

Auditors keep losing medical records

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A hospital recently asked for advice in dealing with a RAC auditor that kept losing medical records. The hospital sent the requested records and had a signed confirmation of delivery but received a notice from the contractor that the records were never received. When they contacted the contractor, the contractor requested a copy of the confirmation and once that was sent, the contractor “found” the records.

We also heard of a hospital that had received a request for 10 medical records. They sent the records as requested. They were then notified by a contractor that 3 of the 10 records had not been received. The only problem was that they sent 10 records on a single CD and had a signed confirmation of delivery of the CD.

While the motives of the auditor are unclear, (but likely nefarious), what is clear is that it is unacceptable to lose medical records. In fact, it is not only unacceptable, it is a federal “crime,” also known as a violation of the Health Insurance Portability and Accountability Act (HIPAA). HIPAA defines a breach as “an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information.” HIPAA also requires that any breach be reported to the affected individual, the Secretary of Health and Human Services, and the media if the breach affected over 500 individuals. In this case, the auditor, once aware of the loss, is required to report the breach, but since the auditor can be considered a business associate of the hospital, they should also report the breach.

The notification to the patient must be made by first class mail and without unreasonable delay and the Secretary must be notified electronically using a web portal. The media must be notified by press release, again without unreasonable delay.

So what should these hospitals do? Their fiduciary duties are to the hospital and the patient and therefore once they are aware of a potential breach, they should take prompt action. That would first include notifying the auditor that they have proof the auditor received the record and therefore are responsible for its safekeeping and by saying they do not have it, they are admitting to a breach. And by admitting to a breach, they must abide by the HIPAA regulations and report the breach without unreasonable delay. It would not be unreasonable to then allow the auditor a short period of time to attempt to locate the record, but if this happens on a regular basis, the hospital should not stand by and ignore their claims of lost records. As we know with the fable of the boy who cried wolf, one of these times the record may actually be lost and the hospital would have a difficult time defending its actions if came to light that it purposefully stood back and did nothing.

Read the HIPAA Breach rules at:

<http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/index.html>