Six Reasons Why HIPAA Matters

Have you ever wondered if HIPAA compliance is really vital to you as a practicing psychologist? If there’s ever been a doubt in your mind, the following considerations may help you reconsider the matter.

1 Compliance is a matter of law.

The most obvious consideration is if you as a health care practitioner take actions that trigger HIPAA, you must comply fully with the HIPAA rules. This includes all health care professionals who electronically transmit health information in connection with standard transactions designated under HIPAA. (See “What Trigger the Need to Comply?” on page 6 for a list of the standard transactions that trigger HIPAA.) There are potential substantial penalties associated with failure to comply with HIPAA. (See the article, “Final HIPAA Enforcement Rule Takes Effect,” page 10).

The following considerations apply even if a psychologist does not technically trigger HIPAA.

2 The health services delivery industry is fast moving toward electronic transactions.

Increasingly, participation in health insurance programs requires electronic claims submission and other electronic transactions that trigger the need for HIPAA compliance. Payers are creating incentives for such participation, for example, by reimbursing more quickly for claims submitted electronically than for paper claims. Even health professionals who do not yet engage in electronic transactions can ensure that their future actions do not put them in violation of HIPAA by complying now. For example, should they decide at some point to employ an electronic billing service or to take a client whose health insurance plan requires electronically billing, these practitioners will have no “grace period” for meeting HIPAA requirements. Full compliance will be required beginning at the moment electronic billing is initiated.

3 HIPAA helps protect your patients.

The Privacy and Security Rules entail requirements that help protect the integrity and confidentiality of the therapist-client relationship. These should be matters of central concern to mental health professionals. Following the Privacy and Security Rules—for example, by keeping HIPAA-compliant psychotherapy notes (see “Practitioners: Take Note,” page 8) and by using safe email practices—can protect client confidences from insurance companies as well as computer hackers.

4 HIPAA requirements constitute sound business practice.

Consider the example of “contingency planning” as required by the HIPAA Security Rule. Taking steps to ensure that electronic protected health information (E PHI) can be recovered and restored in the event of an emergency can lessen interruptions to your practice.

For example, there were practitioners affected by Hurricane Katrina who needed to recover lost electronic patient data.
Those who had backed up and stored their patient records in a location safe from flooding, consistent with the HIPAA Security Rule, were prepared to recover what they needed. Taking this important step in advance helped minimize disruptions to continuity of patient care. Others who lacked backup files were not as fortunate.

**5 Following HIPAA specifications can help you avoid potential risks.**

As one example, the Security Rule requires practitioners to implement policies and procedures to address the final destruction and/or disposal of EPHI and computers or other devices in which EPHI is stored. Disposing of a computer without using software that completely removes patient records is contrary to HIPAA requirements.

There are reports of computer programs being used to recreate patient files that a psychologist thought he or she had “deleted.” The use of such programs may jeopardize confidential patient health information and increase the psychologist’s risk of liability.

**6 The Privacy and Security Rules are likely to be invoked as setting the standard of care in the health care industry.**

Many health care analysts have advanced this argument. HIPAA requirements could be brought to bear in legal and professional disciplinary deliberations, even in situations where HIPAA compliance technically has not been triggered.

Consider a scenario where a practitioner faces disciplinary action for failing to take reasonable steps to protect patient confidentiality after improperly throwing out his practice computer and then having his patient records retrieved.

The attorney for the complaining patient might assert that the practitioner was actually violating the “customary standard of care,” and therefore the psychologist was negligent, by not adhering to HIPAA’s standards for disposing of computer equipment.