This newsletter is one in a series that provides general information on key components of the HIPAA Privacy and Security Regulation. More detailed information and policies are available on the MCW HIPAA website. In this newsletter we'll cover information about patient health information (PHI) incidental disclosures.

HIPAA Privacy Regulations are intended to balance strong privacy protections that do not interfere with patient access to, or the quality of, health care delivery. All College faculty and staff must make reasonable efforts to limit the use or disclosure of PHI to the minimum necessary to accomplish the intended purpose, unless the use or disclosure is for treating a patient. Patients must give specific authorization before MCW can use or disclose PHI in most non-routine circumstances.

Incidental Uses and Disclosures
The Privacy Regulation allows for uses or disclosures that are “incidental” in nature. An incidental use or disclosure is one that cannot reasonably be prevented, is limited in nature, and occurs as a result of another use or disclosure that is permitted by the Regulation. This type of disclosure of protected health information may occur as a result of performing our day-to-day activities. However, an incidental use or disclosure is not permitted if it is a byproduct of an underlying use or disclosure that violates the Privacy Regulation.

For an incidental use or disclosure to be considered allowable, the College must make sure that only a minimum necessary amount of PHI is used for our activities as required, and that we employ reasonable security measures for the storage and transmission of PHI. Examples of incidental uses or disclosures may include sign-in sheets in waiting rooms, patient charts at a bedside, or overheard conversations that could not be kept private.

Minimum Necessary
The Privacy Regulation requires the College to make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. This minimum necessary requirement may be met by policies and procedures for routine uses or disclosures, or by review on a case-by-case basis.

Minimum necessary does not apply to disclosures to or requests by a healthcare provider for treatment, uses, or disclosures made to the individual or as authorized by the individual or to the secretary of the Department of Health and Human Services (HHS) for compliance enforcement.

An overriding factor to consider in many day-to-day situations for all payment and operations (and although the regulation does not require it, for treatment activities as well) is to ask “Is this health information necessary for me to do my job?” If the answer is “yes”, you probably are fulfilling the minimum necessary requirement and complying with this part of the Privacy Regulation.

Disclosures via Fax and Interoffice Mail
Covered entities must have in place reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of PHI that is disclosed via fax machine. Examples of measures that could be reasonable and appropriate when using a FAX machine to disclose PHI include the sender confirming that the FAX number to be used is in fact the correct one and placing the FAX machine in a secure location to prevent unauthorized access to the information. Additionally, when faxes are sent to another area on campus the campus dialing system should be used (i.e. MCW=10, FMLH=155, CHW=12).

Employees sending any PHI through the campus interoffice mail system should take necessary precautions to ensure confidentiality. These precautions include but are not limited to keeping the PHI in a sealed envelope and mark “Confidential” on the outside of the envelope. The sender should also follow up with the recipient to ensure the sensitive documents were received.

COMPUTER SECURITY TIP:
ON WINDOWS 2000 AND XP OPERATING SYSTEMS, PRESSING THE “CTRL-ALT-DELETE” KEYS AT THE SAME TIME AND SELECTING “LOCK COMPUTER” ALLOWS YOU TO IMMEDIATELY SECURE YOUR COMPUTER IF YOU ARE LEAVING YOUR DESK.