



Physician *Newsletter*

September/October 2009



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President
Musings

Why We Do What We Do

~Mike Tracy, MD, Northwestern Counties Medical Society President~

I recently attended the 2009 National Conference and Exhibition of the American Academy of Pediatrics in Washington, DC. I had the privilege of meeting with residents and students to discuss career choices in internal medicine and pediatrics. One student asked me, "Why do you do what you do?" I clarified the question, and what he meant was, "Why do you practice medicine, and why do you do it in Wyoming?" This is a great question which we should all be prepared to answer. I immediately thought of three things:

building relationships with people that are driven by a fundamental trust in their doctor. Practicing medicine in rural Wyoming offers the opportunity to be part of a community. We are able to share with our patients in their collective triumphs and tragedies in a way that colleagues in other locations may not.

Colleagues

The hours and elbow grease that constitute our training create a unique atmosphere of shared experiences with colleagues. Remember those close relationships that developed in medical school as a result of dissecting a cadaver, practicing physical exam skills, and studying for tests? Even if you don't keep in touch with medical school classmates, you likely remember many of them. Residency also offers a unique opportunity to bond with colleagues. We can all vividly remember many of the aspects of

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Check Up

Patients

The physician-patient relationship is the cornerstone of medicine. It is an amazing privilege and not to be taken lightly. It's difficult to analyze any aspect of medicine from quality issues to business issues and not see this as the key element. Our profession generally entails

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Lowest
Rank

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Magazine

New HIPAA Requirements and Their Effect On You

~Timothy L. Woznick - Dray, Thomson & Dyekman, PC~

Background – HITECH and its impact on HIPAA

In February, Congress passed a broad economic stimulus package called the American Recovery and Reinvestment Act of 2009 ("ARRA"). Title XIII of ARRA is known as the Health Information Technology for Economic and Clinical Health Act (or the "HITECH" Act). Much of HITECH is designed to encourage and facilitate increased use of electronic health records (EHRs) in the provision of medical care, but one part of HITECH also contains provisions that modify existing and add new requirements to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). This article focuses on some of those changes.

Before HITECH, HIPAA prevented a covered entity's unauthorized use or disclosure of protected health information ("PHI") but did not provide a mechanism for a patient to be notified when his or her PHI was compromised. HITECH eliminates this "gap" in HIPAA by providing that a covered entity that discovers that "unsecured protected health information" has been "breached" must notify the individual in question.

As a result, Wyoming hospitals, physician practices, and other health care providers that qualify as "covered entities" under HIPAA are now required, under certain circumstances, to tell individuals that their PHI has been compromised. When notification is required,

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WMS President's Message: Musings

~ Reed Shafer, MD ~

Change is coming to WMS - As most already know, Dennis Ellis has resigned as Executive Director of WMS. His wife has just given birth to the Ellis' second child. Congratulations to Dennis and Affie and welcome to Archer Wesley Ellis. With the new change at home, Dennis is eager to spend more time with his family. He has been working upwards of 60 hours a week for WMS and has had a lot of travel throughout the state and nationally on our behalf. In his short tenure as Executive Director of WMS (slightly less than two years) Dennis has distinguished himself as a "get the job done" kind of guy. He will open his own consulting firm and undoubtedly continue to do well. WMS wishes you every success, Dennis - my colleagues, keep your eyes on this man - he is well on his way to a distinguishing leadership career.

The Board and I have selected an ad hoc committee of WMS members to serve as a Search Committee. Sheila Bush is interested in applying for the position of Executive Director of WMS and currently is functioning in the capacity of Interim Executive Director. It would not be appropriate for her to be part of the Search Committee so your Board has contracted with Dennis Ellis to help orchestrate the search for the new Executive Director. WMS will be advertising widely for the new director. Given the state of the economy, we expect a robust response to our search.

The Search Committee will review the candidate applications, evaluate their qualifications and hope to make a selection for the new Executive Director in early 2010. We hope and anticipate that we will have many well qualified

applicants and shall conduct a transparent search to recruit the best candidate. If any of you out there would be interested in participating in the search, we would be eager to include your input - give a call to the WMS office and let us know.

