

# Updated Guidelines for Releasing Information on the Condition of Hospital Patients In South Carolina

March 2003

## Introduction

Hospitals and health systems are responsible for protecting the privacy and confidentiality of their patients and patient information. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandated regulations that govern privacy standards for health care information. HIPAA regulations specify the purposes for which information may and may not be released without authorization from the patient. This document is provided as a guideline only. It includes suggestions for updating hospital policies regarding release of patient information so that they are consistent with the final changes to the HIPAA medical privacy regulations published in August 2002, as well as the guidance document released by the Department of Health and Human Services (HHS) in December 2002.

These guidelines have been reviewed by the S.C. Hospital Association, the S.C. Press Association and the S.C. Broadcasters Association. These associations endorse the guidelines as accurately reflecting the HIPAA provisions.

## Condition and Location of Patients: What You May Release and to Whom

### Inquiries that identify the patient by name

Information about the patient's general condition and location of an inpatient, outpatient or emergency department patient may be released *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.

### Inquiries from clergy

The HIPAA privacy regulations expressly permit hospitals to release the patient's name, location in the hospital, general condition and religion to clergy members, unless the patient has asked that the information not be released. Clergy do not need to ask for the individual by name. For example, clergy could request information regarding patients of a particular religion. However, hospitals are not required to ask about patients' religious affiliations, and patients do not have to supply that information.

### Release of patient's general condition and location

As long as the patient has not requested that information be withheld, you may release the patient's one-word condition and location to individuals who inquire about the patient by name or to clergy, without obtaining prior patient authorization.

## Condition

For the one-word condition, use the terms “undetermined,” “good,” “fair,” “serious” or “critical.” Definitions of patient conditions are listed below:

**Undetermined** - Patient is awaiting physician and/or 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 find the "critical but stable" term useful when discussing cases amongst themselves because it helps them differentiate patients who are expected to recover from those whose prognosis is worse. But a critical condition means that at least some vital signs are unstable, so this is inherently contradictory. The term "stable" should not be used as a condition. Furthermore, this term should not be used in combination with other conditions, which by definition, often indicate a patient is unstable.

### **Death of Patient**

The death of a patient may be reported to the authorities by the hospital, as required by law. Typically, public information about a death will be disclosed after efforts have been made to notify the next-of-kin. Information about the cause of death must come from the patient's physician, and a legal representative of the deceased must approve its release. This means that hospitals cannot share information with the media on the specifics about sudden, violent or accidental deaths, or deaths from natural causes without the permission of the decedent's next-of-kin or other legal representative.

***Question:** Can the hospital tell the media the patient has died without getting the family's permission? In other words, is “deceased” a condition that can be disclosed?*

Under the HIPAA privacy rule, if a patient has not asked that his or her information be kept out of the hospital's directory, the hospital may disclose the patient's general condition to anyone who asks for the patient by name. HIPAA does not define what constitutes a “general condition.” Disclosing that a patient is deceased, however, appears to be a permissible facility directory disclosure as a statement of the patient's general condition. A hospital may not disclose information regarding the date, time, or cause of death.

***Question:** For deceased patients, can the hospital provide the media with the date and time of death, as recorded on the death certificate?*

No. The hospital may not disclose a patient's date or time of death to the media. A hospital may disclose to the media only that information maintained in the hospital directory, which is a patient's name, location in the hospital and general condition, if the media asks for the patient

by name. No other information may be provided without individual authorization. In the case of a deceased patient, authorization must be obtained from a personal representative of the deceased.

### **Location**

The patient's location may be included in the hospital directory to facilitate visits by friends and family as well as the delivery of flowers, cards and gifts.

### **Disclosures of Location to the Media**

HIPAA does not prohibit the hospital from disclosing to the media a patient's location within the hospital when the patient is identified by name by the person so inquiring and when the patient has opted to have such information listed within the directory. Hospitals, however, intend to maintain their current internal policies regarding media access to patients. These policies require a patient's permission before his or her location will be disclosed to the media.

Furthermore, hospitals request that the media continue to work through their public relations departments when desiring to contact or visit a patients. Hospitals will continue to deny media access to patients if such access would aggravate the patient's condition or interfere with the patient's care. A hospital representative will accompany the media during interviews with a patient unless the patient consents otherwise.

