

What's Inside . . .

Closing the Gap with Generation Y.....	2
New Coverage Enhancements	3
Improving Our Service	3
Delegate Responsibly!	4

Play it safe with good communication

When a patient's condition changes, you must quickly consider when, how, and what to communicate to the primary care provider. As you do, remember that these questions have not only clinical implications, but also legal implications.

Message sent—and received

In medical malpractice lawsuits brought against healthcare providers, one question tends to recur: Was an important change in the patient's condition communicated to the primary care provider in a timely and appropriate manner? You may communicate clinical information by speaking directly with a primary care provider or by telephone, fax, progress notes, or e-mail. But to protect yourself, make sure your communications are sufficiently documented.

If a lawsuit is filed and the lack of timely or appropriate notification of the patient's condition is an issue, discovery—the compulsory disclosure of facts—may be used to determine when, how, and what you communicated to the primary care provider. Thus, the legal defense team must evaluate evidence (documentation) to establish that communication with the primary care provider was appropriate and timely.



Such communication requires a speaker of information *and* a listener who receives it. With faxes, progress notes, or e-mail, the defense team can usually establish that the speaker sent the information; the problem is whether the intended listener received the information.

Plaintiffs often argue that if the intended listener had received the information, he or she would have taken some action. Because the record lacks evidence showing that the action took place, the argument goes, the listener obviously didn't receive the information.

Establishing evidence

Here are some suggestions for establishing that the appropriate listener received the information:

- *Face-to-face or telephone communication.* In your progress notes, document the date and time, the person you spoke to, the substance of your communication, and the primary care provider's stated plan of action. To go a step further, write a letter to the primary care provider that recapitulates the communication and keep a copy in the patient's medical record. You can also copy the client on the correspondence.
- *Faxes.* Print the fax confirmation sheet, then call to

verify that the intended recipient received the fax. Document the date, time, and the name of the person who confirmed that the intended recipient received the fax.

- *Progress notes.* On progress notes sent with the client, provide a place for the primary care provider to acknowledge receipt. Request that the progress notes be faxed or returned at the next appointment so you can add them to the client's medical record. If nothing is returned, write a letter to the primary care provider with another copy of the progress notes, stating that because no information was returned, your understanding is that no changes should be incorporated into the treatment plan.

- *Electronic communications.* You can send an e-mail requesting a return receipt on delivery, a notification that the message was read, and a notification that the message was deleted. But you have no way of knowing who received, read, or deleted your e-mail, so you may want to call the primary care provider and confirm receipt, including the documentation discussed.

Legally speaking, proving that you sent important client information to a primary care provider isn't enough. To protect yourself from legal harm, you need to establish evidence that the primary care provider actually received the information you sent. That means creating a record of what you communicated, when you communicated it, and who received it.

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Closing the gap with “Generation Y”

Olivia, a new therapist who just graduated from college, is never far from her portable mobile device, texting at a pace that makes your fingers feel tired just watching her. While talking with Olivia you learn she has a Facebook page, a blog on healthcare reform, and 2,000 followers for her Twitter feed.

On the other hand Steve, who’s been employed for 25 years and just learned that Twitter isn’t what you do simply for fun, checks his Facebook page only when his kids remind him they’ve posted new photos of the grandchildren. He can’t imagine texting them instead of picking up a phone and calling.

Olivia and Steve could easily be at odds, leaving you, their coworker, smack in the middle. To avoid conflict—and to help Olivia steer clear of problems caused by online privacy violations—it helps to understand Olivia’s generation, Generation Y, and how it differs from other generations.

What’s Generation Y?

We’ve all heard of the Baby Boomer generation and Generation X (a 2008 essay by trendspotter Marian Salzman on cnn.com added the Cuspers, who straddle the divide between Boomers and Gen Xers), but what’s Generation Y? Also called the Millennials, Net Generation, and Nexters, this young generation includes those born between

