Healthcare Risk Professionals Impact, Influence, Innovate

Patient Portals: The Good, The Bad & The Ugly

May 6, 2024

Disclaimers

- *The opinions, materials, and statements presented are those of the presenters. They are not endorsed by or necessarily represent the views of CSHRM, MSHRM, NNESHRM, ASHRM or its members.*

- *These materials were created for the 2024 New England Regional Healthcare Risk Management Conference. Republication or reuse of the materials without the permission of the primary speaker is prohibited.*

Presenter

Frank Caria, MPA, CHC, CHPC

Deputy Privacy Officer, Catholic Health

Please refer to the Presenters' Bios available on the table and online for more information.

Objectives

- Identify how recent regulatory changes, guidance and enforcement cases have impacted an organization's risk.

- Discuss lessons learned from patient portal implementation, revisions and issues that stem from such.

- Outline best practices and review case examples in an effort to plan for organizational change or preparedness.

Audience Poll

- Who is in a combined role vs Risk only?
- Who is Risk & Compliance and/or Risk and Privacy?
- Any non-risk but Compliance and/or Privacy professionals?
- Who has a clinical background?

AND OF COURSE

- Who utilizes a patient portal for themselves?
- Who loves it!?

Patient Portals: Introduction

Introduction to Patient Portals

- What is a patient portal?
- What is it used for (a loaded question)?
- Why do we have them?
- How may the role of risk management come into play? *I'll let you decide a bit….*
- The intersection of "Risk", "Compliance" and "Privacy".

HIPAA, HITECH, Cures ACT, etc.

- <u>HIPAA's Right to Access:</u>

  Except as otherwise provided.. "an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set…"

- <u>Cures Act, EHI & Information Blocking:</u>

  If an "actor" knows, or should know, that a practice is likely to interfere with the access, exchange, or use of electronic health information, they may be considered as engaging in Information Blocking.

- Keep in mind State laws as well that may come into play.

See 45 CFR § 164.524 and 45 CFR § 171.103.

Patient Portals: The Good

The Good: Patient Engagement

- National Institute of Health, Annals of Internal Medicine in 2021 notes:

  "Electronic health records (EHRs) were developed to manage clinical information, not to engage patients. ***However, patient access to their EHR data through online portals or mobile applications represents a potential tool for improving patient engagement."***

- Patient engagement via patient portals should mean for information purposes but also for treatment as well.

However, a lot of entities still hover around the 35-40% user base – just wait…

See National Library of Medicine, "Using Electronic Health Record Portals to Improve Patient Engagement: Research Priorities and Best Practices", available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7800164/, accessed March 14, 2024.

The Good: Increased Accountability

- Providers essentially ***have to*** respond to patients; what is option B?
- There is a potential for increasing “proper” documentation (including results, notes, not mixing records, etc.) as well as “contemporaneous” documentation.
- Serves as an opportunity for, what is supposed to be, active participation in treatment plans and encounter documentation, like in “Open Notes” for mental health.

The Good: Decreased Access Issues

- *"I need my records right now"* – can be addressed, somewhat easily (depending); thus resulting in:

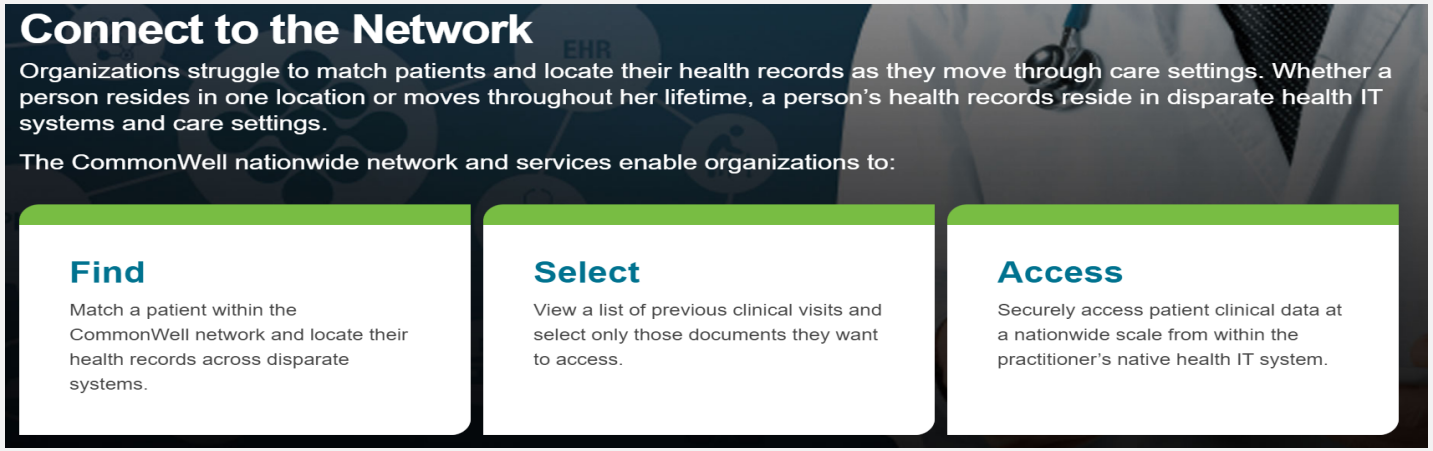
1. Potential decreased ROI and provider office/clinic workload.