***Question:*** *For obstetrical patients, can the hospital confirm that the patient is in labor and delivery or has been released from labor and delivery?*

No. Disclosing the fact that a patient is in labor provides more information than the patient's general condition. A hospital may not disclose that a patient is in labor or has been released from labor and delivery without individual authorization, unless the disclosure is to family members or friends **involved in the patient's care** or payment for the patient's care. Except in cases where the patient has requested that such a disclosure not be made, a hospital may disclose to the patient's family members or friends information relevant to the person's involvement in the patient's care. For example, a hospital may disclose the fact that a patient is in labor and delivery to the patient's back-up delivery coach, as such information is relevant to the delivery coaches' involvement in the patient's care. Similarly, if a person is picking-up a patient from the hospital, the hospital may provide the person with information related to the proper transportation of the patient.

***Question:*** *Since hospitals can only use one-word patient condition reports, may a hospital disclose that a patient was treated and released?*

Yes. Under the HIPAA privacy rule, a hospital may disclose, to individuals who ask for the patient by name, that a patient was treated and released because this only provides the patient's general condition (that they were treated at the hospital) and the patient's location (that the patient is no longer at the hospital). No specific health information is provided. Therefore, assuming the other requirements for disclosures of directory information are met, this appears to be a permissible disclosure of directory information under HIPAA.

**Question:** *If the hospital can say that someone has been “treated and released” without getting permission, may the hospital disclose when the patient was released or to where the patient was released?*

No. Although a hospital may disclose that a patient was treated and released as information regarding the patient’s location (or lack thereof) in the hospital, it may not release information regarding the date of release or where the patient went upon release without patient authorization. A hospital may release this information, however, to the patient’s family members or friends involved in the patient’s care, so long as the patient has not opted-out of such disclosures and such information is relevant to the person’s involvement in the patient’s care.

**Question:** *Can the hospital tell the media that the patient has been discharged from an inpatient admission without getting the patient’s permission?*

Under the HIPAA privacy rule, if a patient has not asked that his or her information be withheld from the hospital’s directory, the hospital may disclose the patient’s location in the hospital to anyone who asks for the patient by name, without the patient’s authorization. If the patient is no longer at the facility, the hospital may disclose that fact in response to such an inquiry.

## **Beyond the One-Word Condition: Media Access to Patients**

The following activities require written authorization from the patient:

- Drafting a detailed statement (*i.e.*, anything beyond the one-word condition) for approval by the patient or the patient's legal representative
- Taking photographs of patients
- Interviewing patients

In general, if the patient is a minor, permission for any of these activities must be obtained from a parent or legal guardian. Under certain circumstances, minors can authorize disclosure of information without parental approval or notification. State laws may vary.

**Question:** *Should the hospital obtain consent from individuals who appear in the background of photos taken in a public place such as the hospital lobby?*

The HIPAA privacy rule does not speak to background photos. Under the HIPAA privacy rule, however, hospitals may not release identifiable photographs of patients at the hospital, without the patient’s authorization.

## **Condition and Location of Patients: When You Should Not Release Any Information**

### **Patients can “opt out” of providing information altogether**

The hospital has a responsibility to tell patients what information will be included in the hospital directory (name, general condition, location, and religion) and to whom that information will be disclosed (to people, including media, who ask for the patient by name, and to clergy). The hospital

may inform the patient of this information verbally or in writing. The patient has the option to expressly state that he or she does not want information released—including information confirming his or her presence in the facility. The hospital may obtain the patient's agreement or objection verbally or in writing. If a patient opts-out of the hospital directory, information still may be disclosed to family and friends who are involved in the patient's care or payment for care. In such case, only information directly relevant to the person's involvement in the patient's care or payment may be released.

### **Do not release information that could embarrass or endanger patients**

Spokespersons should not report any information that may embarrass a patient. Situations where room location information could embarrass patients include (but are not limited to) admission to a psychiatric or substance abuse unit; admission to an obstetrics unit following a miscarriage, ectopic pregnancy or other adverse outcome; or admission to an isolation room for treatment of an infectious disease. In addition, where knowledge of a patient's location could potentially endanger that individual (*i.e.*, the hospital has knowledge of a stalker or abusive partner), no information of any kind should be given, including confirmation of the patient's presence at the facility.

### **Consider other applicable federal laws**

Be aware that federal laws prohibit hospitals from releasing any information regarding a patient undergoing treatment for alcohol or substance abuse. These include the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Drug Abuse Office and Treatment Act of 1972; and 42 CFR Part 2, 188. Other state laws also may apply.

### **Exercise good judgment in situations where patients can't express a preference**

In some cases, patients will not have had the opportunity to state a preference related to the release of their information. For example, a patient's medical condition may prevent hospital staff from asking about information preferences upon admission. In those circumstances, condition and location information should be released **only if, in the hospital's professional judgment**, releasing such information would be in the patient's best interest. As soon as the patient recovers sufficiently, the hospital must ask about information preferences. Each hospital should develop policies and procedures to guide staff in making these judgments.

