Health Care in 2014

Follow the Rules... “I Love the USA”

- State Employment Commission
- State Commission on Human Rights
- State Workers Compensation Act
- State Communicable Disease Prevention and Control Act
- Equal Employment Opportunity Commission
- Americans with Disabilities Act

- Department of Labor
- Wage and Hours Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Center for Disease Control
- Federal Privacy Act
- Immigration Reform and Control Act
- Occupational Safety and Health Administration

The HIPPA Act of 1996

- Result of law is to establish national standards for electronic health care transactions
- Result of law is to establish national identifiers for covered entities
  - Health plans
  - Health care clearinghouses
  - Health care providers who transmit any health information in electronic form in connection with a transaction defined in the law

Optometric Responsibilities

- Patient care
- Staff-related issues
  - Hiring
  - Management
  - Retention
- Operations
- Administrative duties
- Follow the rules

Staff Responsibilities

- Set clear expectations
- Be consistent
- Be honest
- Be smart
- Follow the rules
Set Clear Expectations

- Let your optometrist know that you expect certain things to happen during the course of a day and during your period of employment
  - You expect that the stresses of day-to-day clinical care and practice ownership will not spill over into negative or emotional interactions with you
  - If patients are rude, obnoxious or stupid, it's not your fault and that as the doctor, you are best qualified to deal with bad patient behavior
  - Directing patient-induced nonsense to me is not appreciated and only delays the proper response

Be Consistent

- Let your optometrist see the same positive behaviors repeatedly
- Erratic and inconsistent staff behavior drives an optometrist crazy
- Make it clear that you are human and may occasionally make mistakes

Be Honest

- If you have something on your mind that could help the practice – don’t hold back
- Don’t be nice
- Remember, being in a dark room for several hours during the day may negatively affect your optometrist’s judgment (sometimes)
- If you feel your optometrist can’t take constructive criticism and it’s bothering you, let him or her know it
- If you are really unhappy – find a different boss

Be Smart

- Tell your optometrist that you expect them to stay up-to-date with clinical care
- Tell them that it is embarrassing to hear for you to hear about a new product or technology from a patient instead of them
- Tell them you would appreciate it if they could help out when needed (e.g., learning the day-to-day functions required to make the office go)
- Remind them that staff management is a two-way street

And the Answer Is…

"Is there a plan for any discussion about risk assessment for HIPAA compliance with electronic records? It is all over the journals lately and sounds like a lot of work… Would love to know if anyone has gone through it.

Apparently there will be audits and fines in 2014 if we don’t have it."

HIPPA Demonstration Audit Project

- Authorized by Section 13411 of the HITECH Act
- Office of Civil Rights realized there was no real enforcement of HIPPA violations prior to 2012
- Project demonstrated a 17% compliance rate with Privacy and Security Rules
- HIPPA documentation requirements
  - Privacy Manual
  - Security Manual
  - Notice of Privacy Practices
  - Acknowledgement of Notice of Privacy Practices
  - Evidence of staff training and re-training
Who’s In Charge?

- A 44-year-old woman presents for an eye examination
- When called from the reception area, the patient and a man come forward together to begin the examination process
- The staff member obtains the initial patient history and performs some of the other service components of the eye examination
- Patient is placed in the exam room to await the arrival of the optometrist

Optometrist enters the room and greets the two people
- He/she continues the examination process by reviewing the initial patient history
- STOP – STOP – STOP
- You are breaking the law
- Someone has to do it – ask permission

HIPPA Violations in Texas

- All investigations were complaint-based
  - Case 1: No staff training - $20,000 penalty fine
  - Case 2: No fine for alleged violations, but $20,000 in legal fees
  - Case 3: Employee violated HIPPA law, but optometrist produced evidence of staff training and was exonerated
  - Case 4: Disgruntled employee contacted Office of Civil Rights, investigation ended when doctor produced HIPAA Manual
- Optometrist in North Carolina
  - Willful negligence - $250,000 penalty fine

“Hey Big Boy… Want a Date?”

