

## Maintaining Compliance When Communicating With Consumers via E-mail

By Kristie Danielson, Paralegal

Electronic communications have become a standard way of conducting business in the health care industry. Providers often use web-based programs to record appointments, store health care records and submit claims for payment. Consumers are also becoming increasingly comfortable e-mailing their physician's office to schedule appointments, discuss laboratory results or request medication refills. As electronic communication becomes commonplace, providers and their collection agency partners must be aware of the risks and benefits of engaging in such communication with consumers.

The benefits of using electronic or e-mail communications with consumers are indisputable. Utilizing electronic communications greatly reduces letter printing and postage costs. Additionally, the speed of electronic communication surpasses that of traditional mail. E-mail can help collection agency partners provide timely post-dated check notices or receipts of payment.

Although electronic communication has many benefits, using e-mail undoubtedly poses concerns about the privacy and security of a consumer's information. E-mail is often electronically stored at several locations, and is considered relatively unsecure. Computer hackers can often gain access to e-mails, employers often monitor e-mail usage and some consumers share e-mail accounts with multiple parties.

Due to the risks associated with e-mail, it is vital providers and collection partners evaluate the applicable laws and assess the risks of communicating with consumers electronically before engaging in the practice.

### HIPAA

Health care providers and collectors must ensure e-mail communications are compliant with the Health Insurance Portability and Accountability Act (HIPAA) when transmitting protected health information (PHI).

HIPAA's Privacy Rule does not prohibit health care providers or collectors from communicating with patients via e-mail, provided they apply reasonable safeguards when doing so. The U.S. Department of Health and Human Services (HHS) suggests reasonable procedures may include checking the e-mail address for accuracy before sending, or sending an e-mail alert to the patient for address confirmation prior to sending the message.

HIPAA's Security Rule also allows for electronic PHI to be sent via e-mail as long as the information is adequately protected.



The Security Rule does not strictly require the encryption of e-mail communications. Rather, an entity must undertake a risk analysis to determine if encryption is a reasonable and appropriate security measure to apply within its security framework. If the entity determines encryption of e-mail is a reasonable safeguard, then e-mails should be encrypted. If the entity determines encryption is not practical, however, the entity should execute alternative measures.

HHS suggests some alternatives to encryption may be limiting the amount or type of information disclosed through the unencrypted e-mail. One approach is to ensure the body of the e-mail does not contain any PHI or reference the alleged debt. Rather, information related to the consumer's obligation should be included

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## Health Reform Requires Insurers to Use Plain Language in Describing Health Plan Benefits, Coverage

People in the market for health insurance will soon have clear, understandable and straightforward information on what health plans will cover, what limitations or conditions will apply and what they will pay for services, according to regulations issued by the U.S. Department of Health and Human Services (HHS), Labor and Treasury on Feb. 9, 2012.

Under the new rule, health insurers must provide consumers with clear,

consistent and comparable summary information about their health plan, benefits and coverage. These rules will ensure consumers have access to two key documents that will help them understand and evaluate their health insurance choices:

- A short, easy-to-understand summary of benefits and coverage (SBC), and
- A uniform glossary of terms commonly used in health insurance

coverage, such as “deductible” and “co-payment.”

All health plans and insurers will provide an SBC to shoppers and enrollees at important points in the enrollment process, such as upon application and at renewal. The final rules aim to ensure strong consumer information while minimizing paperwork and cost.

View the complete HHS press release at <http://www.hhs.gov/news/press/2012pres/02/20120209a.html>.

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## Survey Finds Profound Income Divide in Health Insurance and Access to Health Care

According to a Commonwealth Fund survey released Feb. 7, 2012, adults in low- and moderate-income families are more likely to be uninsured, to lack a regular source of health care and to struggle to get the health care they need compared to those in higher-income families. The survey found that 57 percent of people in low-income families – those earning less than \$29,726 for a family of four – were uninsured for some time in the past year, and 35 percent had been uninsured for two years or more. More than one-third (36 percent) of adults in moderate-income families – those earning between \$29,726 and \$55,875 for a family of four – were uninsured during the year, and 18 percent had been uninsured for two years or more.

In contrast, only 12 percent of adults in families with incomes at or above \$89,400 for a family of four were uninsured during the year, and only three percent were uninsured for two years or more.

The survey found that the lack of health insurance coverage, as well as

income, had a significant effect on access to care, such as receipt of recommended preventive screenings. Just 10 percent of low-income uninsured adults age 50 and over had received the recommended screening for colon cancer, compared with 50 percent of those in the same income range who had health insurance, and 56 percent of higher-income adults. Only about one-third (32 percent) of low-income uninsured women ages 40 to 64 had received a mammogram, compared with two-thirds (66 percent) of low-income women with health insurance, and three-fourths (74 percent) of higher-income women.

