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HOLDING PAYERS ACCOUNTABLE FOR THE IMPROPER HANDLING OF PATIENT HEALTH INFORMATION

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Are you holding payers accountable for the receipt and mismanagement of claims as well as their handling of supporting documentation? Have you had to resubmit documentation several times due to insurance companies' failure to locate the information initially submitted? Lost documentation is a tactic many payers use to avoid promptly processing claims and appeals. These strategies, whether to delay payment or as just sloppy mail room practice, can become frustrating; however, there are consequences for mishandling personal health information (PHI), and providers should start holding payers accountable.

HIPAA REQUIRES PAYERS SAFEGUARD PHI

The Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rule is a series of national regulations concerned with safeguarding patients' PHI and medical records from unauthorized access. The rule applies to health plans, healthcare clearinghouses, and healthcare providers that make certain electronic healthcare transactions. These groups are required to have appropriate limitations and conditions on the use and disclosure of PHI.

The Department of Health and Human Services' Office for Civil Rights (OCR) may impose a penalty on a covered entity for failure to comply with a requirement of the Privacy Rule. Penalties will vary significantly depending on factors such as the date of the violation, whether the covered entity knew or should have known of the failure to comply, or whether the covered entity's failure to comply was due to willful neglect. For violations occurring prior to February 18, 2009, the penalty amount is up to $100 per violation with a $25,000 calendar year cap. For violations occurring on or after February 2, 2018, the penalty amount is $100 to $50,000 or more per violation with a $1,500,00 calendar year cap.

According to the OCR website, a multitude of cases have been reported in which insurance companies were held liable for the breach of HIPAA protected information. These four examples highlight why it is important for payers to ensure proper handling of PHI:

- In 2017, MAPFRE Life Insurance Company agreed to a $2,200,000 settlement with OCR regarding the impermissible disclosure of the electronic protected health information of 2,209 patients in 2011. On September 29, 2011, a portable USB storage device (pen drive) was left overnight in the IT Department from where it was stolen.
- In 2015, Triple S Management Corporation agreed to settle HIPAA violations with OCR in the amount of $3.5 million, after repeatedly failing to put safeguards in place for its beneficiaries' PHI.
- In 2014, Concentra Health Services and QCA Health Plan, paid a combined $2 million to resolve HIPAA violation investigations that stemmed from the theft of unencrypted laptops containing patient information.
- In 2013, WellPoint reached a $1.7 million settlement. OCR launched an investigation into the health plan after a data breach exposed the protected health information of more than 612,000 individuals in a database. The investigation found WellPoint did not adequately implement policies or safeguards to protect such information.

PAYER ACCOUNTABILITY

Providers should be proactive in their management of PHI and the way supporting documentation is handled. Best practice standards are not difficult but do require providers to document and actively manage the claims process, for example:

1. Utilize tracking numbers or signed delivery receipts
2. Always follow up to verify receipt of information
3. Keep record of all call reference numbers
4. Utilize fax receipts
5. Keep a record of payers that continuously lose documentation and report to the appropriate government agency, or at a minimum, use for future contract negotiation
6. Utilize EDI transaction documentation

It is true that improper handling of patient claims information has some legal consequences and the legal route may be the best method of changing flagrant behavior. Providers have a choice: enforce contractual and regulatory claim processing standards or settle for slow claims processing and reduced reimbursement.