

The HIPAA Privacy Rule

Are you complying?

- In this article, you will learn:
- *what the HIPAA Privacy Rule is;*
- *which information you can use and disclose, and which you cannot;*
- *tips to help yourself comply with the rule, and things to avoid doing.*

Note: The HIPAA regulations are a very complex set of rules, with many different opinions out there about how to interpret various aspects of these federal regulations.

Plus, many states have their own set of rules involving medical privacy which, in some cases, can take priority over the federal regulations.

Therefore, your own privacy rules may be different from the ones in this training session. So it's important that you check your own privacy instructions, specifically for your facility, as they may give different or more specific guidance than the information in this in-service training session.

This training course is designed to mainly inform you of the basics of the federal HIPAA privacy rules, so that you'll have a fundamental understanding of what you can do, and what you cannot do, relative to your elders' guaranteed privacy, and is not designed to replace your own institutions' rules.

Also note that there is only one official source for correct information and interpretations on the HIPAA privacy regulations. And that is the federal government's Internet HIPAA website: www.hhs.gov/ocr/hipaa. It contains lots of easy-to-understand information, and questions and answers, about the Privacy Rule.



The Health Insurance Portability and Accountability Act (HIPAA) is a federal law which prohibits the use and disclosure of patient/resident healthcare information, unless the person gives written consent allowing you to do so.

It does so through a set of regulations called the *Privacy Rule*, which came into effect on April 14, 2003.

According to the Privacy Rule, if a patient/resident discovers that information regarding their health – or other personal data – has been disclosed without their written permission, they have the right to demand both civil and criminal charges to be brought against healthcare providers.

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Answers to quiz

- | | |
|----------|-------|
| 1. T | 5. T |
| 2. T | 6. F |
| 3. T | 7. T |
| 4. a,b,c | 8. T |
| 9. T | 10. T |

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This can lead to fines of up to \$25,000 and jail terms of up to 10 years... and even higher civil penalties. So, this is serious business.

But, generally, it's not that difficult to comply with, as long as you know the basic requirements of this law.

How does the Privacy Rule affect you?

Basically, the HIPAA Privacy Rule boils down to this: caregivers cannot legally view, discuss, or repeat any healthcare information about the elders in their care, unless the elder has given them permission to do so.

However, there is one big exception to this rule: healthcare information can be disclosed to other caregivers who are involved in the care and treatment of that elders' health conditions.

In other words, doctors, nurses, and others can readily exchange health information with each other about an elder who they are treating.

However, an elder can give permission for disclosure of their health information to anyone.

And, according to the privacy law, healthcare institutions must give their patients details on how they intend to use their healthcare information. elders are asked to sign a document that they did receive this notice.

At this point, your elders can also add whatever restrictions they want relative to disclosure of their health information.

They can request that no information be given out about them to anyone, or that just certain persons should be given this information, or that certain friends and relatives can be told... but others not told. And so on.

Those caregivers who are actively involved in the care of the elder can freely share the elder's medical information.



Since these permissions can be different with each of your elders, you need to make sure that you know about them, and that you follow their individual instructions closely.

What information should you protect?

The Privacy Rule covers all medical information – written, oral, or in electronic format – about your elders.

This information is called Protected Health Information (PHI), and refers to a person's "past, present or future physical or mental health condition" according to the HIPAA law.

Examples of PHI include information on the person's:

- diseases and conditions;
- medications and other treatments;
- tests results (e.g., blood tests);
- x-ray and MRI scans;
- dietary restrictions;
- and so on.

Here are some basic points to remember about the Privacy Rule:

- The law requires that someone in your institution inform your elders about how you intend to use information about them, and give them the opportunity to restrict the disclosure of their information, if they desire.

- You cannot inform others anything about a resident's medical condition... without permission from the elder... unless they are directly involved in the care of that elder.
- You should not leave personal medical information lying around so that others can see it.

Medical information, and records, should be kept in folders or envelopes, out of sight of others.

- You should not be talking about the medical condition of your elders with anyone not directly involved in treating the elder's care, unless you have written permission to tell others, from the elder.

What this means, is that the days are long gone when you can run around town announcing that prominent local citizen Mrs. X. has been admitted to your facility with Alzheimer's disease.

Under these rules, you cannot tell anyone about Mrs. X. and her condition, unless Mrs. X. has signed permission to do so.

If you do this without her permission, Mrs. X. can file a complaint with federal officials, and fines and civil penalties can be issued against you and your institution.

"The important thing is not to stop questioning. Curiosity has its own reason for existing."

—Albert Einstein

And note this: the US Department of Health and Human Services (HHS) has a very active enforcement division that investigates these complaints. And the penalties can be large. It is being taken very seriously by federal officials.

What about family and friends?

One of the most frequent questions among caregivers is this: "What can I tell family and friends?"

That's an interesting question, because family and friends... once they learn that a loved one is in a nursing home or hospital... are quick to get on the telephone or visit, to try and find out how the elder is.

