

Confidentiality of Health Care Information

Autumn 2010
Hazlet

Objectives

- ▶ Understand HIPAA applicability in pharmacy practice
- ▶ Understand WA applicability in pharmacy practice:
 - ▶ Uniform Health Care Act (RCW 70.02)
 - ▶ STD/HIC/AIDS Information Act (RCW 70.24.105)
 - ▶ Alcohol & Drug Treatment legislation / rules (RCW 70.96A & 42CFR2.13)
 - ▶ Mental Health services legislation (RCW 71.05, 71.24 & 71.34)
- ▶ Recognize situations where patient-specific information may be disclosed with and without patient consent

Sources of Confidentiality Duty

- ▶ State & federal law
- ▶ Professional ethical standards
- ▶ Accrediting organizations standards (i.e., The Joint Commission)
- ▶ Institutional policies

Major Laws Regulating Health Care Information

- ▶ **Health Insurance Portability Accountability Act of 1996, as amended – 45CFR142, 160 & 164**
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... about HIPAA

- ▶ *“It’s so complicated it can’t possibly be true”*
 - ▶ Virologist, California Viral & Rickettsial Disease Laboratories
- ▶ *“Everything Not Forbidden is Compulsory”*
 - ▶ TH White: The Once and Future King
- ▶ *"Everything should be made as simple as possible, but not simpler."*
 - ▶ Albert Einstein

HIPAA-speak

- ▶ Covered entities
- ▶ Business associate
- ▶ Health care clearinghouse
- ▶ Protected health information
- ▶ Individually identifiable health information
- ▶ “privacy rule”
- ▶ Health Information Technology for Economic and Clinical Health (HITECH) Act

- ▶ Disclosures
 - ▶ Required
 - ▶ Permitted – with / without patient authorization
 - ▶ Prohibited

HIPAA Lexicon 1

▶ Covered entities

- ▶ Health plans
- ▶ Health care providers
 - ▶ Institutions such as hospitals and clinics
 - ▶ Individual practitioners
- ▶ Healthcare clearing house

▶ Business associate

- ▶ Person/entity providing services for/to covered entities
- ▶ Activities that involve the use/disclosure of protected health information
- ▶ Under new regulations, Business Associates are now required to comply with all HIPAA security and privacy rules on behalf of covered entities.

▶ Healthcare clearing house

- ▶ Entity that processes & submits claims on behalf of a provider

HIPAA Lexicon 2

- ▶ Individually identifiable health information – protected health information (PHI)
 - ▶ Identifies / provides reasonable basis for identification
 - ▶ Mental or physical condition
 - ▶ Provision of health care
 - ▶ Payment for health care
- ▶ Probability of re-identification – increases with # of variables
- ▶ Examples: name, phone, SSN, DOB, date of hospital discharge, zip codes in rural area, age if extreme

HIPAA Lexicon 3

- ▶ **Disclosure**

- ▶ Release, transfer, provision of access to, or divulging of PHI in any outside the entity holding the information
- ▶ Contrast with ...

- ▶ **Use**

- ▶ Sharing of PHI within a covered entity

HIPAA – **Prohibited** Disclosures

- ▶ A covered entity may not use or disclose PHI, except either:
 - ▶ As the Privacy Rule permits or requires;
 - ▶ As the individual who is the subject of the information authorizes **in writing**.

HIPAA – Required Disclosures:

- ▶ A covered entity **MUST** disclose PHI in only two situations:
 1. To individuals (or their personal representatives) specifically when they request access to, or an accounting of the disclosures of, their PHI; and
 2. To HHS when it is undertaking a compliance investigation or review or enforcement action.

HIPAA – Permitted Disclosures

- ▶ **To the Individual**

- ▶ **For the Purposes of Treatment, Payment, and Health Care Operations**
 - ▶ **Treatment:** Provision, coordination and management of health care and related services for an individual by one or more health care providers, including patient consultations and referrals.
 - Usual situation where pharmacists disclose information
 - ▶ **Payment**
 - RPh to insurance plans for drug coverage.