***Question:** When a patient has opted-out of the hospital directory, what should the hospital say? If the hospital states that it has no information on the patient or that it is unable to confirm the patient's presence in the facility, the media may infer that the patient is at the hospital.*

Under the HIPAA medical privacy rule, a hospital is permitted to release only directory information (*i.e.*, the patient's one-word condition and location) to individuals who inquire about the patient by name unless the patient has requested that information be withheld. In response to a media inquiry about a patient who has opted-out of the directory, therefore, the hospital should respond by stating that the federal medical privacy regulations allow the hospital to release to the media only the information in the hospital's directory and that the hospital does not have any information about the person in its directory.

***Question:** If a patient opts to make directory information available, but does not want information released to the press, how can the hospital assure that directory information is not provided to reporters who provide the patient's name?*

The hospital is obligated to ensure that no impermissible disclosures are made. Therefore, at a minimum, the hospital will be required to ask for additional information from anyone inquiring about a patient in an attempt to determine whether the person making the inquiry is with the press.

## **Matters of Public Record**

### **What is a matter 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. While laws and/or regulations require health care facilities to report a variety of information to public authorities, it is not the responsibility of facilities to provide that information in response to calls or other inquiries from the media or other parties, *including law enforcement officials*. Instead, such calls should be directed to the appropriate public authority.

### **Are public record cases different from other cases**

No. Patients who are involved in matters of public record have the same privacy rights as all other patients, as far as the hospital is concerned. The mode of transportation by which a patient arrives at the hospital should have no bearing on the hospital's approach to releasing information about the patient. The fact that someone has been transported to the hospital by the police or fire department from an accident, crime scene or fire is a matter of public record likely to be reported by those agencies. These public records may prompt media calls to the hospital requesting a patient's condition. As long as the patient has not requested that information be withheld, you may release the patient's one-word condition and location to individuals who inquire about the patient by name. In those circumstances where a patient's medical condition may prevent hospital staff from asking about information preferences upon admission, condition and location information should be released **only if, in the hospital's professional judgment**, releasing such information would be in the patient's best interest. For many hospitals, this may represent a change from previous policies.

There are numerous state statutes addressing 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 governmental agency does not make that information public and available to news reporters. In fact, state laws may provide enhanced privacy protection for some reportable information, such as HIV status; sexually transmitted diseases; child, spouse or elder abuse; and reportable genetic anomalies.

Refer media questions to the public entity (such as the coroner's office, police, fire or health department) that receives such reports. The public entity will be guided by the applicable statute as to whether it can release any or all of the information received.

### **Are celebrity cases different**

No. Celebrities, public figures and public officials are not subject to different standards than other patients when it comes to hospital policies for releasing information to the media.

## **Releasing Patient Information in Disaster Situations**

**When feasible, notify the next-of-kin first**

While it is desirable to notify next-of-kin before releasing patient information, in disaster situations involving multiple casualties, it may be necessary to share patient information with other hospitals and/or rescue/relief organizations before the next-of-kin has been notified.

**Don't hesitate to cooperate with other hospitals or relief agencies**

You may release patient information to other hospitals, health care facilities and relief 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, you may disclose patient information to a public or private organization assisting in relief efforts for the purpose of notifying family members or others responsible for a patient's care about the patient's location, general condition or death.

**When appropriate, release general information to help dispel public anxiety**

In highly charged situations such as disasters, the public may benefit from the release of general information when specific information cannot be released. For example, you might say, "the facility is treating four individuals as a result of the explosion." You may state the number of patients who have been brought to the facility by gender or by age group (adults, children, teenagers, etc.). This type of general information can help reduce undue anxiety.

**Work effectively with the media**

Current information should be made available to the media as soon as possible. If information is not yet available or if next-of-kin has not been notified, all media inquiries should be logged and callbacks made as soon as it is permissible to release information. A location should be provided for all media to gather 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.

***Question:** If a hospital has a "John Doe" patient and decides to publicize this person's hospitalization as a method of finding the patient's family, would that violate the HIPAA privacy standards?*

It is unclear whether this disclosure would be permissible under the HIPAA privacy rule. Although a hospital is permitted to notify a patient's family about the patient's location in the hospital and general condition, the rule does not permit notification of the general public. A hospital should not release a photograph of the patient without the patient's authorization, but may be able to release information describing the patient's general characteristics (e.g., age, gender, height, weight) that would not be considered protected health information under the privacy rule. A hospital should use its professional judgment regarding the best interests of the patient with respect to any such publicity.

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