



# OVERVIEW FOR THE MEDIA: PATIENT PRIVACY PROTECTIONS UNDER HIPAA

Healthcare providers, including hospitals and health systems, have a legal obligation to safeguard the privacy and confidentiality of their patients. Significant civil<sup>1</sup> and criminal<sup>2</sup> penalties may be imposed when a healthcare provider unlawfully uses or discloses a patient's individually-identifiable healthcare information under the federal privacy rule of the Health Insurance Portability and Accountability Act (HIPAA).

## Need for Patient Authorization

To protect privacy, the rule requires healthcare providers and hospitals to provide each patient with a Notice of Privacy Practices<sup>3</sup>, informing patients of the types of Protected Health Information (PHI) that would be included in a hospital directory and to whom this information might be disclosed, including members of the media. Patients must have the opportunity to limit or prohibit these disclosures.

## PHI in the Hospital Directory

If a patient has not opted out of the hospital directory<sup>4</sup>, it may contain the following information:

- The patient's name;
- The patient's location within the facility;
- The patient's general condition in terms that do not reveal specific medical information about the individual; and
- The patient's religious affiliation. (This information may only be shared with members of the clergy).

## Inquiries Using a Patient's Name

Hospitals may disclose a one-word description of the patient's condition with members of the media who inquire about the patient by name<sup>5</sup>. Many hospitals have policies that prevent disclosure of patient room information to the media.

## Medical Conditions

Hospitals generally describe a patient's medical condition using the following terms:

- **Under Evaluation or Undetermined:** The patient is undergoing assessment.
- **Good:** The patient has stable vital signs that are within normal limits. He or she is conscious and comfortable. Indicators are excellent.
- **Fair:** The patient has stable vital signs that are within normal limits. He or she is conscious but might be uncomfortable. Indicators are favorable.
- **Serious:** The patient might have unstable vital signs that are outside normal limits. He or she is acutely ill. Indicators are questionable.
- **Critical:** The patient has unstable vital signs that are outside normal limits. He or she might be unconscious. Indicators are unfavorable.
- **Treated and Released:** The patient received treatment but was not admitted.
- **Treated and Transferred:** The patient received treatment and was transferred to a separate facility.

If a patient has left the hospital, providers may not disclose the patient's new location or the date of transfer or release without patient authorization.

## Hospitals' Patient Confidentiality Policy

Hospitals may also maintain patient confidentiality policies that:

- Coordinate all media calls and interview requests through a hospital representative;
- Ensure that a hospital representative accompanies members of the media on the hospital grounds;
- Limit media access to hospital areas where confidentiality is required, including patient rooms, emergency departments, maternity units and psychiatric departments;
- Require written authorization for patient photographs, interviews and specific medical information beyond a one-word description; and
- Provide only aggregate information about patients being treated in the wake of a disaster, such as the number of individuals being treated (by age group and gender).

## Matters of Public Record

The privacy rule permits hospitals to comply with the wide range of agency reporting requirements that exist under state laws, including those involving cases of abuse, neglect and domestic violence<sup>6</sup>. However, the rule does not expand the range of information hospitals may disclose to the media in these situations.

## Media Inquiries about Cause of Death

The privacy rule permits hospitals to disclose that a patient is deceased as a description of the patient's general condition in the hospital directory<sup>7</sup>. Hospitals may wait to notify and obtain permission from a patient's next of kin before making such a disclosure, and they may not disclose information that falls outside the limits of the directory, such as time or cause of death.

## Wrongful Disclosure and Publication of Private Facts

In email correspondence with Sen. Bill Cassidy's office, legal experts at the Congressional Research Service (CRS) clarified that, under a provision of federal legislation enacted in 2009<sup>8</sup>, "anyone, who obtains or discloses individually identifiable health information maintained by a covered entity without authorization, is guilty of violating 42 U.S.C. § 1320d-6. Obtaining the information under false pretenses would increase the maximum penalties for committing this crime."<sup>9</sup>

In addition, publication of otherwise private facts about a patient may be grounds for a cause of action under state laws for an invasion of privacy.<sup>10</sup>

### SOURCES

<sup>1</sup> 45 C.F.R. § 160.404

<sup>2</sup> 42 U.S. Code § 1320d-6

<sup>3</sup> 45 C.F.R. § 162.520

<sup>4</sup> 45 C.F.R. § 164.510(a)(1)

<sup>5</sup> 45 C.F.R. § 164.510(a)(1)(ii)(B)

<sup>6</sup> 45 C.F.R. § 164.512

<sup>7</sup> <https://www.hhs.gov/hipaa/for-professionals/faq/485/can-a-patients-release-status-be-part-of-the-facility-directory/index.html>

<sup>8</sup> Sec. 13409 of Public Law 111-5 <https://www.congress.gov/111/plaws/publ5/PLAW-111publ5.pdf#page=157>

<sup>9</sup> 42 U.S.C. § 1320d-6(b)(2) <https://www.law.cornell.edu/uscode/text/42/1320d-6>

<sup>10</sup> Froke, P., Bratton, A. J., Garcia, O., McMillan, J., Minthorn, D., & Schwartz, J. (2018). *The Associated Press stylebook 2018 and briefing on media law*. New York: Basic Books.



Disclaimer: This information is not intended as legal advice.