HIPAA – Permitted Disclosures 2

▶ **Health care operations**

- ▶ QA activities, including case management and care coordination
- ▶ Competency assurance activities
- ▶ Conducting or arranging for medical reviews, audits, or legal services
- ▶ Specified insurance functions
- ▶ Business planning, development, management and administration

HIPAA – Permitted Disclosures 3

- ▶ **Opportunity to Agree or Object**
 - ▶ **Informal permission** – facility (hospital) directories: name, general condition, location in provider’s facility, “publication”
 - ▶ **For notification and other purposes** – pharmacist dispensing of a filled prescription to a person acting on behalf of the patient
 - ▶ **Incidental disclosure** – reasonable precautions – overheard conversation despite closed door
 - ▶ **Public interest & benefit activities**
 - ▶ As required by law (statute, regulation, or court order)
 - ▶ Public health activities
 - ▶ Regarding victims of abuse, neglect, or domestic violence
 - ▶ Health oversight activities (audits, investigations)
 - ▶ Law enforcement purposes
 - ▶ **Payment** – RPh to insurance plans for drug coverage

Recap

- ▶ Covered entity (3)
- ▶ PHI
- ▶ Required disclosure (2)
- ▶ Permitted disclosure (lots)



HIPAA (Written) Authorization Requirements

- ▶ Covered entity must obtain authorization to use or disclose PHI for purposes other than treatment, payment, and healthcare operations or as otherwise permitted or required by Privacy Rule
- ▶ The content of the consent form, and the process for obtaining consent, are at the discretion of the covered entity.
- ▶ Consent form be written in “plain language”, and contain specific information with regard to:
 - ▶ How the PHI is to be disclosed or used,
 - ▶ The person(s) disclosing and receiving the PHI,
 - ▶ Expiration of consent and how to revoke consent.

Examples of Situations Requiring Authorization:

- ▶ Disclosure to life insurer for coverage purposes
- ▶ Disclosures to an employer of results of pre-employment physical or lab test
- ▶ Disclosure to attorney's offices
- ▶ Also in this category: Psychotherapy notes

Patient Rights under HIPAA:

- ▶ **Privacy practice notice:** Patient must be provided with a notice of the practices of the covered entity.
 - ▶ Must give notice of its information practices, including how it uses and discloses info:
http://depts.washington.edu/comply/training_hipaa.shtml
- ▶ **Access:** Patient may inspect or get a copy of their PHI that is maintained by the covered entity, subject to certain limitations.

Patient Rights under HIPAA (cont'd):

- ▶ **Amendment of PHI**
- ▶ **Accounting of disclosures of PHI for six years prior to date of request**
- ▶ **Restriction request:** Patients may ask covered entity to restrict how PHI is disclosed or used.
 - ▶ Note that covered entity is under no requirement to agree to request for restrictions.
- ▶ **Request for alternative means of communicating PHI:**
 - ▶ Example: patient may request that covered entity communicate with patient through a designated address or phone number.

Patient Rights under HIPAA (cont'd):

- ▶ **Complaints:** individuals may complain about compliance with privacy policies and procedures of a covered entity.
 - ▶ Complaints may be filed with the covered entity, and to the Secretary of HHS – Office for Civil Rights
 - ▶ Covered entity must explain procedures for filing complaint within the privacy practices notice.

Rite Aid Agrees to Pay \$1 Million to Settle HIPAA Privacy Case

Rite Aid Corporation and its 40 affiliated entities have agreed to pay \$1 million to settle potential violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, the U.S. Department of Health and Human Services (HHS) announced today. In a coordinated action, Rite Aid also signed a consent order with the Federal Trade Commission (FTC) to settle potential violations of the FTC Act.

