

HIPAA INFORMATION

HIPAA is a federal act that deals with health care concerns and issues. As part of the HIPAA, privacy rules restrict the use of and access to medical records and health information maintained by hospitals and other health care providers.

It appears hospitals and health care facilities must tell patients about the fact that the patient can request that personal information not be shared. If that occurs, the hospital may not disclose patient information. In other cases, the hospital may share information with clergy.

We have informally compiled a list of web sites with information regarding HIPAA privacy issues and how they relate to clergy and patient visits. We have provided a variety of different sites, including hospital and medical advisory sites, so you can get a feel for what advice medical institutions are receiving and how they are dealing with HIPAA rules. *For a complete list of official governmental sites see the end of this document.*

See the comprehensive ELCA Board of Pensions site for more HIPAA information, <http://www.elcabop.org/footer/hipaa.asp>

See also http://www.gcfa.org/HIPAA_Privacy_Rule.pdf

What information can a hospital give to members of the clergy who come to the hospital to see patients?

Under the facility directory provisions of HIPAA (§ 164.510(a)), the hospital may disclose to clergy the patient's name, location in the facility, condition described in general terms (critical, stable, fair), and religious affiliation. The hospital must inform the patient of the information included in the directory and provide the individual with the opportunity to object to its inclusion in the directory. Note that only clergy are entitled access to the facility directory information regarding religious affiliation. Other individuals requesting information about the patient must ask for the patient by name, and can receive only information regarding location in the facility and condition in general terms.

<http://www.bairdholm.com/issues/hipaa/faq.htm>

USE AND DISCLOSURE FOR FACILITY DIRECTORIES SECTION 164.510(a) As Contained in the HHS Final HIPAA Privacy Rules

<p>· HHS Regulations Use and Disclosure for Facility Directories - § 164.510</p>
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Standard: use and disclosure for facility directories.

· *Permitted uses and disclosure.* Except when an objection is expressed in accordance with

paragraphs (a)(2) or (3) of this section, a covered health care provider may:

- Use the following protected health information to maintain a directory of individuals in its facility:
 - The individual's name;
 - The individual's location in the covered health care provider's facility;
 - The individual's condition described in general terms that does not communicate specific medical information about the individual; and
 - The individual's religious affiliation; and
- Disclose for directory purposes such information:
 - To members of the clergy; or
 - Except for religious affiliation, to other persons who ask for the individual by name.
- *Opportunity to object.* A covered health care provider must inform an individual of the protected health information that it may include in a directory and the persons to whom it may disclose such information (including disclosures to clergy of information regarding religious affiliation) and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph (a)(1) of this section.
- *Emergency circumstances.*
 - If the opportunity to object to uses or disclosures required by paragraph (a)(2) of this section cannot practicably be provided because of the individual's incapacity or an emergency treatment circumstance, a covered health care provider may use or disclose some or all of the protected health information permitted by paragraph (a)(1) of this section for the facility's directory, if such disclosure is:
 - Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider; and
 - In the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment.
 - The covered health care provider must inform the individual and provide an opportunity to object to uses or disclosures for directory purposes as required by paragraph (a)(2) of this section when it becomes practicable to do so.

<http://www.hipaacomplyonline.com/hipaasections/164.510a.asp>

Department Clarifies Health Care does not include Spiritual Healing

Comment: Many commenters urged the Department to restrict or clarify the definition of “covered entity” to exclude certain entities, such as department-operated hospitals (public hospitals); state Crime Victim Compensation Programs; employers; and certain lines of insurers,

such as workers' compensation insurers, property and casualty insurers, reinsurers, and stop-loss insurers. One commenter expressed concern that clergy, religious practitioners, and other faith-based service providers would have to abide by the rule and asked that the Department exempt prayer healing and non-medical health care. ...

Also, in response to the comment regarding religious practitioners, the Department clarifies that "health care" as defined under the rule does not include methods of healing that are solely spiritual. Therefore, clergy or other religious practitioners that provide solely religious healing services are not health care providers within the meaning of this rule, and consequently not covered entities for the purposes of this rule.

<http://www.bricker.com/attserv/practice/hcare/hipaa/160.103e.asp>

Technical Corrections to the Standards for Privacy of Individually Identifiable Health Information Published December 28, 2000

SUMMARY

These technical corrections address changes that inadvertently were excluded from the preamble of the Standards for Privacy of Individually Identifiable Health Information published December 28, 2000.

DATES

The effective date of these changes is February 26, 2001, the same as the effective date of the Standards for Privacy of Individually Identifiable Health Information published December 28, 2000.

FOR FURTHER INFORMATION CONTACT: Kimberly Coleman, 1-866-OCR-PRIV (1-866-627-7748) or TTY 1-866-788-4989.

Technical Corrections

Correction 1: In the section-by-section description of the rule provisions, under the description of section 164.510(a)-Use and Disclosure for Facility Directories, paragraphs seven and eight beginning "We believe that allowing clergy....," and "More specifically....," are deleted and replaced with the following:

We believe that allowing clergy access to patient information pursuant to this section does not violate the Establishment Clause because the exemption from the final rule's authorization requirement for disclosure to clergy of the specified protected health information is a permissible religious accommodation. The purpose and effect of this provision is to alleviate significant governmental interference with the exercise of religion, and we anticipate that the exemption

would rarely, if ever, impose any significant burdens on patients or other individuals.