2. Decreased issues with not being able to accommodate records in the format requested can also potentially be avoided (*i.e.*, patient's can view them online, print, e-mail, etc.); paper may be the most difficult these days.

If you have a right to access issue currently (not an OCR investigation from 3+ years ago), you may have a system issue.

The Good: Mass Interoperability

- Mass (or even local) interoperability can potentially lead to less care/provider issues, repeat exams, etc.
- This is only as good as provider use. If you don't access these systems you cannot advantage of them.
- However, haven't we been heard about this before???



Patient Portals: The Bad

The Bad: Barriers to Use

- Barriers may include, among other things:

1. Inability to use technology;
2. Security concerns;
3. The need for understanding what one is viewing;
4. Dislike of non- “in person” communication;
5. Language/accessibility;
6. Lack of inclusive language; and
7. Simply overwhelming.

- *Because of these*, what may organizations have to implement to address?

1. Work around;
2. Systems for routinely reviewing these (or definitely at least changes/new ones)
3. Education; and
4. Alternatives to the patient portal.

The Bad: Failed Patient Satisfaction

- Could increase (or decrease) patient satisfaction
- Patient portals with elements such as online registration or similar are great!

  But not if the patient forgets to hit "submit" or there is a technical glitch on either side…..

- You may encounter an upset patient who shows up for their first appointment and have to re-do everything + the more savvy patients wondering (and questioning) where their information went.
- *"Great! I can schedule an appointment online next time"* **-** Wait! Not that type of appointment, not that date, not that provider, etc.
- Do you have a system in place where calls/messages can be escalated to an SME when the request/issue is more than just a password reset or similar?

The Bad: Failed Consumer Satisfaction

https://www.youtube.com/watch?v=_hkHRjS5ZHU

The Bad: LMR, EHI, DSR & Portals

- State law can come into play. You have LMR in some if not most states, however:

1. The struggle of DRS & EHI
2. What do you, can you, have to, should you display?
3. EMR 70/30 recommendation?

- Any best practices for how other organizations implemented this?

The Bad: Inappropriate Documentation

- Patient portal visibility (and the after effects) may be a driver for more appropriate documentation.
- Not going to list examples of “inappropriate documentation”- you’ll know.
- Patient portal visibility is an opportunity for inappropriate subjective assessments to start to work their way out of documentation.
- Providers should be provided with education (ongoing) of the importance of appropriate documentation.
- Organizations should have a system in place to monitor (audit/review) peer-peer documentation; especially since this most likely will wind up on a patient portal.

Case Study #1

- 47 y/o, A&O male arrives to the ED, r/o broken wrist.
- Vital signs stable and WNL.
- 2 ED providers attend to the patient; a female physician assistant and a male nurse.
- Patient is placed in bed #10, x-ray ordered, IV started for pain medications.
- 30 minutes later, a female nurse checks on the patient and arrives with pain meds. Patient becomes visually agitated and makes comments. Nurse requests the assistance of the PA and patient refuses the medicine again making a comment reference the nurse.
- 15 minutes later a transporter arrives to bring the patient to radiology and the patient makes additional comments.
- Nurse documents patient comments as well as “Patient is nasty and rude”.

Case Study #1

- Patient returns from x-ray and meets with the PA originally assigned to their case. Makes additional comments to the PA. Patient is d/c to home with a splint and pain med Rx.
- 10 days later, HIM/medical records receives an amendment request to remove certain documentation wherein the providers noted specific comments of the patient in the encounter documentation.
- Patient states that this is a worker's comp. case and by including this information, it may show certain views of his to them.

What would you do??

The Bad: “Dr. Google”

- *“I googled my radiology report and it basically said I can potentially have _____ but you are telling me no”*

OR (and maybe worse for Risk)

- *“I [provider] googled your symptoms because I don’t often see this and I think it may be____”*

- There are going to be those times where a patient questioning their treatment is going to wind up in the patient’s favor (both treatment and risk/legal wise potentially).

