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Experts say Conn. attorney general's HIPAA suit could start enforcement trend

HHAs be warned: A state attorney general is acting on new power to enforce laws protecting patients' health information, and others could follow, bringing stricter HIPAA enforcement to home health agencies.

A Connecticut case filed Jan. 13 is the first brought by a state attorney general under the Health Insurance Technology for Economic and Clinical Health Act (HITECH), passed as part of last year's stimulus bill (*HHL 4/1/09*), and could be a "harbinger of things to come," says compliance expert John Parmigiani of John C. Parmigiani and Associates in Ellicott City, Md.

The Connecticut attorney general alleges that managed care company Health Net of Connecticut did not secure the medical information of 446,000 patients, and when a disk drive with that information "disappeared," the company didn't "promptly notify consumers endangered by the security breach." The penalties for such violations are \$100 per incident up to \$25,000 per person, per year, per standard violated.

(continued on page 7)

Tie to U.S. laws against paid referrals hurts Florida's HHA licensing enforcement

The sandwich lunches some Florida agencies continue to offer physician practices and other referral sources could be illegal under Florida's strict home health licensing law, but that doesn't mean the state has a way to stop them.

That's because the Agency for Health Care Administration (AHCA), the state's health care enforcer, has been focused on more serious violations that have prevented enforcers from focusing on "remuneration" of referral sources "at very low dollar amounts," AHCA indicated in its latest testimony to the state Senate's committee on health regulation.

Instead, AHCA has been focused on such issues as failure to offer proof of the necessary finances to operate a home health

agency and on operating without a medical director, another violation of the Florida law.

Lack of enforcement and AHCA guidance has allowed agencies, such as Hands on Home Care, to continue to provide occasional breakfasts and lunches to referring physicians and their office staff, says Mark Rodgers, administrator of the 120-patient Fort Myers HHA (*HHL 8/17/09*).

Miami: No remuneration complaints?

The AHCA testimony provides examples of how the enforcement body is focused on issues besides free lunches:

- **HHAs fined for failure to submit quarterly reports.** The AHCA issued 712 notices of intent to fine agencies \$5,000 for failure to submit quarterly reports required under the Florida licensing law changes.

Compare that with only a handful of agencies that have been charged with improper remunerations. Seventeen agencies have been accused of providing remuneration to physicians since July 1, 2008, when the licensing law initially went into effect. Three additional agencies have pending fines for “remuneration of discharge planners” related to home health referrals. Two have been sanctioned for providing staff to the assisted living facilities – either free of charge or at less than fair-market value – in exchange for referrals (*HHL 12/07/09*).

- **Fewer remuneration complaints filed.** The AHCA reports that there have been “no complaints related to any form of illegal remuneration in Miami.” That’s despite the fact that Miami is a city where remuneration in exchange for patients has been commonplace, according to home health sources.

Does Stark override Florida law?

One problem for AHCA is that last year Florida lawmakers softened the home health licensing law’s impact on free lunches and other favors for referral sources.

That’s clear from AHCA’s recent interpretation of physician-HHA relations under this year’s amendments to the law.

Lawmakers based the legality of goodies for referral sources on what’s allowed by the Medicare anti-kickback statute and Stark law referral prohibitions, which are less limited than what the Florida law allowed.

AHCA continues to recommend that agencies seek advice from attorneys if they have questions about how the federal laws might apply to them.

Lester Perling of Broad and Cassel, Fort Lauderdale, Fla., for one, has advised AHCA that the Stark law in 2009 would have allowed non-cash compensation of physicians up to a \$355 maximum, he states in a 12-page memorandum he gave AHCA officials last year (*HHL 2/02/09*).

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So far, though, AHCA has shown no interest in clarifying the current ambiguities of its enforcement policies.

Lacking AHCA guidance, Rodgers, administrator for Hands on Home Care, is relying on his own interpretation of Stark to mean he also can take a physician out for lunch occasionally, if the physician's share of the tab doesn't exceed \$50, he adds. — *Burt Schorr* (bschorr@decisionhealth.com)

Training opportunities:



Creative ways to manage outliers

Just because CMS has placed a cap on outlier payments doesn't mean that you have to stop serving those patients.

