Manual (Pages 412-413)

Office Standards for Infection Control and Safety
Infection control measures are to be used for decreasing the risk of transmission of microorganisms in patient care settings. VSP has adopted the recommendations/guidelines of the Centers for Disease Control (CDC) as part of its provider office standards. A fundamental concept of infection control is the concept of Universal Precautions, which involve the use of protective methods when taking care of patients.

And it goes on and on, CDC this, OSHA that, if you would care to read it sometimes

Globally Harmonized System
The REALLY Bad News
If you have Hazard policies/manuals – you can pretty much start over
If you don’t have Hazard material, refer back to the three monkey slide

Final Compliance Date: June 1, 2015

And EyeMed?

Pretty much same thing…with a detailed listing of the infection control and environment safety requirements straight out of CDC and OSHA

And other payers? Read close, most of them will say the exact same thing!

Background

- Fraud and abuse compliance programs recommended for all providers initially in 2000 (voluntary)
- Patient Protection and Affordable Care Act of 2010 made program mandatory
- Compliance program guidelines for small provider groups not released until 2014
- Per OBS Legal Counsel - “Not having a fraud and abuse program in your office is just as stupid as it gets!”
What Exactly is the Goal
- Assure that all care rendered is medically necessary
- Assure that all care rendered is properly documented in the patient’s medical record
- Assure that all care billed for reimbursement was rendered in line with accepted practice patterns and clinical guidelines
- Assure that all care rendered was done so with no outside influence on the physician’s determination of medical necessity

REALLY JOE...isn’t this a bit over the top?

ABSOLUTELY NOT!
Some of your colleagues could end up in these pictures. From what we see going on in OPTOMETRY all across the country, optometrists may be close to the front of the line!

Summarized…
It’s all about doing what is right for the patient without any influence from real or perceived monetary gain

REALLY? Why Is That?
- We pushed “going medical” without teaching optometrists about medical necessity and records documentation
- We taught “what codes” not “how to code”
- We taught too much how to make money and not enough how to take care of people
- OUCH?

That’s not happening?
Evidently not or fraud and abuse in healthcare wouldn’t be the single most important investigative issue for HHS and the OIG

Actually not happening to the tune of $65 BILLION A YEAR!

Steps to Achieve Compliance
- Assign a Compliance Officer and/or Compliance Contact
- Train doctors and staff (next two slides)
- Establish compliance standards – must be written manual that at a minimum addresses compliance with the five main fraud and abuse federal laws
- Perform internal auditing
- Correct offenses
- Establish internal disciplinary guidelines
Five Main Fraud and Abuse Laws

- False Claims Act
- Anti-Kickback Statute
- Provider Self-Referral Law
- Exclusion Statute
- Civil Monetary Penalties Law

Provider Relationships

Other than the doctor/patient relationship, ethical behavior of providers is organized around:

- Relationships with payers
- Relationships with fellow providers
- Relationships with vendors