Without this exemption, covered entities would have to obtain authorizations before disclosing the limited protected health information to clergy, thereby making it more difficult than it commonly has been for clergy to provide services to patients. Accordingly, the clergy exemption permitting limited disclosure of protected health information in the circumstances noted above is "rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions." *Corporation of the Presiding Bishop of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 339 (1987). Moreover, in certain cases the clergy exemption might also alleviate significant governmental interference with patients' religious exercise that the final rule's authorization requirement otherwise would impose—for example, by eliminating delay that might inhibit the ability of a patient to obtain sacraments provided during last rights.

Correction 2: In the section-by-section discussion of comments, under the discussion of section 164.534-EFFECTIVE DATE AND COMPLIANCE DATE, the last sentence of the second paragraph should be replaced with the following language. Although the regulation is effective as of 60 days from publication in the Federal Register, section 1175 of HIPAA makes clear that no covered entity shall be required to comply with any standard or implementation specification for 24 months (or 36 months for small health plans). We will not enforce the regulation prior to those dates, and the regulation's provisions will not preempt or otherwise alter state or other law prior to those dates. A covered entity may, of course, voluntarily implement policies that would comply with the regulation prior to those dates, but the regulation itself will neither compel disclosure nor provide a basis to refuse disclosure. We intend, therefore, for all of the provisions of the rule to come into force in 24 months (or 36 months for small health plans).

<http://www.lesc.com/library/Content/Regulations/HIPAA/Privacy/Regs/corrections.htm>

See the page in the federal register referred to at
<http://www.bricker.com/attserv/practice/hcare/hipaa/techcorr.pdf>

HIPAAnotes Volume Two, July 2002

No. 28 HIPAA Detail -- Clergy Access to Patient Information: Where to Begin?

· The HIPAA Privacy rule permits a covered entity to disclose to a member of the clergy:

the individual's name;

· the individual's general condition in terms that do not communicate specific medical

- information about the individual;
- the individual's location in the facility; and
- the individual's religious affiliation.

A disclosure of directory information may be made to members of the clergy even if they do not inquire about an individual by name. So, as a covered entity, can you give all members of the clergy access to your entire patient directory?

Covered entities are not required to obtain religious affiliation from patients, nor are they required to provide this information to the clergy. If you choose to give access to the clergy, you must look deeper into the regulations before setting up related procedures.

First, your organization must settle on a process to determine who are members of the clergy and who will be allowed access. Unexpected conflicts should be considered, for example if a newspaper reporter is also a member of the clergy. Another potential problem is that with the ease that one can become a member of the clergy, (for example, becoming a "minister" by doing a quick Internet search and completing a simple online form), should anyone claiming clergy status be given access to patient information?

In addition, you should be able to honor patients' rights to a meaningful opportunity to opt-out of directory listings or to restrict some or all of the uses and disclosures that might be included. Many patients may not want their religious affiliation shared with anyone, or they may want it restricted to their minister or denomination. Individuals should be free to determine whether they want their religious affiliation disclosed to clergy through facility directories.

Clearly, policies and procedures in this area must include more than a simple inquiry for the patient's religious affiliation and a request for permission to provide this information to clergy members. As with so many aspects of patient privacy under HIPAA, the devil is in the details. Carefully think through and implement a process that explains how and to whom patient information will be shared, and provides a genuine means for determining not only if patients want their information shared with clergy, but if they also wish their religious affiliation shared. Then make sure all affected staff have access to the patient's recorded choices, and are trained to follow through accordingly.

William M. Miaoulis, Principal
Phoenix Health Systems
<http://www.hipaadvisory.com/note/vol2/july02.htm>

Clergy

Members of the clergy frequently request access to names of patients in a hospital to determine if members of their congregations have been admitted. Patient names may be released to members of the clergy if a patient has given permission. A patient must be asked by a hospital if his or her name may be included in a hospital directory. A patient also must be asked if religious affiliation may be included in the directory. The patient may agree or object to the inclusion of his or her name or religious affiliation in the directory. If the patient objects to inclusion of his or her name,

clergy may not be told that person is in the hospital. If the patient does not object, clergy may receive the directory information without asking for the patient by name.

Missouri Hospital Association

October 2002 <http://www.mbaweb.org/hipaaGuidelines.asp>

See also

<http://www.aishealth.com/Compliance/Hipaa/RPPHIPAADir.html>

OFFICIAL GOVERNMENT SITES

<http://aspe.hhs.gov/admsimp/> “This is the main HIPAA site - the Administrative Simplification website for the Department of Health and Human Services.”

<http://www.hhs.gov/ocr/hipaa/> “From the Department of Health and Human Services’ Office of Civil Rights; they’re responsible for implementing and enforcing most of the non-privacy portions of HIPAA.”

<http://www.cms.gov/hipaa/hipaa2/default.asp/> “The Center for Medicare and Medicaid Services HIPAA site; they’re responsible for implementing and enforcing most of the non-privacy portions of the HIPAA.”

<http://www.hhs.gov/ocr/hipaa/finalreg.html/> “The OCR’s privacy rule page, with links to all portions of the HIPAA privacy rule, including commentary and amendments.”

<http://www.hhs.gov/ocr/hipaa/privacy.html/> “The OCR’s December 4, 2002 *Guidance Explaining Significant Aspects of the Privacy Rule*” is essentially the comprehensible version of the HIPAA privacy rule.”

<http://www.wedi.org/snip/> “This site from the Workgroup for Electronic Data Interchange, Strategic National Implementation Process subgroup is a great technical HIPAA resource. See the white papers, especially.”

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