- Five ways you are most likely to have a date with the HIPAA Police
  - Unhappy patient
  - Litigious patient who is up on world events
  - Concerned patient that reads too much
  - Unhappy current or former employee
  - Random audits (coming soon to an office near you!)
- If you want your date to have a “happy ending”, I suggest you take HIPAA compliance seriously

HIPAA Compliance – Privacy

- Designate a Privacy Officer and a Public Information Officer
- Develop policies and procedures on how medical records are handled in the office and transmitted by any means (Privacy Manual)
- Meet all documentation guidelines
- Provide initial, updated, documented training to all employees
- Establish systems to handle any break in privacy and establish sanctions for staff members who violate policy
- Educate your patients

HIPAA-Related Patient Education

- You must formulate a written Privacy Manual and a Notice of Privacy Practices (NPP)
- The NPP must be posted in the office in a visible and accessible location and you must have copies available to any patient who requests one
- The doctor must attempt to get verification that the patient understands the office policies – this is called an Acknowledgement of Notice of Privacy Practices (ANPP)
- The ANPP must inform the patient of their right to view your NPP
HIPAA Compliance – Security

- Appoint a Security Officer
- Conduct a risk analysis to determine threats or risks in your operational systems
- Complete the Organizational Requirements
  - Administrative Safeguards
  - Physical Safeguards
  - Technical Safeguards
- Documented policies and procedures for all applicable Security Standards
  - Security Manual

“Who Ya Gonna Call?”

- New definition of a HIPAA breach
  - To not be a breach, the entity must “demonstrate there is low probability of any compromise to the personal health information or harm to the individual through the breach”
- I am not an attorney and do not offer legal advice
- Do not call me unless it’s an invitation to the next Texas Optometric Association Convention
- If a breach occurs, contact Jeff Drummond at jdrummond@jw.com

HIPAA – “New and Improved”

- Omnibus Rule 2013 (effective date: 9-23-2013)
  - Breaches
  - Business Associates
  - Requests for medical records
  - Restricted disclosure to health plans
  - Marketing communications exceptions
  - Establish violation penalty “tiers”
  - Other minor issues
- Described by the head of Office of Civil Rights as “the most sweeping changes to the HIPAA Privacy and Security Rules since they were first implemented”

Business Associates

- Business Associates now include any entity “sub-contracted” by the main Business Associate but compliance of the sub-contractor is the responsibility of the main Business Associate
- Entities are not liable for the actions of a Business Associate as long as they are an independent contractor
- Business Associates defined to include health information organizations (e.g., prescribing gateways and health information organizations)

Marketing Communications

- New law restricts a doctor from providing marketing communications to patients when it involves a third party product
- To provide this communication, the doctor must have a signed authorization from the patient and the communication must have an “opt-out” clause
- There are five exceptions...

HIPAA Marketing Exceptions

- When the optometrist receives no compensation of any kind for the communication
- The promotion provides general health information without mention of a specific third party product
- The communication involves government or government sponsored programs
- The communication is face-to-face
- The communication involves a drug or contact lens the patient is currently being prescribed and any payment for the communication is limited to only the actual costs of the communication
HIPAA Violation Penalty “Tiers”

- Low Tier – the optometrist did not and reasonably could not know of the Privacy and Security Rules
- Intermediate Tier – the optometrist “knew or by exercising reasonable diligence would have known” of their violation but their action was not willful
- Highest Tier – the optometrist acted “with willful neglect”
- New law gives the government the authority to report your violation to any other government agency that may be authorized to take action against you (e.g., IRS, etc…)

“Oprah – What Should I Do?”

- Go back to your Privacy Manual and your Notice of Privacy Practices (NPP) and make necessary changes to bring the documents in compliance with these new HIPAA regulations
- Make sure your Business Associates Agreement includes the statement that it is the Business Associates responsibility to impose your privacy requirements on any sub-contractor the Business Associate uses

“What Should I Do?”