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Quiz patients on disease management to reduce hospitalizations

Agencies commonly give competency tests to clinicians, but one agency now gives them to its patients.

The Jamestown, N.Y., office of Willcare tests its patients' knowledge of how to manage their illnesses before and after clinicians teach about certain diagnoses, says Lisa Leber, nurse supervisor for that office of Willcare, headquartered in Buffalo, N.Y. The results reveal where patients need more education and whether the clinicians' efforts were successful.

Given as part of a larger program to improve transitions of care from one provider setting to another, the patient competency helped the agency improve its rehospitalization rate for COPD and CHF patients in the project to 8% from 25% for the eight months that ended in July 2008, says Leber.

The program, organized by Community Health Foundation of Western and Central New York, focused

on using transition coaches to educate patients about how to improve their own care and ease the transition between care settings.

The agency uses transition coaches to verbally administer the pre- and post-teaching tests. Unlike nurses who assess and care for patients, transition coaches can be skilled or unskilled employees who focus on educating patients and developing patients' skills to manage their care, Leber says.

The pre-teaching test results reveal where the patients need the most instruction and help the coaches tailor the education to the patients' needs, Leber says. (*For a copy of the test, see p. 8*). The transition coach then teaches the patient about those topics in two to three sessions before giving the same test again.

Any answers the patient doesn't know after teaching show the coach where more instruction is needed or that the coach needs to adjust her teaching style to accommodate the patient, says Erin Gaken, director of the Connections Program at the Fredonia, N.Y., office of Hospice Chautauqua County, another participant in the project. For example, the coach might need to take more time teaching a patient with cognitive issues.

Knowledge of the topics in the test, such as what signs justify a call to a doctor, can prevent hospitalizations by helping patients take responsibility for their own care, Leber adds.

Use transition coaches between settings

The testing was just one part of the transition coaches' activities during the 18-month Community Health Foundation of Western and Central New York program to improve transitions of care.

Willcare teamed up with the Connections Program of Hospice Chautauqua County to use the coaches to improve transitions for patients with CHF or COPD among hospitals, home health and hospice. Teams received up to \$30,000 grants to work toward their goals and measure their success.

Willcare had up to 20 patients involved in the program. Patients who opted out of participating or were noncompliant were not included, Leber says.

CHF and COPD patients in the Connections Program also received pre- and post-teaching tests and education by transition coaches, Gaken says. The Connections Program helps patients who have life-limiting illnesses but might not qualify for home health or hospice.

Along with administering the tests, the transition coaches taught patients other skills, such as preparing questions for doctors' visits and keeping personal health records, to improve their ability to care for themselves, says Christine Klotz, program advisor for the Community Health Foundation of Western and Central New York (*for tips on teaching those skills, see subhead below*).

Ways coaches can promote independence

Willcare chose to use its nurse liaisons as transition coaches, though the coaches don't need to have medical training, Leber says. Successful transition coaches, many of whom are nurses, need to shift from their nurse mindset of completing tasks for patients to teaching patients how to do things for themselves, Klotz adds.

Consider these suggestions from Klotz on how transition coaches can not only assist in moving from one setting to another but encourage patients to take responsibility for their care. Transition coaches can share these ideas with caregivers if patients have cognitive problems, for example.

- **Roll play with patients.** The coach can act as a physician or other provider, and the patient can practice asking questions to give them confidence to get the answers they need.
- **Encourage assertiveness when making doctor appointments.** Transition coaches should advise patients that when making doctors' appointments after a hospitalization, they should explain how they have been discharged from the hospital and need to see the doctor in the next two weeks. Patients should be assertive when requesting a timely appointment when physicians' staff say that there's not appointment for several weeks. That can improve their care and prevent rehospitalizations.
- **Encourage patients to prepare questions for doctors' visits.** The lists of questions don't need to be long but should include key topics, such as symptoms the patients felt recently, that the patient wants to discuss with his doctor. Patients should make notes about the physicians' responses so they can refer to them later.
- **Show patients how to keep their own medication lists and records about their health.** Willcare gave its patients in the program a pamphlet where they can list medications, questions for doctors during appointments, caregiver information, medical history and notes to take to their physicians, Leber says.