Speaking of Changes... I am often asked about the upcoming changes in the US healthcare system - of course, I have next to no input or information as to what goes on in Washington, but I too have a stake in the outcome of the current legislative activity regarding healthcare reform.

I am frequently asked by my patients when I plan to retire. I recall the advice of a colleague who told me not to retire until my wife is enrolled in Medicare. His wife was dangerously ill, he was retired, and she was weeks short of qualifying for Medicare when she became catastrophically ill. Needless to say, I will be working for a few years longer.

My son has graduated from college and he is no longer qualified to be on my family health insurance policy. I have followed his efforts to obtain health insurance. It's very expensive for a single man, over a hundred dollars a month for a high deductible policy with potentially poor coverage after that. But, we all know the high cost of healthcare; an appendectomy can bankrupt a young family.

We know change in the system is needed. Remember: the camel is a race horse designed by a committee. Stay tuned... ■

Why We Do What We Do cont. from page 1

residency ranging from learning to deal with sleep deprivation to the emotional highs and lows of patient care and learning to work with each other in this profession. Sharing call, dealing with medical staff issues and learning from each other are a few of the issues that follow us from residency to our practices. I am impressed with the caliber and commitment of my colleagues in Powell and the Northwest Counties, and indeed across the state, and look forward to continuing to work with colleagues who share a commitment to practice in this unique setting.

somewhere else saving my money to come here on vacation. This state is wonderfully unique, and what a privilege it is to raise a family and practice medicine here. The vastness that makes some wonder why anyone would want to live here is exactly what attracts me. The opportunities for outdoor recreation are a huge draw. I'm sure others who enjoy living here could broaden this list. The geography also contributes to the challenge of practicing medicine here in ways that are difficult to understand if one has a tertiary care center just down the street.

opportunity to answer his question with another question: What can I do to continue to be happy practicing in Wyoming? Cherish relationships with patients, foster relationships with colleagues, and enjoy the things our great state has to offer. I am also committed to being an active participant in my personal life and the upbringing of my children. I would encourage all physicians to ask themselves these questions and to hopefully focus on the positive aspects of our decision to become physicians dedicated to taking care of patients, each other, and the healthcare system. ■

Wyoming

If I didn't live here, I would be living

As I finished my answer to the medical student, I couldn't resist the

Director's Checkup

My Honor, My Pleasure

~ Dennis Ellis ~ Outgoing WMS Executive Director

As I amicably move on from the Wyoming Medical Society to start my own consulting business, I've spent quite a bit of time reflecting on my experience with WMS over the past two years and would like to share my observations.

When I began advocating for Wyoming physicians and their patients, I did not know what to expect. Certainly, I had a generally held perception of physicians and the power they have over their patients' lives. With little exception, we all know patients greatly respect the recommendation of their physician in regard to their health, and when the patient is asked to jump, they ask how high. Further, physicians are viewed as affluent, well educated and intelligent.

However, over the past two years I came to know physicians not as a patient, but as a friend. I learned about the rigors of medical practice, from ever increasing rules in public

programs and private insurers, to ever increasing workloads and complexity of practice. I learned about physician shortages, lack of access to the health care system, and implementation of health information technology. I learned how a physician rarely has a day off, how they must practice defensive medicine and how they can't walk through a grocery store without a patient pulling them aside for a consultation. I learned about a physician's depth of character, strength, and endless patience. I learned how amazing our Wyoming physicians are.

I did my level best to help educate Wyoming's thought and opinion leaders about the type of person a physician is and what their day is like. I educated them about how a physician does not raise an issue with the policy makers unless it is of the utmost importance to their patients' health. I educated our legislators about the shortage of physicians and the difficult liability climate and how

these challenges affect wait times in offices, prevents access to the system, and over works our physicians in the trenches.

From those advocacy efforts, WMS has been very successful at parlaying the challenges faced by physicians into policy decisions that make it easier to practice medicine in the state. These positive changes have come in increased reimbursement levels; implementation of physician recruitment grants and loan repayment; streamlining the medical license application process; and preventing mid-level providers from increasing their scope of practice in a manner that would harm the public. I hope you as a WMS member would agree.

