

PHRs : Risk and Legal Considerations for Clinicians and Consumers

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PHRs: Risk and Legal Considerations for Clinicians and Consumers



The primary ePHR legal concept is that there is no ePHR law, but rather laws that impact the development and use of ePHRs. The ePHR is a personal health record; it contains information about the subject. Yet, the law does not define the nature of the bundle of relationships that defines the ePHR.



Laws Impacting PHRs:

- ✓ **Laws impacting PHRs are those impacting relationships in the health care system:**
 - **Consumer and the PHR.**
 - **Consumer and the sources of health information populating PHR.**
 - **Consumer and provider who has access to information in PHR.**
- ✓ **For each of these relationships, we are concerned with:**
 - **Ownership and Custody, Rights to Access and Disclose;**
 - **Privacy and Security; and**
 - **Liability.**



PHRs: Risk and Legal Considerations for Clinicians and Consumers



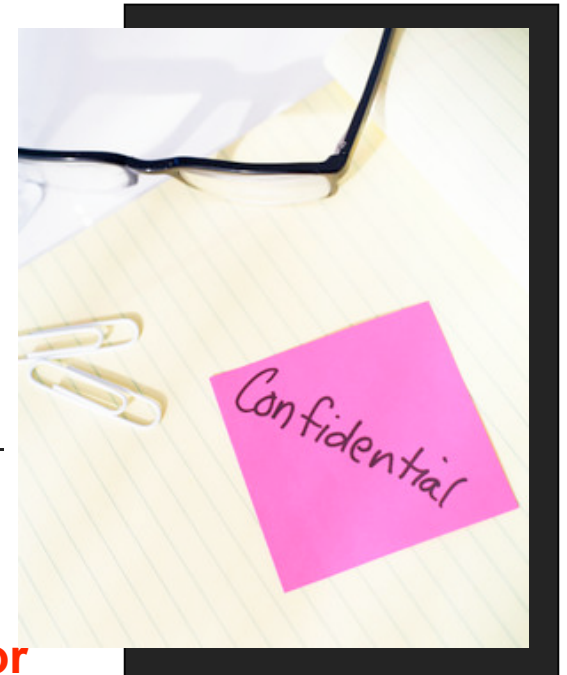
Risk No. 1: Privacy

Scenario

A consumer chooses an Electronic Personal Health Record (ePHR) to manage their care and that of family members.

Response will be for tethered and untethered PHRs:

- a) What privacy rights does the consumer have as it relates to their health information and the ePHR vendor or organization (e.g. payer or government) providing the product ?
- b) What are the clinician risks and obligations to maintaining the privacy of the health information that is accessed from this consumer's ePHR ?
- c) What legal recourse does a consumer have if their health information is used for other purposes without their consent ?





Risk No. 2: Security

Scenario

A consumer has a concern that the ePHR's health data could be potentially compromised



Response will be for tethered and untethered PHRs:

- a) How can a security breach risk be mitigated on behalf of the consumer (e.g. Medical Identity Theft) ?
- b) Does the clinician have any obligation if there is a breach in security resulting from their staff ?
- c) Are there any legal protections today for ePHRs ?



Risk No. 3: Obligation to Review Consumer Health Information

Scenario

The consumer has an expectation that their clinician will review their ePHR health information as a routine aspect of their Interaction with the clinician.

Response will be for Providers and Payers:

- a) Is the clinician legally obligated to review health information in the ePHR ? (both electronic access and/or paper copy)
- b) What risks exist for clinicians if a consumer prevents access to certain types of health information (e.g. mental health) and the potential impacts delivery of appropriate care





Risk No. 4: HIPAA Relationship to ePHR

Scenario

The consumer and the clinician have concerns about HIPAA implications as it relates to ePHR.

- a) Does an ePHR fall under HIPAA and PHI rules ?
- b) What are the HIPAA obligations of the ePHR vendors or organization hosting ?
- c) What are the HIPAA obligations of the clinician and their organization ?





Risk No. 5: Chain of Trust

Scenario

The consumer and the clinician have certain expectations as to their sharing of health information in the ePHR.

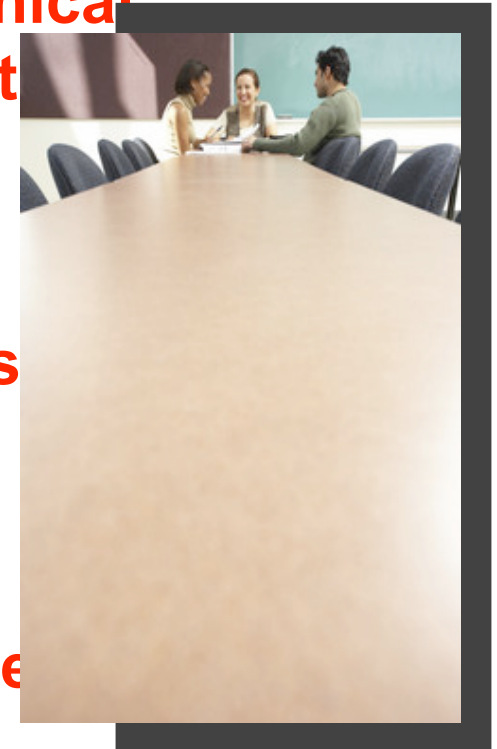
- a) What 'chain of trust' agreements exist between sharing entities ?
- b) Is such an agreement required to support the concept of 'chain of trust' ?





A Legal Perspective: Steps to Mitigate Risks in Using PHRs

- For clinicians – address as part of overall policy regarding information from patients and third parties – need to consider clinical legal/risk, workflow and reimbursement issues as well as patient expectations
- For patients – need to understand the responsibilities and limitations of PHRs in addition to the benefits
- For vendors – increase interoperability and tools to help clinicians quickly access important information

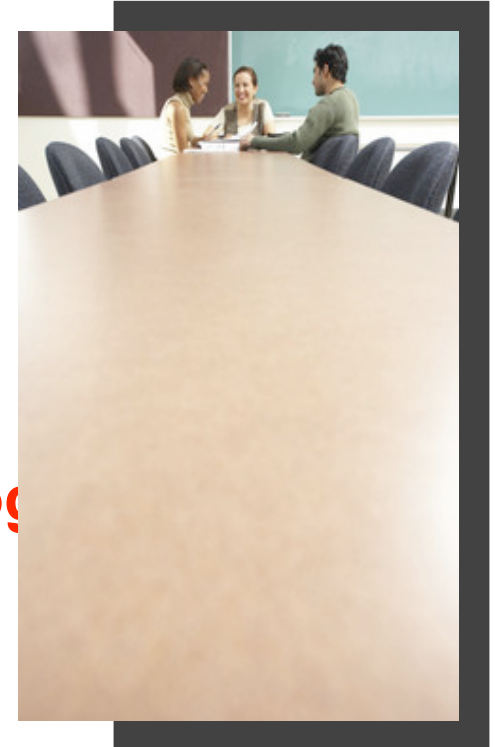




An HIT Perspective: Steps to Mitigate Risks in Introducing Personal Health Records?

- **Bring the right parties to the table early in the discussion**
 - Executives
 - Chief Medical Officer
 - Other Clinical Caregivers
 - Legal Counsel
 - Physicians
 - Health Information Management
 - Information Technology, etc.

- **Consider policies, processes, technology, user workflow, impact on care delivery model / expectations, reimbursement, market positioning and legal aspects - PHRs touch many constituencies on multiple levels**





Questions from Our Audience



PHRs: Risk and Legal Considerations for Clinicians and Consumers



Thank you for attending today's session.

If you would like to contact the participants....

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2008-2009**

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