The transitions coach walks through completion of the forms with patients at their first meeting then encourages patients to update the forms, Klotz says. – *Karen Long* (klong@decisionhealth.com)

Standard patient-satisfaction surveys reveal home health deficiencies

Just because your agency has high scores on your homegrown patient-satisfaction surveys doesn't mean you'll score as high when using the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey.

That's a lesson learned by agencies that have begun to use uniform surveys conducted by vendors and have compared their results with other agencies in the consultant's database.

Many HHAs that now do their own surveys are lulled by results that indicate patients love their care until they learn from being compared with others that "they're at the bottom of the good scores," says Lisa Cone-Swartz, Press Ganey Associates VP for medical practice and home health.

Lessons uniform surveys can teach

- **Stop telling patients that visits will occur at a specific time.** Instead, give them a two-hour window in which the visit will occur.

That's one step that a 250-patient Massachusetts agency took after working with vendor Fazzi Associates to analyze puzzling deficiencies turned up by Fazzi's PatStat survey, says Gina Mazza of Fazzi's patient-satisfaction benchmark service.

To its surprise, the agency found patients gave it low grades in three apparently separate areas – "caring and concerned" clinicians; good coordination of care; and satisfactory nursing care. When Fazzi did a separate survey focused on those issues, it learned that all three categories of complaints reflect patient annoyance with the failure of agency clinicians to show up at the promised time.

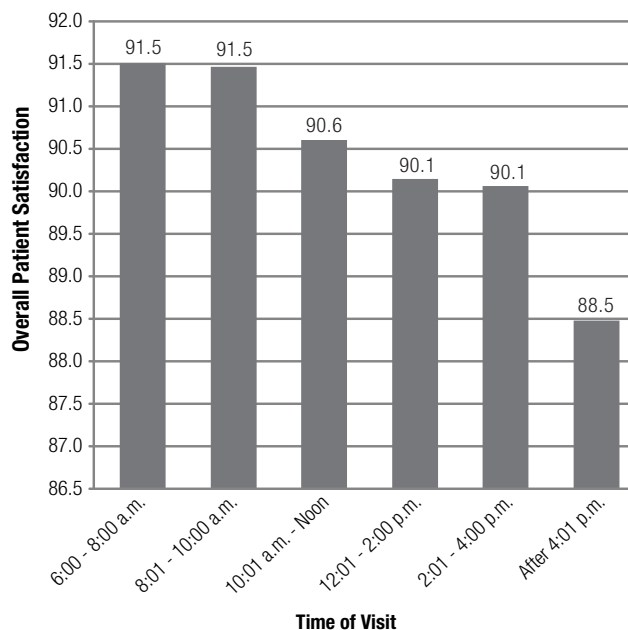
The thinking of some clinicians at the agency was that "because the patients are homebound, they're not going anywhere. So it's OK to come at 8:15 instead of 8," says Mazza.

Responses to CAHPS question No. 15 will make it easier to spot that issue, Mazza believes. It asks, "In the

Benchmark of the Week

Patient satisfaction based on the time of the visit

The highest patient satisfaction scores occur in the morning (between 6 a.m. and 10 a.m.), and generally decline throughout the day, according to recent data. One possible reason: Delays may be more likely to occur as the day progresses, Press Ganey says. (See related story, p. 4.)



Source: 2009 "Home Care Pulse Report" prepared by Press Ganey Associates, South Bend, Ind.

*Based on ratings by 106,225 patients of 553 HHAs during the six months through Dec. 31, 2008.

last two months of care, how often did home health providers from this agency keep you informed about when they would arrive at your home?" The Fazzi survey didn't ask that exact question, but it does ask patients to rate arrival of clinicians.

- **Give front-office staff a script with expressions that show concern for the patient's pain.** And establish a process to follow-up with patients to ensure their pain is alleviated. Those are key lessons learned when one multi-office HHA in the Midwest compared its patient-satisfaction scores with the scores of 400 clients of vendor Press Ganey Associates. Despite having good pain protocols, the agency discovered to its surprise that

it scored low on the sensitivity of its clinicians to patients' pain, says Alycia Otteson, medical services director for Press Ganey, which is in South Bend, Ind.