<http://www.hhs.gov/ocr/privacy/hipaa/enforcement/examples/riteaidresagr.html>

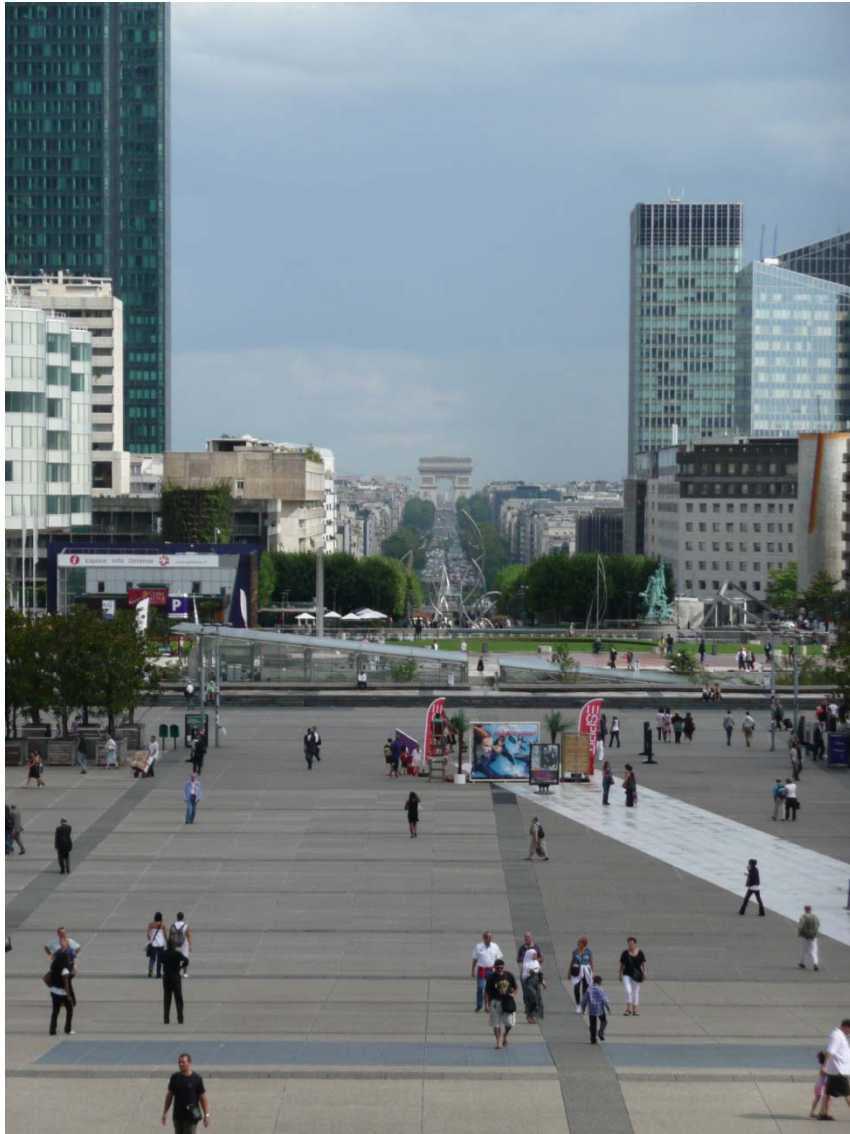
Preemption* of State Law:

- ▶ HIPAA preempts state law to the extent that it is more protective of health information than state law.
- ▶ If state law provides *greater* protection of PHI than HIPAA, then Privacy Rule allows state law to prevail.

* Preemption

The rule of law that if the federal government through Congress has enacted legislation on a subject matter it shall be controlling over state laws and/or preclude the state from enacting laws on the same subject if Congress has specifically stated it has "occupied the field." If Congress has not clearly claimed preemption, a federal or state court may decide the issue on the basis of history of the legislation (debate in Congress) and practice. From dictionary.law.com

Compare: Article VI, Section 2, of the U.S. Constitution provides that the "... Constitution, and the Laws of the United States ... shall be the supreme Law of the Land." AKA "supremacy clause"



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Uniform Health Care Information Act (RCW 70.02)

- ▶ Except as authorized by Act, health care information cannot be disclosed to any other person without patient's written authorization ["prohibited"]
- ▶ **Health care information:** any information, whether oral or recorded in any medium that identifies or can be readily associated with the identity of a patient and directly relates to the patient's health care (includes DNA test results)

Permitted Disclosure (RCW 70.02.050)