The bottom line, from beginning to end, is that working for Wyoming doctors and their patients has been my honor, and my pleasure. Thank you. ■



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WY Earns Lowest Rank

WY Worst in the Nation for Mammogram Screening

~ Carol E. Peterson, MS, RN ~

Wyoming's mammogram screening rate, among women 40 and older, has consistently been below the national average for many years. A recently released summary of the 2008 Wyoming Behavioral Risk Factor Surveillance Survey (BRFSS) concerning breast and cervical screening rates for Wyoming women indicates that our state is now ranked 50th (worst) in the nation for three mammogram screening indicators: women 40 and older reporting they have had a mammogram in the past two years, screening among uninsured women, and screening among very low income women (<\$15,000 a year). For screening of women 40 and older, Wyoming's rank decreased from 43rd in 2004 to 47th in 2006 to 50th in 2008. Our screening rate for women 40 and older is currently 67.2% while the United States goal is 70% and the U.S. median is 76%. Our rates are even lower for the following sub-groups: 63.3% for Hispanic women, 58.8% for American Indian women, 51% for single women, 48% for very low income women, 47% for working poor women, and 34% for uninsured women.

A small workgroup here at WDH is exploring this issue further – such as looking at what counties have the lowest screening rates and why that might be the case (currently the three lowest are Carbon at 59%, Fremont at 62.9%, and Johnson at 63.9%). We are also looking at what the screening rates are for women on Medicaid and Medicare and as well as trying to identify strategies to better target very low-income, uninsured women. We do currently have two projects that provide outreach to racial and ethnic minorities (Women's Wellness at Migrant Health in the Big Horn Basin Area and the Native American Women's Health Program on the Wind River Reservation). We are also seeking ways to partner more effectively with other key players including the Susan G. Komen for the Cure and the Caring for Women program.

Currently, approximately 41,000 Wyoming women age 40 and older have not had a mammogram in the past two years and 6,300 women over the age of 50 have never had a mammogram! In 2007, 309 Wyoming women were diagnosed with breast cancer and 64 women died from the disease. With October being Breast Cancer Awareness Month we are asking health care providers to please talk to all their female clients age 40 and older about the importance of regular breast cancer screening. Also, please remember that the Wyoming Breast and Cervical Cancer Early Detection Program at the Wyoming Department of Health is a statewide program that can pay you for breast and cervical cancer early detection services for eligible low-income, uninsured women. Women who receive services through our program, who are found to be in need of breast or cervical cancer, are also eligible to be referred to EqualityCare for coverage of their breast or cervical cancer (or high-grade pre-cancer) treatment. Please contact us at 1-800-264-1296 for additional information. (FYI: Wyoming's screening rate for Pap tests is also very poor. We are currently ranked 47th and our current rate is lower than it was in 1995!) ■

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HIPAA Requirements cont. from page 1

the covered entity must notify the individual “without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach.” In addition, covered entities in Wyoming must notify a “prominent media outlet” serving the State of Wyoming in cases of a breach of the PHI of more than five hundred (500) Wyoming residents. Covered entities must also notify the Department of Health and Human Services (“HHS”) of all breaches. Breaches of more than five hundred (500) individuals’ PHI must be reported to HHS immediately. All other breaches must be logged by the covered entity, a list of which must be provided annually to HHS.

The HHS Regulations implementing the Breach Notification Rule

HITECH further provides that HHS is to “promulgate interim final regulations” to implement and further clarify this new breach notification requirement. HHS did so by issuing its “Interim Final Rule” for “Breach Notification for Unsecured Protected Health Information” in August. This guidance from HHS sets forth regulations that implement and further clarify HITECH’s breach notification rule, which all covered entities and their business associates must follow as of September 23, 2009. A comprehensive discussion of these new rules is beyond the scope of this article, but here is a summary of the prominent features:

How to tell whether PHI is “unsecured”

HHS defines “unsecured protected health information” as “protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111–5 on the HHS Web site.” Said another (and simpler) way, unsecured protected health information is protected health information that is not “secure”, and HHS has the final say on what it means for PHI to be secured.

