

Chapter 3

# Protected Health Information

## What You Will Learn in This Chapter

This chapter focuses on the identification of *protected health information* (“PHI”) as defined by HIPAA.

- What is protected health information (“PHI”)
  - What are the HIPAA “identifiers” that can be used to identify an individual
  - What kinds of educational and employment records are not PHI
  - What is the difference between protected health information (“PHI”) and electronic protected health information (“ePHI”)
  - How protected health information can be “de-identified” and “re-identified”
- 

## Key Terms

The following terms are key to understanding the content of this chapter.

You will find meanings of each term in the Definitions of Key Terms in Appendix 1-1 and 1-2.

*Identifier*

*De-identification*

*Electronic Protected Health Information*

*Individually Identifiable Health Information*

*Protected Health Information*

*Re-identification*

## Chapter 3

# Protected Health Information

HIPAA protects a category of information called “protected health information” (“PHI”), whether the information is electronic, hard copy (such as paper, photographs and film), or spoken.

The definition of PHI is complex — we’ll discuss some of the intricacies in this chapter. However, on a day-to-day basis, it is not usually necessary to analyze whether a given piece of information meets the definition of PHI. In general, a dental practice may find it prudent to apply the practice’s HIPAA safeguards to all patient information whether or not the dental practice has determined that the information meets the HIPAA definition of “protected health information” (“PHI”).

However, in some cases it is necessary to determine whether specific items of patient information meet the HIPAA definition of PHI. For example, if a dental practice discovers a suspected breach of unsecured patient information, notification is not necessary if the information does not meet the definition of PHI. As another example, if a patient asks for an accounting of disclosures, the dental practice is not required to include disclosures of information that does not meet the definition of PHI.

In general, PHI is likely to include information in patients’ dental records and billing records, photographs of patients’ faces, radiographs, and other information in a dental practice that identifies, or could be used to identify, a patient and that pertains to the patient’s physical or mental health, treatment, and payment for health care. PHI includes demographic information, such as patients’ names and addresses, genders, etc. As a result of the 2013 Final Rule, PHI includes genetic information, but does not include information about a patient who has been deceased for 50 years or more. There are certain exceptions to the definition of PHI, such as employment records kept by the dental practice in its role as an employer.

A dental practice can use the information in this chapter as a tool to help determine generally what information is protected by HIPAA and whether or not a specific piece of information meets the definition of PHI.

## What is Individually Identifiable Health Information?

To understand protected health information, you first must understand the term *individually identifiable health information*. Individually identifiable health information generally means information about an individual's health that identifies (or can be used to identify) the individual.

**Individually identifiable health information** is “information that is a subset of health information, including demographic information collected from an individual, and

- (i) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (ii) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
- (iii) That identifies the individual; or
- (iv) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.”<sup>1</sup>

## What is Protected Health Information (or “PHI”)?

HIPAA Privacy and Breach Notification apply to protected health information, or “PHI,” which is generally defined as individually identifiable health information in oral, hard copy (paper or other physical items such as films), or electronic form. HIPAA Security applies to protected health information in electronic form, or “ePHI.”

**Protected health information** means individually identifiable health information:

- (1) Except as provided in paragraph (2) of this definition, that is:
  - (i) Transmitted by electronic media;
  - (ii) Maintained in electronic media; or
  - (iii) Transmitted or maintained in any other form or medium.<sup>2</sup>
- (2) Protected health information excludes individually identifiable health information:
  - (i) In education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;
  - (ii) In records described at 20 U.S.C. 1232g(a)(4)(B)(iv)[Family Educational and Privacy Rights];
  - (iii) In employment records held by a covered entity in its role as employer; and
  - (iv) Regarding a person who has been deceased for more than 50 years.

<sup>1</sup> 45 CFR 160.103.

<sup>2</sup> 45 CFR 160.103.

**Electronic protected health information** is protected health information that is transmitted by, or maintained in, by electronic media.

When does information **“identify the individual”**? Information identifies an individual if it contains even a single item on HIPAA’s list of 18 “identifiers”<sup>3</sup> with respect to an individual or an individual’s relative, employer, or household member, or if the dental practice has actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information. The list of eighteen identifiers includes the following information for the individual and his or her relatives, employers, or household members:

- Names, including initials
- Any geographic subdivision smaller than a state (including address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code<sup>4</sup>)
- All elements of dates directly related to an individual (including a birth date, treatment date, etc.) except year, all ages over 89, and all dates, including year, that indicate ages over 89
- Telephone numbers
- Fax numbers
- Email addresses
- Social security numbers
- Medical or dental record numbers
- Health plan beneficiary numbers
- Account numbers
- Certificate/license numbers
- Vehicle identifiers and serial numbers, including license plate numbers
- Device identifiers and serial numbers
- Web Universal Resource Locators (URLs)
- Internet Protocol (IP) address numbers
- Biometric identifiers such as finger and voice prints
- Full face photographic and any comparable images
- Any other unique identifying number, characteristic, or code, unless:
  - o The code, etc., is not derived from or related to information about the individual and cannot be translated to identify the individual, and
  - o The dental practice does not use or disclose the code, etc. for any other purpose, and does not disclose the mechanism for re-identification.

**De-identification “codes.”** If you “de-identify” PHI by removing **all** of the identifiers, the information is no longer PHI. Note that if you de-identify PHI by removing all of the identifiers and you develop a code (or other mechanism) that allows you to re-identify the information, the information will not be considered de-identified if: (1) the code or mechanism is derived from or related to information about the individual, (2) the code or mechanism can be translated so as to identify the individual, or (3) you use or disclose the code or mechanism for re-identification or any other purpose.

<sup>3</sup> More information about identifiers and de-identification can be found at the end of this Chapter, in Chapter 2 Step 21, and in the HIPAA regulations at 45 CFR 164.514.

<sup>4</sup> The geographic unit formed by combining all zip codes with the same three digits must contain more than 20,000 people; otherwise, the three digit code must be changed to “000.”

Examples of PHI include:

- Patient charts
- Radiographs
- Patient billing records
- Communications about an individual's health condition, health care, or payment for health care, in any form (oral, hard copy, or electronic, etc.) and from any source
- Health history forms
- Patient contact information (names, addresses, telephone numbers, e-mail addresses, etc.)
- Patient identification numbers (account numbers, health plan numbers, social security numbers, driver's license numbers, license plate numbers, etc.)
- Photographs (full face photographs or other photos that could be used to identify an individual)

Examples of ePHI include:

- Electronic health records
- E-mails containing PHI
- PHI stored on stationary or mobile electronic media such as a CD, DVD, flash drive, laptop, or PDA

**ADA<sup>®</sup>**  
**TIP**

All workforce members in the dental practice should apply HIPAA safeguards to all protected health information. They should also know how to identify PHI and should understand the HIPAA PHI identifiers.

The following decision tree can help determine whether information is PHI.