- ▶ To a person reasonably believed to be providing health care to the patient,
- ▶ To any other person who requires info for health care education, or to provide planning, QA, peer review, or administrative, legal or financial services to health care provider (malpractice coverage)
- ▶ Imminent danger/harm to patient

- ▶ **Restrictions**
 - ▶ Need to know
 - ▶ “Reasonable” precautions against re-disclosure or inappropriate use
 - ▶ Written patient instructions restricting re-disclosure

Permitted Disclosure (RCW 70.02.050)

- ▶ Research project if institutional review board approves
- ▶ Audits if identifiable information removed or destroyed at earliest opportunity and no further disclosure
- ▶ To penal or custodial officials where patient detained
- ▶ Directory information, unless patient refuses
- ▶ Cases reported by fire, police, sheriff, or other public authority, directory information, nature and extent of injuries and whether patient conscious when admitted
- ▶ To federal, state, or local public health authorities to the extent required by law, when needed to determine compliance with licensure, certification, registration laws, or to protect the public health
- ▶ To county coroners and medical examiners for investigations of deaths

Patient Authorization of Disclosure, Requirements (RCW 70.02.030):

- ▶ In writing, dated and signed by patient
- ▶ Identify nature of information to be disclosed
- ▶ Identify the name, address, and institutional affiliation of person information being disclosed to
- ▶ Identify provider making disclosure
- ▶ Identify the patient
- ▶ 90 days, unless form specifically provides expiration date.
- ▶ Patient may revoke authorization in writing at any time (some exceptions)

Additional Patient Rights

- ▶ **Examining & Copying**
 - ▶ Within 15 (21) days / “lost”
 - ▶ Reasonable fee
 - ▶ Denial – cf. Public Records Act 42.56 RCW
- ▶ **Correction or amendment of record**

Consent by Others

- ▶ **Consent may be provided on behalf of the patient by:**
 - ▶ Legally authorized surrogate for healthcare decisions (see RCW 7.70.065)
 - ▶ Personal Representative of deceased patient
- ▶ **Parental consent: effective only in situations where parental consent required (usually age 14 or under).**

Civil Remedies:

- ▶ Actual damages, reasonable attorneys' fees, and other reasonable expenses
- ▶ Court injunction (provider ordered to comply with chapter)
- ▶ 2 year statute of limitations after violation discovered

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Prohibited Disclosure of Test Results for HIV/STD's (RCW 70.24.105)

- ▶ **Prohibited Disclosure – Information on HIV or Sexually Transmitted Diseases – confirmed positive results**
 - ▶ Subject identity
 - ▶ Test
 - ▶ Test result / diagnosis
 - ▶ Treatment
 - ▶ Any information relating to the above

- ▶ **Permitted Disclosure**
 - ▶ Test subject's legal representative for health care decisions, except when subject is > 14 years old and competent
 - ▶ Specific release authorized by subject
 - ▶ Public health staff
 - ▶ Reporting & provision of health care
 - ▶ Body parts
 - ▶ Court order
 - ▶ Law enforcement staff
 - ▶ Victim

