



Speaking With: Jonathan S. Leonard

Recently, *FacilityCare* spoke with Jonathan S. Leonard, vice president of Lencore Acoustics Corp. about the far-reaching aspects of privacy legislation and how the Health Insurance Portability and Accountability Act (HIPAA) regulations apply to oral privacy.

Lencore Acoustics Corp. is a privately owned acoustical solutions company specializing in sound masking and acoustical panel products. Federal legislation in healthcare has created interest in providing acoustically sound environments that protect personal health information from being disclosed. As a result, Lencore worked with a well-known healthcare attorney to develop a deeper understanding of how HIPAA legislation applies to oral privacy. Eager to provide healthcare professionals with backup information that substantiates their efforts, Lencore has developed an analysis program that generates a privacy prediction report.

Although HIPAA legislation dates back to 1996, the April 14, 2003, deadline brought oral privacy compliance to the forefront of the minds of healthcare professionals. However, despite years of clarification, the legislation left open ambiguous definitions for terms such as "reasonable safeguards."

FacilityCare: Without a concrete definition for the term reasonable safeguards, what measures can facility managers take to demonstrate that they have attempted to comply with the oral privacy portion of the legislation?

Jonathan Leonard: Facility managers must look within the healthcare industry and to

other industries to see what prudent providers have done to solve oral privacy issues. If you consider corporate America as a sample of the market that represents prudent providers, you will see that corporations have long been concerned with protecting speech privacy as well as proprietary and other sensitive information. For more than 30 years, the construction industry has considered sound masking as part of its approach to ensuring oral privacy and has shown tremendous confidence in this solution to provide adequate privacy safeguards.

FC: What is the value of a report that can generate a privacy index rating?

JL: The value in a privacy index rating report is that it enables a healthcare facility to demonstrate that efforts have been made to protect personal health information as well as show how well the space meets industry standards for speech privacy.

Speech, or oral, privacy is rated on a scale that runs from speech being unintelligible to speech being entirely understandable, and there are key calculations for this rating. Regardless of a space's construction, the privacy index (PI) and the articulation index (AI) basically represent whether speech is intelligible or unintelligible and are measured using the ASTM Test E-1130.

The American Society of Testing and Materials (ASTM) developed this standard test method for the objective measurement of speech privacy in open offices. After the testing data has been collected, the test uses the AI as part of its conclusion. These tests have been used in the building and construction industry for decades as benchmarks for privacy. By using industry-accepted methods,

privacy in healthcare settings can be measured and proven to meet these standards.

FC: Even if the privacy rating is the best it can be, are there any guarantees against making inadvertent disclosures?

JL: In most environments, and particularly in healthcare where the patients change from day to day, there are many variables. Since the space configurations can vary exponentially as can the people within the environment, it is impossible to guarantee complete speech privacy without exorbitant construction costs or draconian privacy policies. However, the new rules do permit incidental disclosures but only to the extent that the covered entity has undertaken reasonable safeguards.

FC: What types of penalties are assessed for non-compliance?

JL: We have been advised that penalties can run as high as \$250,000 and possibly prison time. It remains to be seen how stringent the Department of Health and Human Services will be when enforcing these rules but for now, it is in everyone's best interest to be safe rather than sorry.

Get a professional on board to help you develop an overall privacy plan. Educate your staff about the new privacy policies. Look for any trouble spots in your facilities where oral privacy may be an issue and consider implementing solutions that already meet industry standards. FC

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