

Guide to Release of Patient Health Care Information to the Media

A guide for hospital public relations professionals under HIPAA

Introduction

Releasing information concerning hospital patients to the news media requires a careful balancing of patient privacy with the media's desire for information. Hospitals are required by law to safeguard the privacy and confidentiality of their patients' medical information. These responsibilities often place hospital public relations professionals in conflict with reporters, whose job it is to seek out relevant information of people who are in the news.

Wisconsin law has protected individual health care privacy for some time. Now, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) adds federal protection to patient health care privacy rights. New HIPAA regulations, with a compliance date of April 14, 2003, specify the purposes for which patient information may be released by hospitals and other health care providers without authorization from the patient.

These HIPAA privacy regulations strictly limit what patient information hospitals may share with the news media.

The purpose of this guide is to help you understand what information can and cannot be released to the news media under the law. This guide should not be considered legal advice and is not intended to serve as a substitute for legal counsel. If you need legal advice, consult your legal counsel.

General Guidelines

The general rule under HIPAA is that except for payment, treatment and operations purposes, patient health care information may be released only if the patient authorizes the release. One exception to the general rule is that hospitals may release hospital directory information if (1) the patient has been advised of the information that may be included in the directory and to whom the information may be disclosed; and (2) the hospital provides the patient with the opportunity to restrict the release of some or all the directory information. If the patient does not "opt-out" of the directory, the hospital may release the patient's directory information, which is the patient's name, the patient's location in the hospital and, under HIPAA, the patient's condition (read the Patient Condition section below concerning state law).

Hospitals must use discretion in releasing a patient's location to avoid providing protected health information based on location. For example, at no time may a hospital disclose a patient's location in a psychiatric or substance abuse unit.

As part of the directory, the patient's religious affiliation may be released to clergy.

Please note that, except for the clergy, the directory information may be released only to persons who ask for the individual by name. This is a significant change to existing law.

Once a person is no longer a patient in the hospital, no information may be released concerning that person. Even while in the hospital, patients can ask the hospital not to release any information about their stay, in which case no information may be provided to the public and media.

Patient Conditions

Under HIPAA, as part of the directory information discussed above, hospitals may disclose a patient's condition in general terms that do not communicate specific medical information. It is important to note, however, that some interpret Wisconsin law to prohibit the release of *any* medical information about a patient, including a general condition statement. You should consult your legal counsel when developing your hospital's policies. If you determine that Wisconsin law permits the release of the patient's condition, in describing the patient's condition, hospital personnel should limit their comments to the following definitions:

- Undetermined.** Patient is 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.

** Please note, "stable" is not considered an accurate description of a patient's condition and therefore should not be used.

Release of information regarding minors is different from that of adults. See "*Minors*," page 2

Nature of Injury or Condition

In the past, some hospitals released a description of the nature of a patient's accident or injuries. This is not permissible under HIPAA without written authorization from the patient. Without specific authorization that meets HIPAA and state law requirements, the only information that may be disclosed to the news media or others is directory information as described above. Again, directory information may be disclosed only to persons who inquire about the patient by name.

Death of a Patient

While some interpret HIPAA and state law to permit a hospital to disclose the fact that a patient has died as part of the release of directory information (as a condition report while the patient is in the facility), others argue that “death” is health information that is protected by state law and cannot be released without authorization. If following this latter interpretation, information about a patient’s death, including the date, time and cause of death, should not be released without written authorization from a legal representative of the deceased.

Although a hospital may report information about a patient’s death to certain government agencies in certain circumstances (e.g. coroner, law enforcement, etc.)—some of which may become public—this does not enlarge the scope of information that a hospital may release to the media or to the public.

Location of a Patient

HIPAA permits disclosure of information concerning the patient’s location in the hospital to persons who inquire about the patient by name. (Please note, the exception for patients being treated for mental health, substance abuse, or developmental disabilities discussed below.) However, release of such information is intended to facilitate visits by family and friends, as well as the delivery of gifts and flowers.

Caution should be exercised in disclosing this information over the telephone, even where such disclosure is believed to be proper, except as necessary to direct the inquiring party in general terms to the appropriate location within the hospital.

Precise information (e.g. floor or room number) are best disclosed only on a face-to-face basis so that there is an opportunity to verify the individual’s purpose or intended use of this information.

Although HIPAA does not expressly prohibit the disclosure of a patient’s room location to the media, it is recommended that hospitals adopt policies prohibiting such disclosure without the patient’s written authorization.

When a Patient is Incapacitated

If a patient is incapacitated and there is no designated representative, a hospital may disclose some or all of the directory information if such disclosure is consistent with a prior expressed preference of the patient or is determined to be in the best interest of the patient. Hospitals should use discretion in making this decision, and the patient must be informed of the use or disclosure of information as soon as it is practical to do so and be given the opportunity to object to or limit the further release of directory information.

Access to Patients

Hospitals may deny the media and others access to a patient if it is determined that the presence of reporters or others would aggravate the patient’s condition or interfere with hospital care.

