

Debut of Apple Watch raises new concerns over privacy issues

Question: Is it true that Apple has developed a watch that may include some type of health care app? Does this raise HIPAA (Health Insurance Portability and Accountability Act) privacy issues?

Answer: Apple recently announced the launch of its Apple Watch, which should be available to consumers by the time you read this column. In fact, even if you have another Apple mobile device such as an iPhone or iPad, you may be able to pull up a standard preloaded health application (app), recognizable by a familiar heart icon, that can measure health and fitness items such as the number of steps taken in a day, week, month or year.

HealthKit is the Apple software that information technology professionals will use to create programs to send health data to and from the app. Recognized health care entities such as the Mayo Clinic have already begun partnerships with Apple that may allow users to view lab results in real time, among other things (see techtimes.com/articles/17152/20141003/apple-healthkit-has-a-powerful-supporter-in-mayo-clinic.htm). It's not a stretch of the imagination to contemplate how such apps may be helpful in the context of mental health treatment, such as measuring real-time heart rate, respiration and even perspiration levels in clients with anxiety.

To answer your second question, interesting privacy issues are indeed raised. Under current federal law, if a user were merely to use the app without communicating with his or her health care providers, the app probably would not directly implicate HIPAA. However, if the protected health information were to be created, sent or received by a HIPAA “covered entity” (see cms.gov/Regulations-and-Guidance/HIPAA-Administrative-Simplification/HIPAA-GenInfo/AreYouCoveredEntity.html) or the “business associate” of a covered entity, HIPAA would be implicated. Stringent physical, administrative and technical safeguards would need to be implemented to ensure the protection of electronic protected health information. Furthermore, considering the small size of the Apple Watch and how easily it might be stolen or lost, the U.S. Department of Health and Human Services Office for Civil Rights could levy civil monetary penalties against Apple or the entity responsible for ensuing privacy breaches.

Depending on how the mobile devices are used, state laws may also be invoked. Connecticut's attorney general wrote a letter to Apple's CEO raising privacy questions on behalf of the state's citizens, despite the fact that Apple has said that users' protected health information will be encrypted on the Apple Watch.

The Apple Watch and its HealthKit may offer promising future benefits

for health care consumers. In the meantime, because of still unresolved privacy concerns, counselors are advised to monitor developments before encouraging interface with their clients on health-related electronic device apps.

The question addressed in this column was developed from a de-identified composite of calls made to the Risk Management Helpline, sponsored by the American Counseling Association. This information is presented for educational purposes only. For specific legal advice, please consult your own local attorney. To access additional risk management Q&As, go to counseling.org/ethics and scroll to the bottom of the page for the ACA members-only link to the Risk Management section of the website. ♦

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