An individual having health insurance also meant the difference between having a regular source of care and not having one. Low- and moderate-

income adults in the survey who were without health insurance were less likely to report that they had a regular doctor or place to go for their health care needs than low- and moderate-income insured adults.

According to the report, while adults are often uninsured in low- and moderate-income families, programs such as Medicaid and the Children's Health

Insurance Program (CHIP) step in to fill a crucial gap by insuring children in 63 percent of low-income families and 38 percent of moderate-

income families. However,

31 percent of low-income families and 20 percent of moderate-income families still reported some or all of their children were uninsured, compared to only 12 percent of higher-income families.

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in an attachment – preferably a PDF – that is accessible via password. Using an e-mail portal is another option. This method uses a link to direct consumers to a secure server where they must sign in with a previously assigned username and password.

Note that patients have the right under the Privacy Rule to request a provider communicate with them by alternative means or at alternative locations, if reasonable. Thus, if the use of unencrypted e-mail is unacceptable to a patient who requests confidential communications, other means of communicating with the patient, such as by more secure electronic methods, or by mail or telephone, should be offered and accommodated.

**FDCPA**

In addition to HIPAA considerations, health care collectors must also ensure their e-mail communications comply with the Fair Debt Collection Practices Act (FDCPA). The FDCPA does not specifically address the use of e-mail

in communications with consumers; however, debt collectors could face liability under the Act if the existence of a debt is disclosed to a third party through e-mail. In addition, time constraints, the location of the consumer and state special text requirements all apply to the collector's use of e-mail.

The risk of violating the FDCPA for an inadvertent third-party disclosure may be absolved if a consumer consents to receiving communications via e-mail. A consumer's consent should be properly documented and stored.

Along with the consent, the consumer should be provided with a statement informing the consumer of (1) his or her right to withdraw consent along with the consequences of withdrawal; (2) whether the consent will be a one-time consent, or continuing consent that applies to certain categories of records throughout the course of the party's relationship; (3) procedures to withdraw consent; (4) how to update his or her electronic contact information; and (5) the hardware and software requirements to be able to

access the electronic records sent to the consumer.

Consent agreements outlined in a provider's service contract may be able to be transferred to a collection agency partner; however, these agreements should be discussed and reviewed by any attorney to ensure compliance and transferability.

Due to the risks associated with engaging in e-mail communications, prior to contacting a consumer via e-mail, policies and procedures should be adopted to ensure the use of e-mail is proper and authorized. Regardless of the encryption or security method used, the system should be tested to ensure e-mails are being received and security protocols are operating properly. Providers should also incorporate policies and procedures for electronic communications into their business associate agreements with vendor partners.

## ICD-10 Compliance Date Delayed

**O**n Feb. 16, 2012, the U.S. Department of Health and Human Services (HHS) announced it will initiate a process to postpone the date by which certain health care entities have to comply with International Classification of Diseases, 10th Edition diagnosis and procedure codes (ICD-10).

The final rule adopting ICD-10 as a standard was published in January 2009 and set a compliance date of Oct. 1, 2013 – a delay of two years from the

compliance date initially specified in the 2008 proposed rule. At the time of publication, a new compliance date had not been announced.

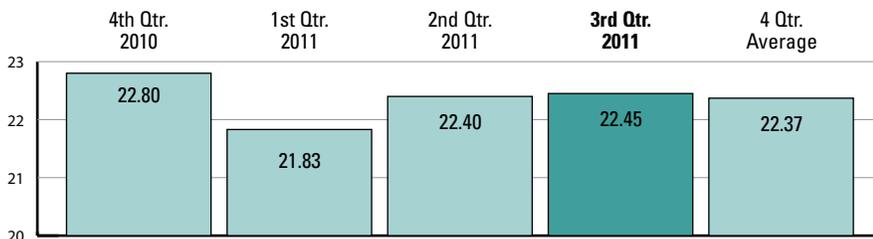




# DATA WATCH

## Percentage of Discharge A/R Over 90 Days

U.S. hospitals held the line on the percentage of accounts receivable (A/R) aged greater than 90 days in third quarter 2011, retaining benchmark level performance with only a slight increase in aged A/R. U.S. hospitals reported 22.45 percent of third quarter A/R was aged greater than 90 days, up from 22.40 percent in second quarter 2011. The benchmark for this major financial indicator is to hold A/R aged greater than 90 days to 25 percent or less of total A/R.



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