Re-disclosure Prohibited

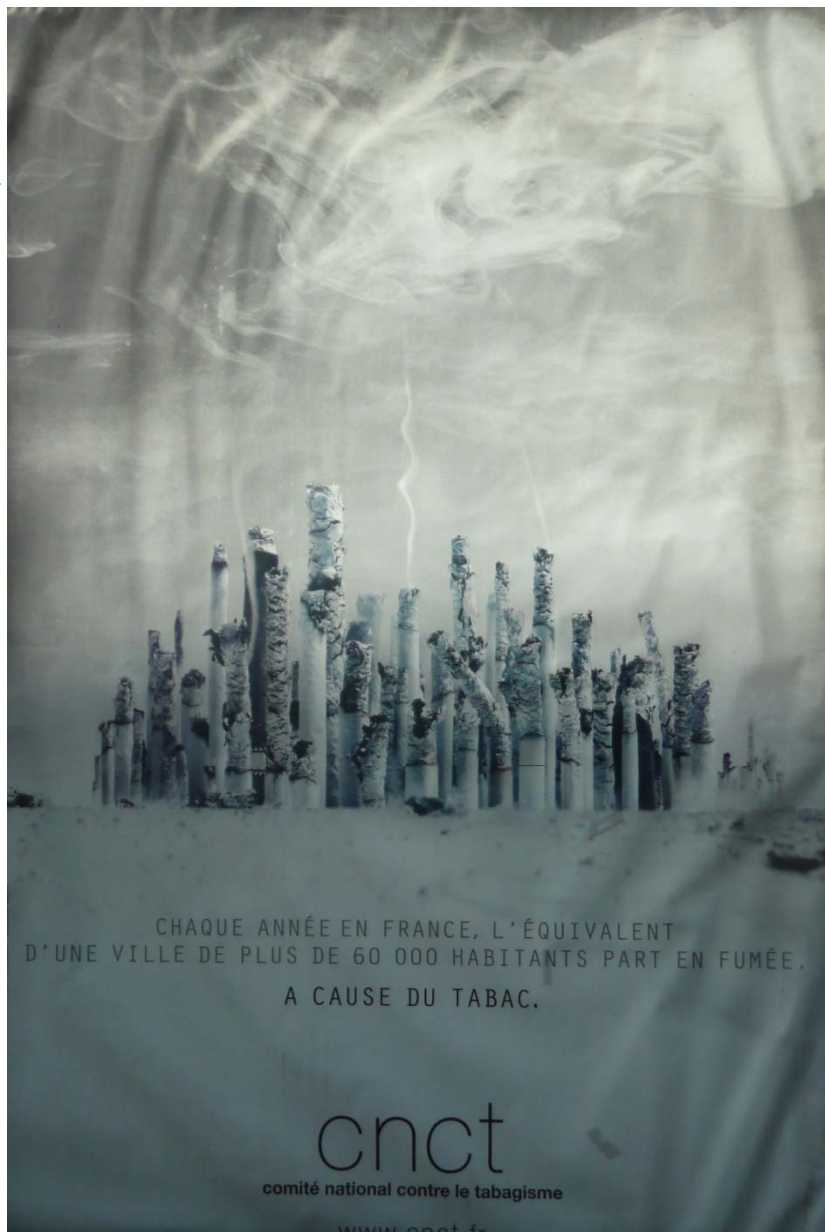
- ▶ Person to whom test results have been disclosed may not disclose results to another person unless authorized as above.

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Treatment for alcoholism, intoxication, and drug addiction (70.96A RCW and 42 CRF Section 2.13)

- ▶ Registration records and other records of treatment programs are confidential.
- ▶ Disclose only with
 - ▶ Prior written consent of patient
 - ▶ If authorized by a court order
 - ▶ To comply with state reporting requirements for suspect child abuse
 - ▶ When crime committed on program premises
 - ▶ RCW 70.96A.230 – Age ≥ 13 for disclosure to parent if subject is competent; “child in need of services” petition under 13.32A.030(6) RCW



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Other Washington Statutes Dealing with Patient Confidentiality Issues

