Chapter 8
E-Discovery and Health Care IT: An Investigation

Vasupradha Vasudevan
Management Sciences and System, USA

H.R. Rao
Management Sciences and System, USA

ABSTRACT

The increase in electronic health records has introduced an increase risk of litigation related to collection, storage and exchange of health information. This chapter explores the issues associated with activities involving legal discovery that can result from failure to properly manage this stored data. It offers insights into strategies that organizations can use to protect against litigation resulting from failure to properly consider and mitigate against unexpected outcomes involving legal discovery involving stored health data.

INTRODUCTION

The computer revolution has increasingly improved firm productivity. Communications and archival systems to electronic documents help firms cut costs and quickly respond to everyday challenges. Storage of information in the electronic format helps organizations transfer confidential patient information safely and securely, save time in searching for files and helps gain better control over information. However, hidden costs may also exist in the form of high litigation risks. The risk of litigation can also impose heavy costs in terms of archiving and preservation of electronic documents. (Thru-Group, nd)

DOI: 10.4018/978-1-60960-174-4.ch008

E-discovery is a concept that health care organizations need to keep in mind, as it can greatly affect their daily operations. Many firms and organizations adopt E-discovery to save their organizations from incurring huge monetary losses in litigations.

E-Discovery

Discovery is the process by which one party to a lawsuit exchanges information with the other party. This exchange of information is vital to proving the claim or defense of a party. The scope of discovery is extremely broad.

E-discovery is the process of accessing, using and preserving information, data and records created or maintained in electronic format. It refers to discovery of information in civil litigations in which information is stored in electronic format and is also referred to as Electronically Stored Information (ESI).

The electronic format prevents spoliation of information as it also contains Metadata of the information preserved in the records. Examples of information sources that are most often used for e-discovery include instant messaging, e-mail, accounting databases, files etc. It is possible to generate large volumes of data at very low costs with the replication of ESI.. Furthermore, electronic content can be easily edited and can be backed up. Special software may, however, be required to access electronic information. (Dirking and Kodali, 2008)

Any information pertaining to a patient that is kept in the possession of a hospital or a healthcare provider whether on paper, or stored in electronic format, can be subject to disclosure in lawsuit. "E-discovery" however deals only with electronically stored information. In today's world, more than 99% of business information is stored in electronic format. In a lawsuit, any physician or CEO of a large healthcare organization will be called upon to produce ESI. E-discovery therefore requires the production of electronically stored information or ESI.

In 2004, President George W. Bush called for an electronic health records system to be maintained and preserved for all the Americans by 2014. Thus, a new office was established within US Department of Health and Human Services (Office of the National Coordinator for Health Information Technology).

On December 1 2006, amendments to the federal rules took effect that will henceforth have an impact on how ESI is created and stored. Healthcare providers are required to establish procedures to comply with these rules and communicate about the same to their staff.

Electronic Health Records are believed to contain a wealth of information about a patient. These records provide a critical source of evidence in all kinds of legal proceedings, such as medical malpractice cases and workers' compensation cases. Two other types of records that are maintained and preserved electronically by a healthcare organization are Business records and Employee records. (Brouillard, 2008) and (Miller and Tucker, 2009)

Associated Roles

The information technology (IT) specialists, keeper of medical records, health information management (HIM) personnel, financial officers, risk managers and corporate officers should understand the rules related to ESI to protect their organization from litigation.

HIM personnel should work in agreement with the IT staff and with the organization's attorneys to address the privacy issues of sensitive information like HIV, mental health, substance abuse and employee records as all of these are impacted by the new amendments in the federal rules. HIM personnel should be prepared to handle any issue relating to the organization's information management systems, including the location, preservation, retention and accessibility of electronic healthcare information.