

# FACILITY CARE<sup>®</sup>+

Design, Operation & Maintenance of Healthcare Facilities

## Creating and Documenting Oral Privacy

By Jonathan S. Leonard

In recent years, the Health Insurance Portability and Accountability Act (HIPAA) has received a great deal of attention, and there is no shortage of available reading materials about protecting electronic information and paper documentation. However, there is an additional portion to the HIPAA law that affects personal health information (PHI) that is communicated orally. This article will guide you in tackling the oral privacy portion of the HIPAA law.

To meet HIPAA objectives in all its forms — electronic, paper and oral — standardized methodologies and procedures for protecting PHI must be put in place. However, the “victim” of these violations do not usually realize violations that happen electronically, on paper or as a matter of procedure.

An example might be seen when your doctor inadvertently leaves your file on a counter with a prescription order attached to it. Another individual could feasibly walk up and see that you have been given a prescription for high blood pressure. If that person does not tell you that they found out this information because of the doctor's oversight, you will never be aware that the violation took place. The same can be said for many privacy violations that occur during the course of a day.

But consider a personal health information violation that happens orally. It can

happen right in front of you, for your ears and for everyone else's ears at the moment of the violation. For example, if the pharmacist that is helping you calls you from the waiting area to pick up your prescription for Lipitor, you and everyone in the waiting area knows about your cholesterol problem. For this reason, the oral portion of HIPAA is literally the most obvious violation because it is overheard by the victim.

### Protecting Oral Information

Oral communication is not only necessary but also vital in healthcare settings. Medical staffs need to speak openly with patients and with other medical professionals to discuss conditions, procedures, diagnoses, prognoses and treatments.

So given all this talking, how can we possibly protect the information that is being shared from becoming a violation? The answer is given in HIPAA's Privacy Rule, and it emphasizes that information conveyed orally must be kept to the “minimum necessary,” and that this information must be communicated in an environment where “reasonable safeguards” have been put in place to prevent incidental disclosure.

Because of patient needs or the medical situation, incidental disclosures are bound to happen. The U. S. Department of Health and Human Services (HHS) makes allowances for these disclosures only to the extent that the covered entity has

applied “reasonable safeguards.” So even though a violation may have occurred, HIPAA will permit the “incidental disclosure” as long as you have done something meaningful to prevent or limit it.

Not only should you prevent or limit oral disclosure, but every facility should document its efforts and maintain records that can be readily accessed should there be a violation or an audit in response to a HIPAA oral privacy violation. The section about Assessment Tools in this article will explain this type of documentation in more detail.

### Industry Standards for Oral Privacy

In the absence of stringent guidelines or publicly outlined practices for safeguarding personal health information, healthcare organizations are relying on previously established standards to show that they are providing solutions deemed to be “reasonable.” In determining what is considered reasonable, HHS looks at what other “prudent” providers are doing to protect confidentiality.

In the area of oral or speech privacy, the commercial office market has used sound masking since the 1960s to reach their goals for speech privacy. Based on standards set by the American Society for Testing of Materials (ASTM), there are metrics to determine whether a space

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provides adequate levels of speech privacy.

In defining what is or is not considered private, there are three levels of speech privacy indicated by ASTM and used by industry professionals nationwide:

- *No Speech Privacy.* This is when over 20 percent of the spoken word is understood and the conversation is intelligible.
- *Speech Privacy.* This is when 20 percent or less of the spoken word is understood.
- *Confidential Speech Privacy.* This is when less than 5 percent of the spoken word is understood.

By industry and ASTM-accepted standards, normal speech privacy is achieved when less than 20 percent of the spoken word is understood. This percentage correlates to an index known as the Articulation Index (AI). An AI of 0.20 or less is the benchmark for achieving speech privacy and is the standard your healthcare facility should meet to maintain an accepted level of speech privacy.

