

HIPAA Communication Guide for News Media

Introduction

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandated regulations that establish standards to protect the privacy of each person's individually identifiable health information. Hospitals must comply with these privacy standards – and the rules regarding the way hospitals may use or disclose “protected health information” or PHI – by **April 14, 2003**.

The Nebraska Hospital Association has prepared this material to provide news media professionals with an understanding of hospitals' responsibilities to protect their patients' privacy.

As providers of information, hospitals are obligated to ensure that the facts they are authorized to release are as accurate as possible. The hospital's **first responsibility** is to protect the confidentiality, health and legal rights of each patient. To ensure that reporters receive timely and accurate information, they should contact the public relations director of the hospital. Media should not contact patients directly.

The Hospital Directory

Under the Privacy Rule, a hospital must provide each of its patients with a Notice of Privacy Practices that, among other things, describes the uses and disclosures that the hospital may make of patients' PHI, including uses and disclosures in its Hospital Directory of patients. HIPAA privacy regulations restrict the information health care providers may include in a patient directory and release to the public, including news media.

Disclosure of Directory Information

The Notice of Privacy Practices requires hospitals to inform the patient of the persons to whom the hospital may disclose the PHI that is included in the Hospital Directory:

- The hospital may disclose the patient's name, location in the hospital, and general condition, ***only if the inquiry specifically identifies the patient by name***. No information may be given if a request does not include a specific patient's name or if the patient requests that the information not be released. This includes inquiries from the press.
- As long as the patient has not requested that information be withheld, hospitals may release the patient's one-word condition and location to individuals who inquire about the patient by name.

Definitions of Patient Conditions

Under the Privacy Rule, the Hospital Directory may include a one-word, general description of the patient's condition that does not communicate specific medical information about the individual. These one-word descriptions should be disclosed only if 1) the patient has not opted out of the Hospital Directory, and 2) the person inquiring about the patient asks about the patient by name. The following terms are recommended by the American Hospital Association's Society for Healthcare Strategy and Market Development:

Undetermined – Patient awaiting physician assessment.

Good – Vital signs are stable and within normal limits. Patient is conscious and comfortable. Indicators are excellent.

Fair – Vital signs are stable and within normal limits. Patient is conscious, but may be uncomfortable. Indicators are favorable.

Serious – Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.

Critical – Vital signs are unstable and not within normal limits. Patient may be unconscious. Indicators are unfavorable.

Option to “Opt Out” of the Directory

The hospital must give the patient the opportunity to restrict or prohibit some or all of these permitted disclosures of the PHI that is to be included in the Hospital Directory, including restricting the use or disclosure of one or more categories of PHI (e.g., a patient could opt to have his or her name and location, but not his or her condition, included in the Directory.)

Patients Who Are Unable to Consent to Inclusion in the Hospital Directory

If a patient is unconscious or otherwise incapacitated when he or she is brought to the hospital and cannot agree or object to his or her inclusion in the Hospital Directory, the hospital may use and disclose the Hospital Directory Information to people who ask about the individual by name if such disclosure is consistent with any known preference of the patient (e.g., if the patient expressed a preference when he or she was a patient at the hospital in the past) and if the hospital believes that such disclosure is in the patient's "best interest."

The hospital must notify the patient of his/her right to agree or object to inclusion in the Hospital Directory as soon as the patient is conscious and able to make that decision.

Beyond the One-Word Condition: Media Access to Patients

Media representatives and photographers should contact the hospital's designated spokesperson for assistance in obtaining interviews and/or photographs of patients, employees and areas of the hospital. Hospital policies usually require that a hospital representative accompany news personnel any time they are on hospital grounds. No photographs, audio/visual recordings or interviews of patients may be taken within the facility or on hospital property without the patient's prior written consent, or the written permission of a parent or legal representative. Even

with permission, news media representatives should use good judgement when airing images or printing photographs of patients who are ill or injured. Deceased or unconscious patients should **NEVER** be photographed under any circumstance, regardless of whether they are in the hospital or on hospital property.