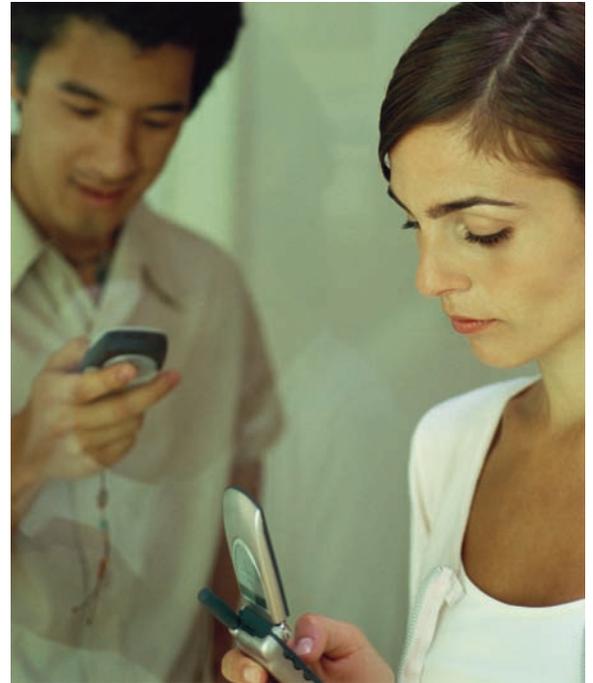
1979 and 2003 and is the fastest growing segment of today’s workforce. It’s important to avoid stereotyping, but some general traits of Gen Y include a commitment to civic duty, acceptance of diversity, and an ability to be empathetic. Gen Y is the most optimistic of all generations that came before them.

Each generation has its own view of history and cultural touchstones. Members of Gen Y grew up in the digital age, don’t remember when there was an East and West Germany, and may not have even been born when the Twin Towers came under terrorist attack. They’ve been exposed to random violence, even at school, so it’s not surprising that they value safety and security.

Challenges of Gen Y

Gen Y grew up exchanging information all the time in all locations. They’re used to texting their friends almost constantly to share the latest details of their lives. They’re less conscious of privacy as they post somewhat embarrassing photos of their latest party on their Facebook page.

This freeform sharing can cause problems in the work setting, where professional



ethics on confidentiality and privacy regulations such as the Health Insurance Portability and Accountability Act (HIPAA) require strict adherence. It’s important to help your Gen Y coworkers understand that sharing confidential information about a client violates legal, regulatory, and ethical principles. That way, you help them—and your organization—avoid potential liability issues. The costs of such events can be high. Fines for violating HIPAA regulations can run as high as \$250,000, and offenses can be punishable with jail time.

Some organizations block Internet access at work. Talk with your supervisors to encourage open access. Closed access turns off Gen Y members like Olivia and may make them look for a job at an organization with a more liberal policy, leaving you short staffed. According to an Australian study, nearly half of employees who use MySpace and Facebook during work hours would turn down a job offer from an employer that banned the sites. Of course, it’s still important not to spend too much time online, in the same way you wouldn’t talk excessively with others while on the job.

Working with Gen Y

You can be an effective coworker and help colleagues like Olivia understand the

Generations		
Name	Birth Years	Work Values
Veterans	1928–1945	Loyal, respect authority, value stability, hard working
Baby boomers	1946–1953	Skeptical of authority, idealistic, competitive, like teamwork
Cuspers	1954–1965	Value traditional notions of family but see men and women as equals in parenting, embrace digital technology
Generation X	1966–1978	Value self-reliance, rely more on friends than institutions, irreverent humor, more pessimistic, not loyal to company
Generation Y	1979–2003	Like to figure things out, confident, want challenge but not responsibility, like group work, not in awe of authority figures, don’t want to pay dues, like the idea of being with one or two companies

importance of confidentiality and other liability issues by understanding how her generation prefers to work. Gen Y likes group work and doesn't like hierarchy. To help your coworkers, you might start a discussion group of Gen Y staff to talk about case examples related to privacy issues. For example, in February 2009 two Wisconsin nurses were fired for posting a patient's X-rays on a Facebook page, even though the patient wasn't identified. Because members of Gen Y aren't in awe of authority figures, consider coleading the discussion with a Gen Y representative.

Gen Y prefers communication to be electronic, timely, and positive. Seek out interactive videos to teach this generation about privacy issues. When your Gen Y coworker does something great, consider texting a positive note right after an event instead of sending an e-mail later. Remember that Gen Y craves feedback from those around them. You can build a solid collaborative relationship by providing frequent, sincere positive feedback as appropriate.

Finding common threads—and differences

If you become frustrated with a member of Gen Y, take time to consider generational similarities. After all, humans share 99.99% of the genetic code—that's a lot in common. Family is the top priority for all generations. You can use that to facilitate discussions of integrity in the workplace. For example, you can ask, "How do you think your mother would feel if information about her illness was posted on a Facebook page?"

At the same time, leverage generational differences. For example, Gen Y is very technology oriented. Members of this generation can help you learn how to set privacy tools on their social media pages to improve confidentiality.

Above all, remember what it was like when you started working with others from different generations. Respect each person's individuality while helping him or her understand the need to keep client information confidential.