- **Hang a calendar in each patient's home.**

Phoenix-based Banner Home Care's staff members write the visit schedule for each discipline on the calendar and post it on the patient's refrigerator. That helps keep patients from becoming confused about when clinicians are supposed to come.

The calendar is among the strategies that helped Phoenix-based Banner Home Care achieve its spot among the top 25% of Press Ganey clients by the end of 2008.

- **Hold daily meetings with intake staff, home health managers and schedulers.** The 30-minute meetings are to discuss patient complaints about late clinician arrivals, assess any unwelcome trends and identify needed follow-up. A major one – as identified by patient comments – was scheduling. "Voice mail boxes were full, calls were not returned in a timely manner, and there were no standards for telephone etiquette," a Press Ganey report on the Banner case relates. – *Burt Schorr* (bschorr@decisionhealth.com)

Think outside of the box; seek referrals from nontraditional sources

Look beyond traditional referral sources and you could rev up referrals by as much as 15% a year.

More than half of the respondents to a recent *HHL* survey say that increased home health competition has forced them to turn to nontraditional referral sources, such as churches, senior centers and independent living centers, more often today than they did five years ago.

For Mission Home Health in San Diego, that means participating in events sponsored by the American Lung Association and local orthopedic groups, which has resulted in a 10% to 15% growth in overall referrals in the past eight months, says Jennifer Robinson, owner and operator of the agency.

Reaching out to such associations allows agencies to network with doctors and patients to promote agency services, Robinson says. After attending association meetings, some patients have asked whether Robinson can get in touch with their physicians to let them know about Mission Home Health.

Align with the right association

When choosing an association to partner with, Robinson recommends that agencies:

- **Determine the strengths of the agency's clinicians.** For example, you could connect with the American Lung Association if your agency specializes in respiratory therapy and has a team of respiratory therapists on staff. Or, set up a meeting with the American Heart Association if your agency treats a lot of cardiac patients.
- **Choose one area of expertise to focus on.** Even if your agency specializes in many things, try to narrow your scope. The last thing you want to do is spread yourself too thin.
- **Contact the local chapter of your association** and set up a meeting to talk to the person in charge of support groups. Support group leaders often know what is best for their members, and guide them in their decision-making processes. Mission Home Health representatives reach out to the directors of the associations as well, so the directors are familiar with the agency.

Two more ways to boost referrals

In addition to partnering with associations, agencies can grow referrals when they:

- **Take a health care expert to independent and senior living centers.** When Director of Marketing Richard Griess visits independent and senior living centers once a month, he's usually accompanied by one of the agency's experts on senior safety or urinary tract infections, for instance.

The idea is that seniors will become comfortable with the expert and often will call his agency, Rehabilitation and Visiting Nurse Association of Greeley, Colo., after the presentation, Griess says.

Griess visits the same four centers each month, and says there's usually a 50% chance that he'll get a call from one resident after a presentation.

And while the goal is to gain referrals, that method provides much more, he says.

"As a non-profit, we're limited in our advertising budget," he says. "So you go in and meet with the nurses and doctors face to face and build relationships. It makes them more comfortable, knowing you as a person and not just an agency."

Caution: To avoid violating anti-kickback rules, agencies should charge the senior living center a nominal fee, such as \$50, when offering educational services, advises home health attorney Elizabeth Pearson of Pearson and Bernard in Covington, Ky.

- **Host a pig roast for the entire medical community.** For Enid, Okla.-based Integris Bass Home Health, reaching out to nontraditional referral sources means hosting a pig roast and inviting the town's whole medical community. More than 500 doctors, ambulance drivers, nursing home directors and others usually show up for the 600 pounds of barbecued pork. The event, which costs the agency about \$700, provides the opportunity to not only thank the community for their business but also to gain a customer or two, says Sunna Hoover, the agency's director of home care.

It's hard to put a number on the referrals the agency gets because of the event, but whether it's one or 100, it's worth it, Hoover says.

"We always notice a kick in referrals around the summer, after the pig roast," she says. "I think after the event we just come to people's minds."