The following activities require a written and signed authorization that meets all HIPAA privacy standard requirements from the patient:

- Releasing a detailed statement (includes anything other than a one-word condition); the patient or his/her legal representative must sign the written authorization approving any detailed statement;
- Taking photographs (either video or stills) of the patient; and
- Media interviews with patients.

Matters of Public Record

Matters of public record refer to situations that are reportable by law to public authorities, such as law enforcement agencies, the coroner or public health officer. Patients who are involved in public record situations have the same privacy rights as all other patients. Inquiries should be directed to the appropriate public authority. The public authority will be guided by the applicable federal or state statutes as to whether or not it can release information.

Celebrity and public figures are not subject to different standards than other patients when it comes to hospital policies for releasing information to the media.

Requests for Extensive Patient Information

If a member of the press is seeking information about a patient's condition and/or treatment at the hospital that goes beyond the basic information that is provided in the Hospital Directory (e.g., a detailed statement about the patient's condition, a photograph of the patient, or an interview with the patient), the hospital public relations department must obtain written authorization from the patient to use and disclose that PHI. This authorization must describe in detail how the information will be used and to whom this information will be disclosed, and must establish a specific point in time (a date or an event related to the patient or the purpose of the use or disclosure) at which the authorization will terminate and the use and/or disclosure of PHI will no longer be permitted.

Written Policies and Procedures

The Privacy Rule specifically requires that each hospital adopt and implement written policies and procedures that are designed to ensure its compliance with the Privacy Rule. Hospital public relations staff should understand these policies and procedures, and should ensure that the hospital's Administrative Policies and Procedures reflect any protocols that have been changed to comply with the Privacy Rule.

Penalties for Wrongful Disclosure

Hospitals: Hospitals can face serious penalties for disclosing PHI about their patients without proper permission. The U.S. Department of Health and Human Services views wrongful disclosure of PHI as a violation of civil rights and has delegated the civil enforcement responsibilities for the Privacy Rule to its Office for Civil Rights (OCR). OCR will monitor compliance with, and enforce civil penalties for violations of the standards set forth in, the Privacy Rule. OCR will refer criminal violations to the U.S. Department of Justice. The criminal penalties for wrongful disclosure of PHI fall into three categories:

	FINES	IMPRISONMENT
Knowingly	Up to \$50,000	Up to one year
False Pretense	Up to \$100,000	Up to five years
Intent to Sell, Transfer or Use for Commercial Advantage, Personal Gain or Malicious Harm	Up to \$250,000	Up to ten years

Members of the Press: A reporter who obtains PHI in violation of the Privacy Rule under “false pretenses” (for example, where the reporter does not identify him/herself as a member of the press) could be subject to a criminal penalty under HIPAA of up to five years in prison and/or a \$100,000 fine. In addition, members of the press could be subject to common law tort liability for breach of privacy by writing, producing, and publishing a story that uses PHI disclosed to them in violation of the Privacy Rule.

Working Together

Hospitals and news media rely on each other to provide the public with important, timely and accurate health care information. While the HIPAA regulations formalize patient privacy and the release of information, the changes are not significantly different from most hospitals’ communication practices. If you have any questions about HIPAA or other communication issues, please contact your local hospital public relations executive. He or she will be glad to have the opportunity to explain their hospital guidelines and build a good working relationship.

For more information, please contact your local hospital or:

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Additional HIPAA Resources

- Nebraska SNIP Web site: <http://www.nesnip.org>
- U.S. HHS, Administrative Simplification in the Health Care Industry:
<http://aspe.hhs.gov/admsimp/>
- HIPAA Comply: <http://www.hipaacomply.com/>
- American Hospital Association: <http://www.hospitalconnect.com/DesktopServlet>
- Ohio Hospital Association Media Guide: <http://www.ohanet.org/media/mediaguide.htm>
- HIPAA Compliance Guide: <http://www.hipaacomplianceguide.com/>