- Go to www.optometricbusinesssolutions.com and get a HIPAA Compliance Manual for only $320 with your ALLDocs discount – put in the discount code “LENS”
- The OBS HIPAA Manual includes the following
  - Privacy Manual
  - Security Manual
  - Notice of Privacy Practice customized for optometry
  - Every form you will ever need
  - A 200 slide doctor training power point
  - A customizable staff training power point

What Federal Law Requires

- Americans With Disabilities Act – applies to employers with 15 or more employees
- Cannot discriminate against any protected employee who meets the knowledge, experience, skill and education necessary to perform the job with or without reasonable accommodations
- Protected employees include a physical or mental impairment that limits one of life’s major functions; has a record of impairment; is perceived as having an impairment; has an association or known relationship with a disabled person

Discrimination

- You cannot discriminate based on race, color, creed, sex, national origin, disability status or history, military service status or history – but in reality it is dangerous to discriminate on the bases of ANYTHING
- Discrimination applies to hiring, promotion, compensation, benefits, days off, training, approved education, or social activities
The issue of employee harassment is possibly the most dangerous human resource issue with absolutely the most damaging financial penalties and effects on an employer’s reputation.

There are two forms of employee harassment:
- "quid pro quo" (this for that)
  - Usually sexual harassment
- Hostile work environment
  - Usually not sexual

Sexual Harassment
- Defined as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature
- Quid pro quo sexual harassment
  - Submission to such conduct is, explicitly or implicitly, made a term or condition of employment
  - Submission to or rejection of such conduct by an individual is used as a basis for any aspect of their employment (raises, benefits, advances, etc.)

Sexual Harassment
- The conduct must be “unwelcome”
- The employee must not have solicited or initiated the conduct
- The employee regarded the conduct as offensive or undesirable
- To a disgruntled employee – all of the above will be stated as the truth

Hostile Work Environment
- Sexual conduct and other verbal or physical conduct constitutes a hostile work environment when such conduct has the effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment
- Caution: This definition is VERY loosely interpreted in a court of law

Other Harassment Issues
- The “victim” may be a woman or a man
- The “victim” may be the employee or the boss, although the latter is rare and hard to prove
- The “victim” does not have to be of the opposite sex
- The “victim” does not even have to be the person harassed, but can be anyone who says they are affected by the offensive behavior
- No “warning” from the employee is required

Infectious Disease / Substance Abuse
- Infectious Disease Control
  - You are legally required to protect your employees
  - CDC and OSHA require you to maintain a Hazard Manual documenting your safety procedures
- Substance Abuse
  - You may require drug or alcohol testing for any prospective or current employee
  - You are not required to provide any treatment or rehabilitative benefits
No Federal Law Against...

- Requiring employees to wear uniforms or special types of clothing
- Requiring employees to work with patients that have HIV
- Asking an employee who claims they suffered an injury on the job to be examined by the doctor of your choice, but ultimately it is the employee’s choice who they see
- Not hiring a person with a criminal conviction if their job involves handling money

Job Classifications

- Exempt employee is salaried
- Non-exempt employee is hourly

This is one of the most misunderstood concepts in human resources and one that can be most damaging to your savings account.

Fair Labor Standards Act

- Defines the classifications of exempt and non-exempt
- Does not apply to “learned professionals” like optometric employees
- Exempt employees are paid for “doing a job”
- Non-exempt employees are paid for “doing an hours work”
- For the most part, it’s all about what happens when the work week exceeds 40 hours time spent on the job

Exempt vs. Non-Exempt

- Is this really an issue?
- YOU BET – not getting this right can cost you massive amounts of money
- Generally, it is unusual for staff members in an optometrist’s office to qualify as exempt
- To qualify as exempt, you have to pass a three criteria test – all of them
  - Salary Level Test
  - Salary Basis Test
  - Duties Test

Importance of Job Classification

- If you salary an employee who should be hourly, YEARS LATER that employee can state they should have been hourly and state they worked any amount of overtime they can dream up
- Unless you can prove they DID NOT work those hours, you will pay fines, penalties, and the entire amount of back pay the employee claims you owe them (remember, at time and a half)

This is a guilty until proven innocent situation!!