Incidental Disclosures

Question:
My co-workers say incidental disclosures of protected health information (PHI) are allowed under HIPAA if reasonable safeguards are used to prevent a patient privacy violation, but I don't know what that means.

Answer:
HIPAA Privacy Rules are not intended to prohibit the treatment team from talking to each other and/or to their patients. Of course, others outside the treatment team may be in the general area during these discussions and may overhear information that they do not need to know. While reasonable precautions should be used to avoid sharing patient information with those not involved in the patient's care, it is possible that minor amounts of patient information may be disclosed to people near where patient care is delivered or being coordinated. This is referred to as an incidental disclosure.

Privacy principles do not prohibit an incidental disclosure of patient information so long as reasonable safeguards are taken to minimize the disclosure. What is reasonable depends on the situation.

For example, in an emergency the need to provide quality care may necessitate loud communications. On the other hand, in a non-emergent situation, discussing a patient's condition in front of other patients, visitors, or family members in a hallway is not appropriate.

Reasonable safeguards include:
- Avoiding conversations about one patient in front of other patients or their visitors/families.
- Lowering voices when discussing patient information in person and/or over the phone.
- Avoiding conversations about patients in public places, such as elevators, public hallways, or the cafeteria.

Conversations discussing PHI should be conducted in a private area or room, especially when discussions involve highly confidential information (i.e. Mental Illness or Developmental Disability, HIV/AIDS Testing or Treatment, Communicable Diseases, Venereal Disease(s), Substance (i.e. alcohol, drugs) Abuse, Abuse of an Adult with a Disability, Sexual Assault, Child Abuse and Neglect).

Examples:
The following illustrate how reasonable safeguards are used to minimize the chance of disclosing patient information to others who may be nearby:
1. Nurses or other health care professionals may discuss a patient's condition over the phone, or face to face with the patient, a provider, or a family member who is authorized to receive the information, but should speak quietly or do so in a private area to avoid others from overhearing the conversation.
2. A healthcare provider may discuss a patient's condition or treatment regimen in the patient's room, but he/she should ask the visitors/family to step out, or ask the patient if it is okay to discuss their information in front of visitors/family.
3. A health care professional may discuss test results with a patient or other provider in a joint treatment area, but should speak quietly.
4. Healthcare professionals may discuss a patient's condition during training rounds, but should speak quietly and avoid having conversations in public areas where patients and families are present.

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