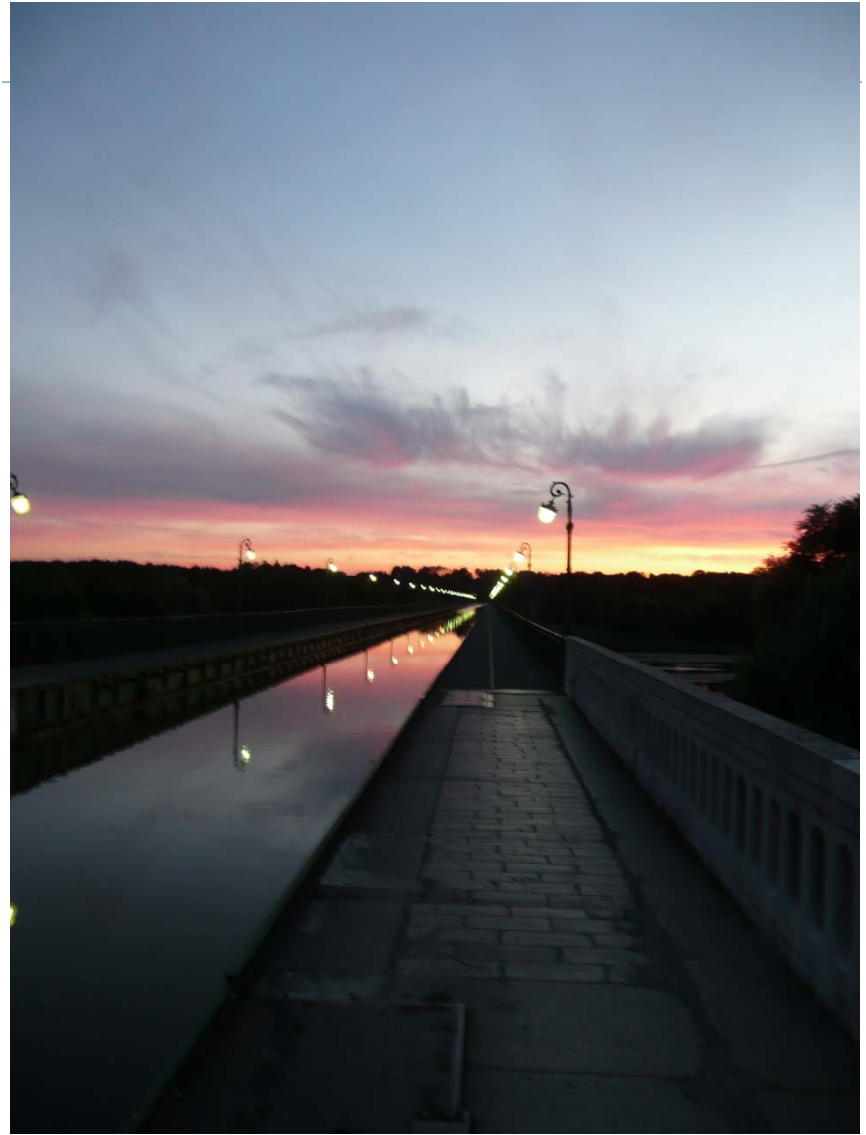
Mental Health Information (RCW 71.05, 71.24 and 71.34)

- ▶ Fact of admission for mental health services and all records of mental health treatment are confidential.
- ▶ Limited circumstances under which these records may be disclosed.
 - ▶ When a minor's information is disclosed (to anyone), a description of that disclosure must be included in the clinical record. RCW 71.34.350
- ▶ Designee, or for "minor" (<18), parents 71.05.390(3)(a)
RCW

Other Washington Statutes Dealing with Patient Confidentiality Issues

Mental Health Information (RCW 71.05, 71.24 and 71.34)

- ▶ **Disclosure without minor approval *only*:**
 - ▶ In the case of dependency hearings, to persons medically responsible for the minor, in custody hearings, when there is a written consent by the minor, for billing purposes, to courts, to law enforcement officials and public health officers acting in an official capacity, to the secretary of health for data collection purposes, to next of kin, guardian, attorney or conservator.
- ▶ **Information that may be released:**
 - ▶ The fact of a minor's presence in a facility, a statement evaluating the physical condition of the minor, a statement of the probable duration of treatment.



Violations of HIPAA, State Law in Normal Pharmacy Practice

- ▶ Usually can be avoided by exercising reasonable care and professional judgment. Watch out for:
 - ▶ Careless “chatter”: e.g., elevator or cafeteria talk
 - ▶ Careless disposal or mishandling of patient records (includes paper records/receipts, patient-specific medication information generated when processing a prescription).

Violations of HIPAA, State Law in Normal Pharmacy Practice

- ▶ Failure to adequately ascertain relationship of patient to person picking up medication or inquiring about medication for patient.
- ▶ Forwarding of e-mail with patient information to non-secure site.
- ▶ Failure to protect faxed information. Note FCC requirements
- ▶ Viewing PHI on computer of patient you are not going to be interacting with.

Summing Up

- ▶ HIPAA
- ▶ Uniform Health Care Information Act
- ▶ Control and treatment of sexually transmitted diseases
- ▶ Treatment for alcoholism, intoxication, and drug addiction
- ▶ Mental illness