

**2003 CODE OF COOPERATION
PROTECTING PATIENT PRIVACY**

TABLE OF CONTENTS

Introduction

Definitions

Health Insurance Portability and Accountability Act of 1996

Guidelines for Health Care Facilities

Guidelines for Physicians

Guidelines for News Media

Access to Health Care Facilities and Patients

HIPAA and Release of Patient Information to the Media

 With a Signed Written Authorization

 Without a Signed Written Authorization

 Incapacitated Patient

 Public Airwaves

 Interviews and Photographs

Special Situations

 Police and Accident Cases

 Disaster Situations

 Outpatient and Emergency Care

 Psychiatric, Drug and Alcohol Treatment

 Organ Transplants

 Maternity

 Unusual Illnesses

 Death

 Discharge of Patient

 Newsworthy Persons

Introduction

This document is provided to assist both health care facilities and the news media in communicating facts and data about patients. The Code acknowledges a shared responsibility to provide accurate information to the public, and to assure patients and health care providers that the gathering and reporting of this information is consistent with state and federal laws and does not infringe upon patient privacy, professional medical ethics, or patient care.

Oregon Association of Hospitals and Health Systems (OAHHS) published the Code of Cooperation with editorial contributions from member organizations and the Oregon Medical Association (OMA). These guidelines should be adapted to the news media policies of individual health care providers and facilities.

Definitions: For purposes of this Code:

“Health Care Facility” means a hospital, hospital-owned clinic, outpatient facility, ambulance, nursing facility or hospice.

“Disaster” means any man-made or natural event that causes significant loss of life, injury or illness.

“Patient Condition” includes the following standard terms when describing a patient's condition:

- Good: Vital signs such as pulse, temperature and blood pressure are stable and within normal limits. Patient is conscious, comfortable and there are no complications.
- Fair: Vital signs are stable and within normal limits. Patient is conscious and alert although may be uncomfortable or in pain and may have minor complications.
- Serious: Vital signs may be unstable or outside normal limits. The patient is acutely ill or injured and may have major complications.
- Critical: Vital signs are unstable or outside normal limits. There are major complications. (Most patients in an intensive care unit are considered critical until ready to be moved to a regular nursing unit.)
- Undetermined/Under Evaluation: Patient in the process of receiving physician assessment.

Note: "Stable" is not a condition.

"Personal representative" means:

- A person appointed as a guardian under state law;
- A person appointed as a health care representative under state law to make health care decisions or mental health treatment decisions; or
- Such other person as designated in the health care facility's policies and procedures.

Health Insurance Portability and Accountability Act of 1996

In 1996, Congress passed the Health Insurance Portability and Accountability Act (HIPAA). In response to the privacy requirements of the Act, the federal Department of Health and Human Services adopted regulations specifying the conditions under which health care facilities, physicians and other health care providers may release individually identifiable health information. See 42 CFR 164.500 et. seq. HIPAA changes how health care facilities may release patient information to the media and others.

Guidelines for Health Care Facilities

In an effort to be helpful and responsive to the media, OAHHS and each health care facility will designate an authorized spokesperson to be accessible to the news media at all times. The spokesperson serves as the primary resource for the news media and assumes responsibility for coordinating exchange of information from and access to the health care facility. When requested or allowed by a patient or a patient's family, the health care facility spokesperson will direct calls to the patient's designated spokesperson.

News media in the community served by the health care facility should be informed of the facility's designated spokesperson(s). It is the health care facility's responsibility to keep this information current.

When a physician's approval is necessary to release information, the health care facility spokesperson will assist the reporter to obtain this information.

Before releasing an attending physician's name, the health care facility spokesperson must get the physician's approval. However, the spokesperson

may acknowledge that a patient is under the care of the health care facility staff, if appropriate patient permission is obtained. *See the discussion of HIPAA, page 10.*

When a health care facility invites the news media to cover a story, the facility will provide reporters with requested follow-up information and access consistent with the Code.