As with offering educational services to a senior living center, agencies should be careful when hosting a free event for referral sources, Pearson warns. To avoid violating anti-kickback laws, agencies should charge a nominal fee for referral sources to attend the pig roast, she says. — Bradford Pearson (bpearson@decisionhealth.com)

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Conn. attorney general's HIPAA suit

(continued from page 1)

The Connecticut case could pave the way for other states to file similar lawsuits against providers, including home health agencies, for violations of HIPAA (Health Insurance Portability and Accountability Act), says home health attorney Robert Markette of Gilliland & Markette in Indianapolis. "Once that first attorney general has some success, the other [attorneys general] are going to [follow]," he says.

States' attorneys general offices likely have more staff to investigate cases than the Health and Human Services Department's Office of Civil Rights, which enforces HIPAA on a federal level, Markette says.

For home health, one possible violation that could get more attention: the lack of a formal HIPAA training program, Parmigiani says. Agencies could be vulnerable to HIPAA violations if they don't have documentation that staff members were trained on the agency's HIPAA policies and procedures.

Conn. AG: Health Net delayed notifications

In the Connecticut case, the disk drive that disappeared from the Health Net office had social security numbers and bank account numbers for the 446,000 past and present enrollees, the attorney general alleges. That included "27.7 million scanned pages of over 120 different types of documents, including insurance claim forms, membership forms, appeals and grievances,

correspondence and medical records," the attorney general alleges. The information was not encrypted "but rather was viewable through the use of commonly available software."

Health Net took six months from the May 2009 breach to post a notice on its Web site and start sending notices to its consumers, the attorney general states.

Health Net has not received reports of misused data, according to a notice about the breach on its Web site. The company also will provide two years of free credit monitoring and assistance for those affected by identity theft or health care fraud.

Tips to protect patient information

The HITECH law means agencies now could face more HIPAA enforcement, and one of the most vulnerable areas for home health agencies still exists – unencrypted laptops, point-of-care devices and other sources of patient data that clinicians take into the field. For example, one Oregon agency had to pay a \$100,000 fine, along with the costs of guarding against future privacy mistakes, after disks containing data for 365,000 patients were stolen from an employee's car (*HHL 8/11/08*).

Consider these tips from Markette to protect your agency and its patients' information:

- **Remind staff not to share information with the patient's friends and neighbors.** Though your patient's neighbor might ask how the patient is doing out of concern, it could be a HIPAA violation for clinicians to

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Tool: Patient competency quiz for disease management

Willcare uses this tool to test patients' knowledge of how to manage their illnesses before and after patients are taught by transition coaches. Transition coaches read the questions to patients and listen for answers to understand where patients need the most instruction. Then after teaching, the coaches administer the test again to determine whether more instruction is needed, says Lisa Leber, nurse supervisor for the Jamestown, N.Y., office of Willcare. (See related story, p. 3.)

Patient name: _____ **Visit date:** _____

Diagnosis: CHF COPD

Pre-visit

Can patient verbalize disease process? Yes No

Can patient verbalize two signs and symptoms of disease process? Yes No

Can patient identify medications related to disease process? Yes No

Can patient verbalize two signs and symptoms to notify the health care provider of? Yes No

Post-visit

Can patient verbalize disease process? Yes No

Can patient verbalize two signs and symptoms of disease process? Yes No

Can patient identify medications related to disease process? Yes No

Can patient verbalize two signs and symptoms to notify the health care provider of? Yes No

Plan:

Source: Willcare

share that information. Clinicians should be clear about who they want information released to. Even staff at an assisted living facility might not be authorized to know a resident patient's personal information (*HHL 9/21/09*).

- **Reinforce the importance of clinicians taking laptops and point-of-care devices out of cars.**

Laptops and point-of-care devices without encryption continue to be one of the largest potential HIPAA vulnerabilities for home health agencies because of the information they contain in the field. Leaving that equipment in cars overnight or even while running errands is risky because of the potential for theft, but the problem "just keeps coming up," Markette notes.

- **Use the new law as an opportunity to train, or retrain, clinicians about your agency's HIPAA policies and procedures.** Remind clinicians what the statute is and what your agency's policies and procedures are for protecting patient information.

- **Instruct clinicians to hide their laptop screens from others in public.** Clinicians who stop in public places between visits to look at patient files, upload data and check email should make sure no one can read over their shoulders. Try sitting with your back to a wall. – *Karen Long (klong@decisionhealth.com)*

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