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Announcing New Coverage Enhancements

HPSO strives to offer the best product in the marketplace at competitive rates. To support our goal, HPSO is pleased to announce that we've upgraded many of the features included in your professional liability insurance policy. The following limits have been upgraded and will be available at your next renewal:

- *License Protection*: New Expanded Coverage!
- *Defendant Expense Benefit*: New Higher Limits!
- *Deposition Representation*: New Higher Limits!
- *Assault*: New Expanded Coverage!
- *Medical Payments*: New Higher Limits!
- *First Aid*: New Higher Limits!
- *Damage to Property of Others*: New Expanded Coverage!

Along with these upgrades, the following coverage enhancements will also be available:

- *Workplace Violence Counseling*: Includes reimbursement for counseling services arising from an assault at your workplace.
- *Sexual Misconduct (up to \$25,000 aggregate)*: Replaces existing exclusion to provide coverage for sexual misconduct. Defense is outside the limit, and all duty to defend ends once the aggregate is paid. When sexual misconduct is alleged, all allegations in that claim will be subject to the sexual misconduct aggregate, including professional liability, personal injury liability, and malpractice liability.
- *Information Privacy Coverage (up to \$25,000 aggregate)*: Coverage for breach of privacy including HIPAA fines and penalties (not including medical billing errors and omissions).

To read more about these coverage enhancements, please visit our website.

Improving Our Service to HPSO Customers

Our HPSO Contact Center is dedicated to providing you the highest level of service. Each year, we manage an increasing number of client interactions including telephone calls, e-mails, faxes, and letters. Our customer service team works to answer your phone calls, online inquiries, e-mails, and faxed requests in a timely manner.

We recognize that we have not met your expectations in all cases over the last year. To support our goal to provide you excellent service, we've made improvements to our professional staff and technology.

Professional Staff

- *More Resources*: Our representatives are licensed insurance agents and now we have more of them to better serve you.
- *Quality Assurance Program*: We take pride in our quality assurance program and take steps to ensure that our service results meet or exceed your expectations. We analyze call performance, develop quality measures through training and audits, and deliver one-on-one coaching feedback.

Advanced Technology

- *Call Recording Solution*: Recording telephone calls and data associated with each call has allowed us to improve the customer experience through first-call resolution, streamlined processes, and targeted training and education. We now can handle many of your requests over the phone, such as name change requests, policy upgrades and adding policy endorsements that were previously required to have been submitted in writing.
- *Document Imaging*: By scanning all client information and adding it to your electronic account, we can immediately access your documents to provide quicker response and processing times.
- *Daily E-mail*: When your renewal payment is received or if you've applied for a new policy and payment is received, we'll send you an electronic verification of payment statement by the next business day, along with a link to download your Certificate of Insurance. To take advantage of this service, a valid e-mail address is needed.
- *My Account Online Self-Service*: You can renew online, obtain certificates of insurance, make payments, change an address, and perform other self-service functions.
- *Telephone Self-Service*: Allows you to perform many of the same functions as our online solution by calling our toll-free number.

As always, our self-service systems allow you to access your account information and process transactions at your convenience, at any time, from any location.

HPSO Helps the Environment

HPSO *Risk Advisor* is going green! And you can help, too. You can register to receive the next edition of the HPSO *Risk Advisor* via e-mail. To do so, go to www.hpso.com/gogreen and sign up. However, if you'd like to continue to receive the paper version, we'll print it on recycled paper. You can also read past issues of the HPSO *Risk Advisor* on our website by visiting www.hpso.com/news.

Service your account, day or night, by visiting **My Account!**
Check it out at www.hpso.com

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Delegate responsibly!

During a busy work day, you may be called upon to delegate some of your work to coworkers—but how do you know you're giving the right task to the right person? The “five rights” for delegating to another caregiver provide an easy-to-remember guide: right person, right task, right circumstances, right direction, and right supervision.

The **right person** refers to both the person who's delegating and those who will perform the task. To direct and supervise appropriately, you must understand the qualifications and competencies of your staff.

The **right task** is one that may be safely delegated for a specific patient. Safe tasks



are those that involve an unchanging, standard procedure and have minimal risk and predictable results.

To determine the **right circumstances**, consider all relevant factors, including appropriateness of the patient setting and available resources.

Giving the **right direction** means providing a clear, concise description of the task you're delegating, including objective limits and expectations.

Providing the **right supervision** calls for knowing the qualifications and competencies of your staff, knowing the results of the delegated task, and evaluating performance.

Following the “five rights” will allow you to delegate effectively—and provide a safe and positive outcome for you and your patients.

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