Hospitals should develop policies and procedures that streamline requests for media interviews through their public relations departments or other designated hospital personnel. Because of the often time-sensitive nature of media requests, it is recommended that hospitals designate “back-up” spokespersons to respond to media inquiries in the event the facility’s designated media representative is unavailable.

To safeguard patient privacy, it is recommended that a hospital spokesperson accompany media representatives at all times when they are in the hospital facility.

The following activities require **prior written authorization that meets HIPAA and state law requirements** from a patient:

- Issuing a detailed statement regarding the nature of the patient’s illness or injury, his or her treatment and prognosis
- Photographing or videotaping patients

If the patient is a minor, permission for any of these activities must generally be obtained from a parent or legal guardian. See “*Minors*,” below.

Public Figures and Celebrities

The standards for release of information and permissible disclosures for public figures or celebrities are not different from the standards for other patients. Given the likelihood of media interest, however, the hospital may wish to discuss with the patient representative whether the public figure would like to authorize a broader release of information to the media.

Minors

HIPAA defers to state law with respect to the rights of parents to obtain access to or control the disclosure of information concerning their children. Under Wisconsin law, only the parent or legal guardian may authorize the disclosure of a minor’s medical information to the media.

Emancipated Minors

Minors who have been legally emancipated generally have the authority to make health care decisions for themselves. In these circumstances, emancipated minors also have the ability to authorize (or object to) the disclosure of their health information.

Cooperate With State Designated Disaster Agencies

Hospitals may release patient information to state designated disaster agencies in situations where multiple facilities are receiving patients from one disaster. Public relations representatives from different facilities are encouraged to cooperate and facilitate the exchange of information regarding patients' location and status.

Specifically, hospitals may disclose patient information (e.g. location, general condition or death) to a state designated disaster agency assisting in relief efforts for the purposes of notifying family members or others responsible for a patient's care.

Rules governing the release of patient information to the media do not change in disaster situations—a reporter must have a patient's name before any information can be released to the media.

When Appropriate, Release General Patient Information

Hospitals may tell the media the number of patients that have been brought to the facility by gender or age group (e.g. adults, teens, children, etc.) and the general cause of their treatment needs (an explosion, earthquake, etc.) as long as it is not identifiable to a specific patient.

When Patient Information Should Not Be Released

A hospital's first and foremost duty is to its patients. This duty includes protecting a patient's privacy and the confidentiality of their medical care. A patient's health care privacy trumps the media's desire for information—even if some of the information can be considered a matter of public record.

The following situations dictate that hospitals **not release patient information**:

Patients Who Opt Out of Providing Information

The hospital has a responsibility to tell patients what information will be included in the hospital directory and to whom that information will be disclosed. The patient must be provided the opportunity to expressly state that he or she does not want information released, including confirmation of his or her presence in the facility.

Mental Health, Substance Abuse and Developmental Disabilities

Federal and state laws specifically prohibit hospitals from releasing any information about patients who are being

treated for alcohol or substance abuse, mental health issues or developmental disabilities. This includes acknowledging, even in response to specific inquiries, that a patient is being treated in a facility if doing so would identify them as being the recipient of these services.

Hospitals that provide treatment for alcohol or substance abuse or for mental health or developmental disabilities should develop specific policies and procedures to address the additional restrictions imposed on the disclosure of information related to such treatment.

Sensitive Information

A hospital should protect its patients' sensitive health information. Such information could include the room location of the patient (e.g. admission to an isolation room for treatment of an infectious disease).

Additionally, a hospital should not report a patient's location within the hospital—or even confirm the patient's presence in the facility—if that information could endanger the patient (e.g. the hospital has knowledge of a stalker or abusive partner, etc.).

Matters of Public Record

Matters of public record include situations that are reportable by law to public authorities such as law enforcement agencies, the coroner or the public health officer. Information that is included in police reports also is considered to be public record (e.g. the transport of car accident victims to a hospital).

However, public record cases are no different from other cases with regard to the release of information. Thus, even though public record cases may result in increased media inquiries, hospitals must take the same precautions to protect patient privacy as in other situations including the HIPAA requirement that only directory information be released and **only if the inquiry specifically contains the patient's name.**

For example, in the case of a car accident victim who is transported by the fire department or paramedics to a hospital, **a reporter must have the car accident victim's name before the hospital can provide any patient information. The hospital then may release only directory information. Again this limited release is permitted only if the patient has been provided information concerning the release of information through the directory and has not opted out of the directory. This is a significant change to many hospitals' previous practices.**

There are numerous state statutes that address reporting of incidents ranging from child abuse to gunshot wounds. The fact that a hospital has an obligation to report certain confidential health care information to a government agency does not make that information public and available to the news media.

Hospitals should refer media questions on matters of public record to the appropriate agencies (e.g. police, fire, coroner's office). The public entity will decide, based on the laws applicable to it, whether it can release any or all of the information it has received.

A Designated Hospital Spokesperson Should Be Available At All Times

Because of the rapidly changing nature of disasters and the critical role that hospitals play following a disaster, a hospital spokesperson should be available to the news media at all times. This access can be in person or via telephone or pager. The spokesperson should have immediate access to hospital administrative and clinical personnel so that he or she can provide accurate and appropriate information to the media.

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