

Q.

1. Do we have to track and list on the patient accounting of disclosures all PHI that is sent to our BA if it is to (1) a clearinghouse for claims and billing statements and (2) a collection agency for past due accounts? I received a mailing regarding software that will track all PHI sent out that stressed "especially for BA PHI". It says " the tracking mechanism must have the capacity to retain data for 6 years starting with the 4-14-03 and it must include PHI to or by a business associate. We have very few business associates, and the only ones that receive PHI from us are: clearinghouse, answering service, hearing aid dealer, lawyer, medical record & billing software vendor, collection agency, computer technical support. The only destination for the PHI is to the insurance company and/or patient from both entities. It would be monumental to have to account for all billing. I thought that PHI for TPO purposes is excluded from the accounting.
2. Do we have to get "certified" for HIPAA regarding our policy manual and for training of staff? If so, where do we go for this?
3. Can the patient sue employees as well as the employer under HIPAA?

A.

1. The accounting does not need to track disclosures for TPO. 164.528(a)(1)(i). Both of your first two examples appear to be payment-related and so they probably do not need to be included on an accounting.
 2. You do not have to get your policies and procedures "certified." Some lawyers and consultants will review your policies to determine whether they are HIPAA-compliant, but you probably will not be able to get a guarantee. (Think of it this way: there's no way to know definitively whether a workplace complies with all of the OSHA regulations until OSHA itself inspects and evaluates the workplace. OCR will function the same way when enforcing HIPAA.)
 3. HIPAA does not provide for private lawsuits. The government enforces the regulations. There has been some conversation among lawyers (yes, I am one) about whether a HIPAA violation would be actionable as a violation of state privacy laws. Also, if the HIPAA violation was also an ERISA violation, and actionable under ERISA, then there might be a private lawsuit. That's probably the subject of a book or two. (Juliana Reno, Stinson Morrison Hecker LLP , Omaha, NE)
- A.** The other BAs included on your list also appear to fall under the TPO exemptions: medical record & billing software vendors probably relate to billing processes; hearing aid dealer would be a referral for treatment purposes; and the lawyer, answering service and computer computer technical support would fall within healthcare operations. For a good discussion explaining the services included in TPO, see the OCR HIPAA Privacy Q & A issued 12/3/2002-Uses and Disclosures for Treatment, Payment and Health Care Operations [45 CFR 164.506].

Most disclosures will fall under the TPO exemptions, but remember that public health disclosures must still be logged. Whether you use a paper log or a computer software product for tracking, the 6-year retention requirement is correct. (Kathy Zeitz, JD, methodist Health System, Omaha)