

GUIDE TO RELEASE OF PATIENT INFORMATION TO THE MEDIA

*A guide for hospital public
relations professionals and
the news media, as specified
by California law and HIPAA*



**CALIFORNIA
HOSPITAL
ASSOCIATION**

QUICK REFERENCE GUIDE

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INTRODUCTION

Releasing information about the condition of 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 about people who are in the news.

*California law has protected patient privacy for decades by restricting the release of medical information. The federal Health Insurance Portability and Accountability Act (HIPAA) added federal protection to state patient privacy rights. The HIPAA regulations specify the purposes for which patient information may and may not 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 under the law. Health care facilities and professionals should use common sense and good judgment, in addition to consulting this brochure, when developing their policies and procedures regarding the disclosure of individually-identifiable patient information to the news media. A hospital may choose not to make certain disclosures, even if the law technically permits them. Hospitals should consult legal counsel with expertise in health information privacy law prior to finalizing policies and procedures. If a provider is in doubt about whether a particular disclosure is lawful, obtaining the patient's (or legal representative's) written authorization for the disclosure is advised.

This guide is not intended to serve as a substitute for legal counsel and legal advice should be obtained when necessary.

RELEASE OF PATIENT INFORMATION TO THE NEWS MEDIA

OVERVIEW

There is no state or federal law specifically regarding disclosures of health information to the media. However, state and federal health information privacy laws permit hospitals to use and disclose limited patient-identifiable information to maintain a directory, thus allowing visitors, clergy, florists, etc., to find patients and generally know how they're doing, as well as to deliver flowers, cards and gifts.

NOTIFICATION OF PATIENT

Hospitals must tell patients the information that may be included in the directory (patient's location and general condition) as well as the persons to whom it may be disclosed. The patient must be provided the opportunity to restrict or prohibit some or all of the disclosures. This is usually accomplished around the time of admission via the Notice of Privacy Practices.

If the opportunity to restrict or prohibit disclosures cannot practicably be provided because of the patient's incapacity or an emergency treatment circumstance, the hospital may use or disclose the information (patient's location and general condition) if the disclosure is:

1. Consistent with a prior expressed preference of the patient, if any, that is known to the provider; and
2. In the patient's best interest as determined by the provider, in the exercise of professional judgment.

Later, when the patient recovers sufficiently, the provider must inform the patient about the directory information and provide an opportunity to restrict or prohibit disclosures.

GENERAL GUIDELINES

Unless the patient has requested that information be withheld, the following information may be released upon request, but **only if the inquiry specifically contains the patient's name:**

1. Patient's general condition (undetermined, good, fair, serious, critical, deceased), and
2. The patient's location.

This applies to an inpatient, outpatient or emergency patient.

No information can be given out if a request does not include the patient's name. Also, no other information may be released under this provision of the law.

CHA recommends that hospitals use their discretion when exercising this authority. For example, disclosing this information to a television camera crew (without patient authorization) would likely not comply with the HIPAA requirement that the disclosure be in the best interest of the patient. Instead, the hospital should confer with the patient prior to making any disclosure to the media. Additionally, a hospital may not disclose a patient's location in a psychiatric or substance abuse unit. Finally, a hospital should not disclose a patient's death to the media until the hospital verifies that the family has been notified and does not object to the disclosure. (See "Death of a Patient," page 5.)

Patient Conditions

Hospitals may disclose a patient's condition in general terms that do not communicate specific medical information. In describing the patient's condition, hospital personnel are advised to limit their comments to the following one-word descriptions:

- **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.

Clinicians may use the term “critical but stable” among themselves because it helps differentiate patients who are expected to recover from those whose prognosis is worse. However, a critical condition means that at least some vital signs are unstable, so this is inherently contradictory. The term “stable” is not an accurate description of a patient's condition and therefore should not be used with the media.

Release of information regarding minors is different from that of adults. (See “*Minors*,” page 8.)

Nature of Injury or Condition

California used to permit hospitals to release a description of the nature of a patient's accident or injuries. In fact, this law is still on the books. However, this is not permissible under HIPAA without written authorization from the patient.

Without authorization, the only information that may be disclosed about the patient's condition is the one-word description as defined on page 4.

Death of a Patient

State and federal privacy protections continue to apply to a patient's medical information even after the patient's death.¹ That is, no information may be released unless the inquiry contains the patient's name.

The death of a patient is considered to be a "patient condition" and may legally be disclosed using the one-word description "deceased," if the inquiry contains the patient name. However, patient death is an especially sensitive issue and hospitals should exercise additional care with respect to disclosure of a patient's death.

A patient's death is not routinely announced by the hospital. Consequently, hospitals are advised to verify that the patient's family has been notified and does not object to disclosure prior to making any announcement of a patient's death.