The health care facility spokesperson is responsible for obtaining information about patients as rapidly as possible without interfering with the health, welfare or privacy of patients. No information that violates the confidentiality, privacy or legal rights of the patient can be given. *See Psychiatric, Drug and Alcohol Abuse Cases, and Unusual Circumstances.*

Guidelines for Physicians

The communications director or designated staff members of Oregon Medical Association (OMA) will be available to the news media to help get prompt and accurate information on health and medical subjects. If information is not immediately available to comply with news media deadlines, OMA will inform the news media and, depending on the nature of the request, either continue to gather the information for a later deadline, or refer the reporter to another competent authority as a resource.

Officers, committee chairpersons or designated spokespersons of OMA are expected to agree to be quoted by name in matters of public interest for the purpose of authenticating medical information.

This policy is not to be construed by OMA members as a breach of the time-honored medical practice of avoiding personal publicity. It is intended only to serve the best interests of the public and the medical profession.

In matters relating to the private practice of medicine, physicians are encouraged to give information to the news media, as long as the physician fully complies with the HIPAA privacy regulations and all other patient privacy rights. The physician may choose, however, to provide information through a health care facility or OMA spokesperson.

Guidelines for News Media

It is the responsibility of the news media to determine what constitutes news. It is the responsibility of physicians and health care facilities to safeguard each patient's life and health. Therefore, health care providers and the news media

should work cooperatively together to safeguard patient privacy and well-being and report news accurately and promptly.

Access to Health Care Facilities and Patients

Health care facilities are bound by state and federal laws, regulations (including Oregon Administrative Rules Chapter 333) and policies that restrict public access to certain service areas and departments. Before entering a health care facility, reporters and photographers should obtain permission from the health care facility and abide by facility rules regarding media access.

When using a tape recorder, the reporter should advise the health care facility spokesperson, patient or physician prior to questioning. (ORS 165.540) Access to a patient for an interview, photograph or videotaping will be arranged if the patient or patient's personal representative has signed a written authorization and the patient's condition permits. The health care facility will assist a reporter in accessing a patient by attempting to obtain written authorization from the patient or the patient's personal representative.

Health care facilities urge reporters to provide advance notice of visits so that arrangements can be made to ensure that electronic equipment used by the news media will not impede patient care and/or patient confidentiality will not be compromised. In some areas of the health care facility, news people may be required to wear special clothing and have their equipment disinfected or protected.

Release of Information to News Media

To facilitate prompt and accurate response to news media inquiries, reporters should direct inquiries to the health care facility spokesperson.

HIPAA privacy regulations, health care facility privacy policy and common sense dictate how a health care facility or other health care provider may use and disclose individually identifiable health information. Release of information about certain patient situations and conditions is further controlled by state and other federal law. *See state HIV regulations, Psychiatric, Drug and Alcohol Abuse Cases.*

HIPAA and Release of Patient Information to the Media

With a Signed, Written Authorization

See the *OAHHS Sample Media Authorization* form on the OAHHS HIPAA website at www.oahhs.org

If a patient or the patient's personal representative has signed a written authorization allowing release of information to the media, the health care facility may release the information indicated on the authorization to the media representative(s) specified on the authorization. The following frequently requested information specifically requires patient authorization:

- ❑ A detailed statement about a patient's condition
- ❑ Taking photographs of a patient
- ❑ Interviewing a patient
- ❑ Confirmation of patient age, gender, admission and discharge dates and city of residence.
- ❑ Prognosis should only be released if, in addition to patient authorization, the physician has approved release.

Remember that if a patient or his personal representative signs an authorization form, the health care facility may release only the information specified on the authorization form and release that information only to the media specified on the form.

See the definition of "*personal representative*" in the definition section of this Code.

Without a Signed Written Authorization

Without a written patient authorization, HIPAA allows a health care facility or provider to release only *location in the facility and one-word general condition* (refer to the definition of "patient condition" in the definition section of this Code), and only if the following requirements are met:

- ❑ The media representative asks about the patient *by name*; and
- ❑ The provider has told the patient this information may be released and the patient has not expressly stated that he/she does not want this information released.

Asking for the patient by name may be difficult for media representatives. They may be able to access this information through police, fire or other public officials.

Incapacitated Patient

In some cases, patients will not have had the opportunity to state a preference about having their information released. For example, a patient's medical condition may prevent health care facility staff from obtaining authorization or asking about information preferences upon admission. If the patient is unable to sign an authorization or object to release of condition and location information, that condition and location information may be released only if the reporter has the patient's name and past patient preferences are known, or such release is determined to be in the best interest of the patient, in the professional judgment of the medical service provider.