Currently, encryption and destruction are the only two ways to render PHI “secured.” Thus, the only way to secure electronic PHI is to (a) destroy it or (b) encrypt it (in accordance with current standards of the National Institute of Standards and Technology). Further, the only way to secure non-electronic PHI (paper records and the like) is to destroy the records. HHS stated in its August guidance that redaction is not an acceptable method to render PHI secured.

It is important to note that the new regulations do not require covered entities to secure all PHI. For many Wyoming covered entities that still regularly or predominantly use paper records, securing PHI will simply not be an option. Instead, the new rules provide that a covered entity does not have to follow the new rules if it secures all of its PHI (since the rules only apply to breaches

of unsecured PHI). If a covered entity chooses not (or is unable) to secure all PHI, this simply means that the covered entity has to comply with the new rules.

How to tell whether PHI has been “breached”

The HHS rules define “breach” as “the acquisition, access, use, or disclosure of protected health information in a manner not permitted [by HIPAA’s Privacy Rule] which compromises the security or privacy of the protected health information.” This language is, for the most part, the same as the HITECH definition of “breach”, but there is one very important difference. HHS took HITECH’s definition a step further by defining “compromises the security or privacy of the protected health information” as “poses a significant risk of financial, reputational, or other harm to the individual.”

This definition is a significant feature of HHS’ new rules. If a covered entity determines that an individual’s PHI has been acquired, accessed, used or disclosed in a manner not permitted by HIPAA’s Privacy Rule, it has to evaluate the risk of harm to the individual. If the risk of harm is not “significant”, there is no “breach” and the covered entity need not notify the individual about the incident.

In evaluating the risk of harm, a covered entity should consider a number of factors, including:

- Nature of the information;
- Number of individuals affected;
- Likelihood the PHI is accessible and usable;
- Likelihood of resulting harm, including (a) the broad reach of potential harm and (b) the likelihood harm will actually occur; and
- The covered entity’s ability to mitigate the risk of harm.

Summary

The rules contain other requirements in addition to those discussed in this article, including the content of notice to an individual whose PHI is breached, how the notice must be communicated, the impact of the new rules on a covered entity’s business associates, what is required of those business associates in breach situations, and other administrative requirements that now apply to covered entities. Covered entities must understand and implement these new breach notification rules to ensure that they remain HIPAA-compliant. ■



WMS Doctor of the Day

Take advantage of this unique opportunity to be an active participant in moving WMS' legislative agenda forward. Volunteer to be an honored Doctor of the Day at the Wyoming State Legislature.

If interested in volunteering, please contact the WMS office for more information, visit our website at www.wyomd.org, email info@wyomed.org or complete the enclosed volunteer form and return it to:

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WMS Launches Magazine Publication

~ Call for Letters to the Editor ~

Your Wyoming Medical Society is proud to announce the launch of *Wyoming Medicine*. *Wyoming Medicine* (WM) is a magazine publication dedicated to advancing the healthcare dialogue in communities large and small across Wyoming. It will serve as a great benefit to Wyoming Medical Society members. To date, Wyoming communities have not been provided with a forum to discuss healthcare issues and WM plans to fill that void.

WM will strive to address a broad set of diverse issues from general health tips for the public to legal advice for physician owned clinics and practices. WM will cover political ups and downs of medicine in Wyoming and provide inside perspective to various healthcare related topics. Look for your complimentary member copy in early January.

This publication will provide a great opportunity to reach readers statewide so please consider WM to meet your advertising needs. Contact Sheila Bush for more information

about ads, rates and ad copy submission deadlines.

Calling for Letters

Wyoming Medicine will feature a Letters to the Editor section in each publication. This is a perfect opportunity for WMS members and other thought leaders in the state to express their opinions and ideas about health in Wyoming. Please consider writing and submitting something to be included in the January publication.

Submissions are due November 16 to the WMS office. Letters will be limited to 150 words and need to include a name and contact phone number. Please indicate if you would prefer to submit anonymously. Otherwise the name of the writer will be listed with the piece.

If you have any questions please don't hesitate to contact *Wyoming Medicine* Managing Editor and Publisher Sheila Bush at 307-635-2424 or info@wyomed.org ■