Additional information about a patient's death, including the date, time and cause of death, may not be released without written authorization from a legal representative of the deceased.

Although a hospital may be required to report information about a patient's death to other agencies (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.

¹ Medical information may lose federal protection 50 years after the patient's death, but state privacy laws continue to apply.

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. However, release of such information is intended to facilitate visits by family and friends, as well as the delivery of gifts and flowers. It was not intended to give the media access to patients who do not wish them to have it.

Caution should be exercised in disclosing this information over the telephone, even where such disclosure is believed to be proper. Precise information (e.g., floor or room number) is 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 and California law do 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.

A hospital should not disclose a patient's location in a psychiatric or substance abuse unit without the patient's written authorization.

MEDIA ACCESS TO PATIENTS

Hospitals may deny the media access to a patient if it is determined that the presence of photographers or reporters would aggravate the patient's condition or interfere with hospital care. The patient's physician should be consulted with respect to such requests.

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. At their discretion, hospitals may deny the media access to any area, including (but not limited to) operating rooms, ICUs, labor and delivery, emergency, psychiatric units, nurseries, pediatric units, and other units where patients are particularly concerned about privacy.

Under HIPAA, the following activities require **prior written authorization** from a patient:

- Issuing a detailed statement (e.g., anything beyond the one-word condition) regarding the nature of the patient's illness or injury, his or her treatment and prognosis
- Photographing or videotaping patients
- Interviewing patients

If the patient is a minor, permission for any of these activities must generally be obtained from a parent or legal guardian, unless the information concerns health care services that the minor can obtain without the consent of a parent or guardian. (*See "Minors," page 8.*)

PUBLIC FIGURES AND CELEBRITIES

The standards for release of information and permissible disclosures are no different for public figures or celebrities than for other patients. However, given the likelihood of media interest, the hospital may wish to take extra care to confirm with the patient (or the patient's legal representative) whether there is objection to the disclosure 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 California law, when a parent or guardian has the authority to make medical decisions on behalf of a child, that parent or guardian generally also has the right to object to (or authorize) disclosure of medical information to the media.

In those cases where the minor has the legal authority to consent to a health care service, that minor generally also has the ability to object to (or authorize) the release of information regarding that health care service, regardless of whether a parent or guardian has given authorization.

It is possible that minors may receive some health care services for which they can legally consent and other treatments requiring the authorization of a parent or guardian. In these cases, the minor has the authority to object to (or authorize) the disclosure of some medical information, while the parent or guardian has this authority regarding the other information.

Because the privacy laws regarding minors' health information are complicated and have several exceptions, hospitals are advised to seek legal advice prior to disclosing patient-identifiable information to the media about minors.

WHEN A PATIENT LACKS CAPACITY

When a patient lacks decision-making capacity, but has previously designated a representative to make health care decisions on his or her behalf (e.g., an agent or surrogate appointed pursuant to an Advance Directive or a Durable Power of Attorney for Health Care), the designated individual also has the right to authorize (or object to) the release of the patient's information, *but only to the extent necessary for the agent to fulfill his or her duties as agent.*

Whether this authority includes authorizing a hospital or other health care provider to release medical information to the media depends on the facts and circumstances unique to each particular situation.

If a patient is incapacitated and there is no designated representative as described above, but a conservator has been appointed or family members are available, the hospital should consult with the conservator or closest available relative regarding release of information to the media.

If a patient is incapacitated and there is no designated representative, conservator or family members available, a hospital may disclose some or all of the allowed information (location and condition upon specific inquiry, as described above) if such disclosure is consistent with a prior expressed preference of the patient or is considered to be in the best interest of the patient. However, hospitals should use discretion in making this decision, and the patient should be informed of the use or disclosure of information as soon as it is practical to do so.

WHEN THE PATIENT OR PATIENT'S FAMILY CONTACTS THE MEDIA

The laws regarding the release of patient information described above apply even when the patient or the patient's family contacts the media (for example, with a complaint about the health care facility). This makes it difficult, if not impossible, for the health care facility to defend itself in the press. The facility may attempt to obtain written authorization from the patient or the patient's legal representative to release information to the media to respond to the patient's (or family's) accusations. However, if authorization is denied, no information may be released. A health facility should contact its legal counsel regarding the advisability of informing the media that the facility has requested authorization from the patient to release information necessary for the facility to defend itself, but the patient has refused to grant such permission.

WHEN PATIENT INFORMATION SHOULD NOT BE RELEASED TO THE MEDIA

A hospital's first and foremost duty is to its patients. This includes protecting patients' privacy and guaranteeing the confidentiality of their medical care. A patient's right to privacy surpasses 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 (general condition and location) and to whom that information may be disclosed (people who ask for the patient by name). This information is typically included in the hospital's Notice of Privacy Practices. The patient has the option to expressly state that he or she does not want information released, including confirmation of his or her presence in the facility.