Public Airwave

The fact that patient information may already have been disclosed over public airwave does not affect the health care facility's obligation to protect patient information under HIPAA. Information in those circumstances will be released following the same guidelines for other disclosures under HIPAA.

Interviews and Photographs

Media-requested photographs, videotapes or interviews can be granted only with the patient's written authorization. When the patient is a minor, written authorization of a parent or personal representative must be obtained. The patient's physician should be informed of news media requests.

Requests to interview or photograph a patient under arrest or in custody will be handled in consultation with the police department or government agency holding jurisdiction.

The health care facility spokesperson may stay with the news media and the patient throughout the session to provide assistance.

News media coverage of unconscious patients, or patients suffering from severe illness or injury, will be permitted only with written authorization of the patient's personal representative.

Special Situations

Police and Accident Cases

Information about police and accident situations is the most frequent request a health care facility receives from the news media. HIPAA treats victims (or perpetrators) of a crime or accident the same as any other patient when the media seeks health information about them. *See page 11, Without Written Authorization.*

In addition to HIPAA requirements, the health care facility may not make a statement as to whether a patient was intoxicated, whether injuries were the result of assault or an attempted suicide, whether a patient is suspected of being a drug addict, the circumstances in which a patient was shot or stabbed, or the details relating to an automobile accident and whether there was an arrest. News media may be referred to law enforcement for matters that are still under police investigation.

If written authorization from the patient or the patient's personal representative is obtained, further medical information dealing with specific injuries may be given by health care facility spokespersons as follows:

- ❑ *Fractures (except head injuries):* Indicate the part of the body involved and whether the fracture is simple or compound. The words "possible" or "probable" should be used when a diagnosis is not available.
- ❑ *Injuries to the head (except fractures):* A simple statement may be made that there are injuries to the head. However, it may not be disclosed that the skull is fractured. No opinion may be given regarding severity of the head injury until the condition is definitively determined by a physician.
- ❑ *Trauma and internal injuries:* Trauma cases usually involve injuries to more than one body location. A statement may be made that there are multiple trauma injuries. It may be stated that there are internal injuries, and the general site of such injuries may be given.
- ❑ *Unconsciousness:* If the patient is unconscious when brought to the hospital, this fact may be stated. However, the cause of unconsciousness may not be given.
- ❑ *Shooting or stabbing:* A statement may be made that there is a gunshot or stabbing wound and its position indicated. The health care spokesperson may not state how the accident occurred (i.e., accidental, suicidal, homicidal, etc.), nor describe the situation under which it took place.

- ❑ *Paralysis, loss of limb:* No statement may be made without permission from the family or designated health care representative. Hospitals and the news media recognize that in cases of paralysis or loss of limb, there is great emotional turmoil for the patient and family. Often the family opts to wait for a short time to tell the patient of the extent of his or her injuries. In such cases, both hospital personnel and the news media will cooperate to ensure that the patient's privacy is protected.
- ❑ *Burns:* A statement may be made that the patient is burned and the health care facility spokesperson may identify the area of the body involved. A statement as to the severity and extent of burns may be made if indicated by the physician.
- ❑ *Poisoning:* A statement may be made that the patient is being treated for a suspected poisoning. The cause of the poisoning may not be described (such as suicidal, homicidal or accidental). However, when poisoning is proven to be accidental and reported to public authorities, the hospital spokesperson may confirm the nature of the poisoning. The product ingested should be described generically (such as "weed killer" or "detergent") and not by trade name. When the ingested material has not been identified, this fact should be so stated.
- ❑ *Battered children:* No statement shall be made that a child's injuries appear to be the result of child abuse, even if an official report has been filed. The general nature of injuries may be released if appropriate authorization is obtained and all other state and federal privacy provisions are followed.
- ❑ *Rape:* Every effort will be made to protect the privacy of an alleged rape victim. Names will not be released. No statement will be made concerning the nature of the incident or injuries without the specific written consent of the patient. Once a case is reported to the police, further news media questions should be directed to law enforcement authorities.

