

ALLEGHENY COUNTY MEDICAL SOCIETY

Bulletin

JUNE 2019

**Bring your own device
(BYOD) to work day**

Medical malpractice 101



Bring your own device (BYOD) to work day

MICHAEL A. CASSIDY, Esq.

The Centers for Medicare & Medicaid Services (CMS) just recently authorized the expansion of Medicare Advantage Telehealth services, and Pennsylvania enacted a new telehealth authorization act. I thought it might be enlightening to collect a variety of related predictions from “people in the cloud,” which I have not independently verified, just for conversation purposes, regarding the explosion of mobile

health platforms. Some of the predictions or reports (with my parenthetical remarks) are as follows:

1. By the end of 2019, there will be 350,000 different mobile health apps (and we thought the current interoperability challenges were significant).

2. Goldman Sachs allegedly reported that the digital health revolution “could” save \$300 billion (but as with government budget predictions,

nobody said how to do it or how long it would take).

3. There were 30 million telehealth visits in 2017 (however, there is no evidence that these 30 million visits saved any money in 2017, so it is quite possible that these were just more visits and more payments; the third party payment industry has always been concerned that telehealth will not

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Tucker Arensberg lawyers have experience in all major healthcare law issues including:

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For additional information contact any of the following attorneys at (412) 566-1212:

- ◆ Mike Cassidy, Compliance Contracts, Peer Review, Stark/AKS
- ◆ Paul Welk, Mergers & Acquisitions
- ◆ Danielle Dietrich, HIPAA, Collections & Litigation
- ◆ Jerry Russo, Investigations
- ◆ Rebecca Alcorn, Mergers & Acquisitions and Physician Contracts

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save money but simply increase the number of compensable visits).

4. Sixty-two percent of doctors reported they use their “own mobile device” in their practice.

Legal risks

Bring your own device (BYOD) will present massive HIPAA privacy and security problems, because the innumerable owned devices and health apps will be accessible from personal devices even when physicians are not in the office or the hospital. HIPAA Privacy and Security Rules require healthcare entities to protect the privacy and security of patient information, regardless of where the patient health information (PHI) is located or on what mobile device the PHI is stored.

The benefit of mobile health (Mhealth) also is the curse. While mobility may be the obvious advantage, it also creates the greatest risk when the mobile device contains PHI. Digital health services will create a permanent medical record of what was viewed, what was said or not said, or done or not done, and when you said or didn't say or did or didn't do. There will be no opportunity to correct these records, and any attempt to do so also will be logged. With BYOD and MHealth, physicians will be on call 24/7/365, whether they want to be or not.

PHI stored on a mobile device is vulnerable at many levels, including the network, application, database and device level. Mobile devices are lost, misplaced and stolen. Viruses and malware are easily and unwittingly downloaded, and

could compromise emails and other messages transmitted by a device or the information stored on the device. HIPAA enforcement actions for lost or stolen unsecured devices add penalties that can easily reach tens or even hundreds of thousands of dollars. Just check the Office for Civil Rights (OCR) website to track the breach settlements; some are in the millions.

Checklist

The following is a short list of security and privacy safeguards.

1. Identify all mobile devices used to access your network, usually through a staff questionnaire.
 - Determine the security status and capability of the devices.
2. Establish, disseminate and provide appropriate training for BYOD use.
3. Mandatory security steps:
 - Encryption
 - Duo factor authentication
 - Prohibit storing of network passwords on mobile devices
4. Audit BYOD usage
5. Regular review

For an in-depth look at an entire security platform, the Healthcare Information and Management Systems Society (HIMSS) offers a sample Mobile Security Toolkit.

Mr. Cassidy is a shareholder at Tucker Arensberg and is chair of the firm's Healthcare Practice Group; he also serves as legal counsel to ACMS. He can be reached at (412) 594-5515 or mcassidy@tuckerlaw.com.

Help your patients talk to you about their BMI

Allegheny County Medical Society is offering free posters explaining body mass index (BMI) and showing a colorful, easy-to-read BMI chart. The posters can be used in your office to help you talk about weight loss and management with your patients.

To order a quantity of posters, call the society office at 412-321-5030.

You can view or download a smaller version online at www.acms.org.

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