If a patient has requested that information not be released, then inquiries from the media (or others) should be answered by stating that privacy laws allow the hospital to release only the information in the hospital's directory, and the hospital does not have any information about that person in the directory.

INFORMATION THAT COULD EMBARRASS OR ENDANGER PATIENTS

A hospital should not report any information that may embarrass a patient. Such information could include the room location of the patient (e.g., admission to an obstetrics unit if the patient hasn't announced her pregnancy or has an adverse outcome, or admission to an isolation room for treatment of an infectious disease, etc.).

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 potentially endanger the patient (e.g., the hospital has knowledge of a stalker or abusive partner, etc.).

OTHER APPLICABLE FEDERAL OR STATE LAWS

Federal and state laws specifically prohibit hospitals from releasing any information about patients who are being treated for alcohol or substance abuse in a federally-assisted program, and about mental health patients receiving services under the Lanterman-Petris-Short Act. This includes acknowledging, even in response to specific inquiries, that a patient is being treated in the facility.

Hospitals that provide treatment for substance abuse or psychiatric disabilities and that are subject to the federal substance abuse program regulations or the Lanterman-Petris-Short Act should develop specific policies and procedures to address the additional restrictions imposed on the disclosure of information related to such treatment.

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 agencies. Information that is included on police logs also is considered to be matters of public record (i.e., the transport of accident victims to a hospital, etc.).

Public record cases are no different from other cases with regard to the release of information by hospitals and other health care providers. 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 complying with the legal requirement that information be released **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 patient must be given the opportunity to have no information released, or, if the patient’s condition precludes making this decision, the condition and location may be disclosed only if, in the hospital’s professional judgment, it is in the patient’s best interest to do so.

There are numerous state laws that address reporting of incidents ranging from child abuse to gunshot wounds. The fact that a hospital has an obligation to report certain confidential 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, etc.) 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.

DISASTER SITUATIONS

Disaster situations require hospitals to operate in highly emotional and rapidly changing situations. The very real need to keep the public informed must be balanced with the privacy rights of patients. Care must be taken to protect information that can be linked to a specific patient.

State and federal laws governing the release of patient information to the media do not change in disaster situations — the patient must be given the opportunity to opt out of the facility directory, a reporter must have a patient's name before any individually-identifiable information can be released to the media, and only the patient's general condition and location can be released.

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.

The spokesperson should have immediate access to hospital administrative and clinical personnel so that he or she can provide accurate, up-to-date information to the media.

Current information should be made available to the media as soon as possible.

A central media gathering location should be designated so that information can be released in a press conference format that does not compromise patient privacy or the health care facility's need for added security in a disaster situation.

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.

COOPERATE WITH OTHER HOSPITALS AND DISASTER RELIEF AGENCIES

Hospitals may release patient information to other hospitals, health care facilities and recognized disaster relief agencies (such as the Red Cross) in disaster situations.

Specifically, hospitals may disclose patient information (e.g., location, general condition or death) to a public or private organization that is state or federally recognized as assisting in disaster relief efforts for the purposes of notifying family members or others responsible for a patient's care.

Under HIPAA and California law, a health care provider may disclose patient-identifiable information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual or another person responsible for the care of the individual, of the individual's location, general condition or death.

Unless the provider determines that the following requirements interfere with the ability to respond to the emergency circumstances, the provider must follow the steps below before disclosing the information if the patient is present and has the capacity to make health care decisions:

1. Obtain the patient's agreement; or
2. Provide the patient with the opportunity to object to the disclosure (if the patient objects, no disclosure may be made); or
3. Reasonably infer from the circumstances based on the exercise of professional judgment that the patient does not object to the disclosure (under California law, this does not apply if the provider is a psychotherapist; see Civil Code Section 56.1007(c)(2)).

If the patient is not present or is unable to agree or object to the use or disclosure due to incapacity or an emergency circumstance, the provider may determine whether the disclosure is in the best interests of the patient and, if so, disclose only the information that is directly relevant to the disaster relief organization's involvement with the individual's health care.

The terms "disaster" and "disaster relief" are not defined in the laws.

HIPAA WAIVER

The U.S. Department of Health and Human Services (DHHS) has issued a "Frequently Asked Questions" response regarding whether the HIPAA Privacy Rule is suspended during a national or public health disaster. The short answer is no. However, the Secretary of DHHS may issue a waiver of sanctions and penalties following a disaster. In such a case, the HIPAA requirements are not suspended, but no penalties will be assessed by DHHS against a hospital for specified violations of HIPAA requirements as described in the waiver. For more information, go to www.hhs.gov/hipaafaq/providers/hipaa-1068.html.

There is no process to waive penalties for violations of state health information privacy violations.

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November 2013



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