Disaster Situations

In the case of a disaster, health care facilities may release general information to help dispel public anxiety when specific patient identifiable information is not yet releasable. For example, a health care facility may say, "the facility is treating four individuals as a result of the explosion." Specific information should be made available to the media as soon as possible.

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.

Outpatient and Emergency Care

In health care facilities where outpatient care is provided by medical staffs, the facility may choose to release information on patients consistent with the guidelines for *Release of Information to the News Media* in this Code.

Similarly, when a patient is brought to the emergency department but is not admitted to the health care facility, the spokesperson also should respond to inquiries consistent with the guidelines for *Release of Information to the News Media* in this Code.

Psychiatric, Drug and Alcohol Abuse Cases

State and federal laws prohibit the disclosure of any information about psychiatric, alcohol and drug abuse cases (42 USC Section 290; 42 CFR Section 2.1; ORS Chapter 426). This includes confirmation of the patient's admission to or discharge from the facility when the treatment is for psychiatric, drug or alcohol treatment.

When reporters have information from the police or other sources concerning persons who are being treated as psychiatric, drug or alcohol abuse cases, it is recommended that all such inquiries to the healthcare facility be answered, "We cannot, under federal or state law, comment on such a case."

Organ Transplants

Organ recipient. The facility spokesperson will confirm or respond to inquiries about the following if written authorization has been provided by the transplant recipient or the recipient's personal representative: name, city of residence, sex, age and condition.

Organ donor. A potential organ donation will not be discussed by the facility spokesperson. When a potential organ donor dies, as determined by the attending physician, the disposition of the body will not be revealed. The hospital spokesperson shall refer questions on definition of death to the attending physician. The hospital performing the transplant will not release information about the donor that might ultimately reveal the donor's identity.

Maternity

Health care facilities must obtain written authorization from the parent before permitting photographs or release of information about newborns.

No information may be provided about drug-affected newborns (babies born to drug-addicted mothers) without written authorization from the parent or legal representative.

Unusual Illnesses

Health care facilities will refer to the health department all questions about reportable diseases or unusual illnesses. Names of patients and other health information that could be used to identify a patient will not be released without written authorization from the patient or the patient's personal representative. An HIV patient's privacy is protected by state and federal law. The identity of a person tested for HIV or the results of an HIV-related test is confidential (OAR 333-23-270(1)).

Death

A patient death may be confirmed by a health care facility after notification of next of kin and with written authorization from the deceased's personal representative.

Information on the cause of death may be given by the health care facility spokesperson after receiving approval from the attending physician and the patient's personal representative.

If a death becomes the object of a medical examiner's investigation, news media inquiries as to the cause and circumstances of death will be directed to the medical examiner's office.

Suicide: The health care facility spokesperson should never release statements asserting suicide or attempted suicide as a reason for hospitalization or death of a patient. A medical examiner is usually the qualified authority for rendering such a judgment.

Patient Discharges

Once a patient is discharged, the health care facility no longer will disclose information about him or her to the news media. All further inquiries should be directed to the patient or the family. Without written patient authorization, the

health care facility may not release information related to the date and time of discharge. A facility may, however, indicate that the patient “is no longer located in the facility.”

Newsworthy Persons

HIPAA does not distinguish between public and private persons or infamous and ordinary injuries. A person whose activity is a matter of public interest, a person whose livelihood or success depends on being kept in the public eye (e.g., a sports figure, an elected official or an actor), or a victim of a newsworthy injury, does not forfeit a right to privacy of their medical information. Health care facilities should release information in accordance with the guidelines for *Release of Information to the News Media* in this Code.

When a prominent person is hospitalized, the health care facility will coordinate with the patient, family and physician to provide information about the patient's illness in a manner that is consistent with the law.

The prominent person may elect to name his or her own spokesperson, who will receive all requests for information. Media should seek out the person's spokesperson when requesting information about the person.

When a newsworthy person is in serious or critical condition, the health care facility should arrange for medical bulletins to be issued on a regular basis, while complying with the guidelines for *Release of Information to News Media* in this Code. These bulletins should be issued by the health care facility spokesperson in cooperation with the attending physician and the family.

The above practices also may apply to the patient who, whether willingly or not, has been involved in an occurrence of public or general interest and, as a result, becomes hospitalized.