### Assessing and Documenting Oral Privacy

Now that we know where our articulation index (AI) needs to be, how do we get there and document our efforts? The first step to meeting your facility's Health Insurance Portability and Accountability Act (HIPAA) oral privacy objectives is to assess each area where healthcare information is exchanged. For example, patient rooms, nursing stations, medical offices, consultation counters and pharmacy areas, reception areas and anywhere else that personal health information is discussed should all be assessed.

An appropriate sound level reading at each of these locations should be performed to assess the ambient background sound and the current level of privacy, or lack of, in order to set a benchmark for bringing the area to ASTM standards for speech privacy. Meeting standards is achievable if you employ a two-part, time-tested approach to improving the space's acoustics.

### A Two-Part Solution

The two improvements most commonly needed to achieve adequate levels of speech privacy are ceiling panel upgrades and a sound masking system.

Healthcare facilities are often fitted with general purpose drop ceiling panels that may not provide adequate sound reduction or sound attenuation. Installing ceiling panels with better sound absorption and reflective capabilities in open and private areas can be an effective first step in bringing an environment closer to meeting oral privacy requirements.

The second part needed to ensure compliance with ASTM standards for speech privacy is to add sound masking. A quality sound masking system introduces an unobtrusive, ambient background sound into the environment that gently raises the present ambient background sound to cover the speech frequencies and thereby eliminate intelligibility of speech. It effectively reduces the AI within a space so that speech privacy is achieved. The sound masking speakers should be self-contained, low-voltage, UL-listed units that are installed in the plenum above the suspended ceiling to ensure the uniformity of sound being masked.

Sound masking works because it changes the "dynamic range" of sound in an environment. Typically, the dynamic range in most environments is large, meaning that there is a great degree of difference between the ambient sound level and the highest levels of sound generated in a space, such as when people are actively speaking and working. Without sound masking, normal speech is easily overheard in a backdrop of the low, ambient sound.

### Assessment Tools

Using an assessment tool is important. Make sure your sound masking provider can provide key documentation that corroborates your efforts to meet your facility's HIPAA requirements for speech privacy. Ask for a diagnostic and planning tool that can help you create an implementation strategy for meeting ASTM standards and your HIPAA oral privacy objectives. Secure this documentation as proof that your facility has taken "reasonable safeguards" to protect the privacy of its occupants.

This assessment tool should enable a fact-based approach to analyzing sound levels and speech intelligibility before and after the acoustics are corrected. For example, on-site measurements can be taken of the ambient, or background, sound and other various acoustical parameters. This should include

physical characteristics of the space, such as plenum and ceiling heights, partition layouts and ceiling material properties. All the measures can then be used to calculate the existing level of speech privacy and AIs. After determining the correct sound masking levels needed, specifications can be generated for how the sound masking system should be configured and tuned to the unique characteristics of the space.

Upon installation, the facility professional should ask for a report detailing the acoustical improvements made in the space. The report can be retained for future reference in the event of an audit.

### The End Results

Objectives for HIPAA oral privacy can be met using accepted industry standards and should be documented and kept on file as a way of identifying the efforts you have undertaken to protect personal health information at your facility.

Investing in a quality sound masking system and upgrading ceiling tiles can effectively "cover" potential breaches in oral privacy to help you meet your HIPAA oral privacy objectives and avoid potential liability.

"When we opened our new Heart Center with patient rooms fitted with sound masking, our patient satisfaction rating jumped to 98 percent," says Tim DeBlaey, vice president of cardiovascular services at Holy Spirit Hospital, Camp Hill, Pa. "Several patients told me they've never slept better in a hospital. The system is also a positive for our staff. Nurses can maintain a normal tone of voice without interrupting patients."

Creating an environment that meets oral privacy standards and also increases patient comfort and satisfaction not only makes legal sense but also communicates to patients and employees just how serious your organization is about protecting privacy. Make sure to document all that you have done to meet your HIPAA oral privacy objectives. **FC**

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