Patient Portals: The Ugly

The Ugly: Information Blocking

- Doesn't have to be through a patient portal but most commonly now it is, and why?

1. Lack of education;
2. Presumption it is a blanket allowance;
3. Simply easy to do; just click on the box and boom a patient cannot see it.

- What about the unanticipated work-around posing an issue for Information Blocking, access, privacy, security? (*i.e.*, an EMR suppressing a note may block it from the patient portal but someone calls and requests their record – it is now included).

- Do you have a system to review these scenarios? And is it a "peer review" type of process; is it permitted first by many and then a retrospective review takes place?

The Ugly: Issues with Proxy Access

- Proxy access could pose significant privacy / access issues particularly for those with laws protecting minors and other sensitive information.
- Most importantly - do you have a system / protocol for suspending proxy access into a in certain sensitive cases? Is this system as close to full proof as possible– aka not just a provider writing a note.
- Could this be Information Blocking?
- So proxy access was not limited so what do we do with those who find out?; most are not happy. Does this turn into a patient relations issue, a risk issue, a legal issue, all of the above???

Case Study #2

- 14 y/o, A&O female arrives to the ED, unaccompanied, complaining of severe abdominal pain.
- Vital signs WNL. Attempts to obtain parent information go unanswered at this time. Some responses to questions are themselves, questionable.
- Patient is placed in bed #5, labs ordered, etc.
- 45 minutes later provider comes into the room and notifies the patient of their positive pregnancy test.
- Patient notes that she has been sexually active recently, thinks she knows who the father is, but is adamant that her parents do not find out.
- Providers believe they take the necessary steps to not notify the parents.
- 3 weeks later hospital receives a threatening phone call from the father of the patient after viewing an itemized bill for services and questions the entire case.

What would you do??

The Ugly: Security Concerns

- Keep in mind, there is a security risk for the patient and for the organization.
- We're no longer in an environment where records sit on a shelf behind a locked door; we're at the point of anyone can potentially access them from anywhere in the world.
- 5 years ago this may not have been put on this deck, but now with all the breaches, ransomware, etc.
- This may not even involve external factors (*e.g.*, ransomware, phishing, etc.) but there may be those with limited access to assist with patient portals and using/accessing inappropriately.
- You may encounter a significant privacy/security incident or issue. Now is the time for risk assessments, pro-active reviews and plans for corrective actions.

The Ugly: Privacy Breaches

- OK, so you:

1. Scanned the wrong patient's x-ray report into another patient's record; OR
2. Entered an HIV diagnosis for a patient with the same name but different DOB.

- Concerns of breaches are of significant important and:

1. HIPAA Breach Risk Assessments must be performed.
2. Train staff on audit trails for the patient portal?
3. Attestations should be obtained in cases where information was viewed to document it was not downloaded, shared, screenshotted, etc.

Not only do we need to worry about PHI but now many states have and continue to enact legislation for information such as PII or PI;
So now the scope expands greatly.

The Ugly: Messy Amendments

- HIPAA (for now) says this:

  An individual has the right to have a covered entity amend protected health information or a record about the individual in a designated record set for as long as the protected health information is maintained in the designated record set.

- I hope this is on the list for revisions/specificity in light of more recent issues.
- Increased workload for HIM and for the providers.
- Makes a mess out of the record as sometimes things can be changed and others cannot and it make carry over into multiple sections.
- Getting more complicated because of patient interpretations sometimes.

Begs the question now: What is really the focus of the amendment? Is it to change incorrect information however, or simply change things a patient does not like.

Case Study #3

- 60 y/o male presents for their annual physical exam at a local clinic/practice location.
- Patient provides a scan of recent blood work and chest x-ray performed at an outside facility.
- Documents are uploaded to the EMR.
- 10 days after the visit the patient requests an amendment to the record which states:

1. "The information on the portal and my bloodwork is incorrect. I didn't fast".
2. "Since my visit, I went for a follow up to a specialist and they said my lung sounds include wheezing and congestion and your doctor said they were fine". "This needs to change".

What would you do??

Closing/General Tips

- Risk Assessments (even similar to a tracer) need to be conducted and done so with the collaboration of various departments.
- May require policy and process development or revisions.
- Risk/Privacy/Compliance Continuing Education on much of these topics.
- Provider Continuing Education (and specific to the provider type).
- Internal/Departmental continuing education.
- Patient Transparency needs to be considered heavily (they see it already).

Questions/Discussion

Thank you for your time, attendance and discussion!