They are justifiably very concerned, and want to be available to lend friendship and support.

This is an area where you'll want to double-check your own institution's privacy regulations, because they may be different than the HIPAA regulations. Plus, different state regulations may also apply.

But, HIPAA officials state that that it is generally okay to inform family members, and personal friends, about the general condition of the elder, as long as the elder does not object to this.

Here's what HIPAA says about this:

"HIPAA does not cut off all communications between providers and the families and friends of patients:

"Doctors and other providers covered by HIPAA can share needed information with family, friends - or even with anyone else a patient identifies as involved in his or her care - as long as the patient does not object.

HIPAA regulators state that it's okay to give concerned friends and relatives basic information on an elder when they inquire, including their overall condition and room number... unless the elder has asked you not to.



"The Privacy Rule also makes it clear that, unless a patient objects, doctors, hospitals and other providers can disclose information, when needed, to notify a family member, or anyone responsible for the patient's care, about the patient's location or general condition.

"Even when the patient is incapacitated, a provider can share appropriate information for these purposes if he believes that doing so is in the best interest of the patient."

It's recommended that you only give out basic information about the elder's condition, and avoid the medical details, except to those involved in the elder's medical care.

After an elder is in your institution for awhile, and medical personnel have discussed the disclosure of information in more detail, the elder may well give permission for more disclosures of information about them to friends and relatives.

But, until they have done this, the basics of the Privacy Rule apply.

"Most of the important things in the world have been accomplished by people who have kept on trying, when there seemed to be no hope at all." —Dale Carnegie

What can you tell visitors?

HIPAA officials state that you can tell visitors basic information about your elders *if they ask about the elder by name...* and if the elder has okayed the release of this basic "directory information."

Visitors can be given the elder's phone and room number, and general health condition such as "good," "serious", "critical"... but not specifics... unless the elder has denied permission to give out this information.

Religious affiliations may also be given to clergy only, and clergy only do not have to ask about your elders by name in order to get this information.

Note that your state may have stricter regulations, which you'll need to be familiar with.

What if your resident is unable to give you permission?

Sometimes, a resident may be incapacitated in such a way that they cannot give you permission to disclose any information.

In this situation, HIPAA regulators state that, if it is determined to be in the best interests of the resident, medical information can be disclosed to relatives or close personal friends... but only that

information which is directly related to that person's involvement with the elder.

Keeping information private

Basically, the Privacy Rule means that detailed medical information about your elders should not be disclosed to anyone not directly involved with the care of that elder, unless the elder has given permission to do so.

This means that frontline caregivers need to be careful about talking about, and handling, medical records and information about their elders.

Here are some tips on how to do that:

- Use a low voice when discussing medical situations with other residents, co-workers, and visitors.

- This also applies to telephone conversations.
- Use a private area to discuss medical information.
- Keep messages left for families and patients/residents private. These should be brief and general.
- Make sure that neither your elders, nor their visitors, have access to areas where medical records are stored.
- If you need to access medical information at a computer station, check that the screen cannot be viewed by persons who don't need to, or should not, view such information.

Use the same precaution when sending a fax.

- If you use medication/treatment books, or medical charts, make sure they

are safely stored out of sight, when finished.

- Keep clipboards face down.
- Cover posted flow sheets, such as those used in bathrooms to record such things as the number of bowel movements/day of your elders.
- Double check addresses before closing an envelope, or sending a fax/e-mail.

A matter of respect

Remember, the scope of the Privacy Rule is to safeguard sensitive information about the physical and mental health of your elders, and their personal details.

It's another means of showing respect to your elders; a way to ensure their dignity and worth, and help you be a successful and compassionate caregiver as well.

Quiz yourself

HIPAA Privacy Rule

Major objectives:

- *to learn what the HIPAA Privacy Rule is;*
- *to understand which information you can use and disclose, and which you cannot;*
- *to learn some tips to help you comply with the rule, and things to avoid doing.*

- 1. True, False.** The HIPAA Privacy Rule means that you need to follow strict regulations about who you can talk to about your elders' medical conditions.
- 2. True, False.** Generally, it is against this federal law for you to tell anyone any details about your elders' medical conditions, unless they are somehow directly involved in the elders' caregiving.
- 3. True, False.** This law allows medical caregivers, such as doctors and nurses, to freely exchange information about an elder, if they are directly involved in that elder's care.
- 4. Which are true? (Check all that apply):**
 - a. An elder can give permission that allows their medical information to be given to whomever they choose.
 - b. It is okay to give out basic "directory" information, including the elder's name, room number, and general health condition, unless the elder objects.
 - c. An elder will sometimes make a list of persons who they do not want information to be given to.
- 5. True, False.** If an elder is unable to give permission, it is okay for personnel to give out information to friends, relatives, and other caregivers if it is in the best interests of the elder.
- 6. True, False.** It is usually okay for other residents of your facility to see each other's medical records.
- 7. True, False.** In order for your facility to give out basic directory information about an elder to a visitor or caller, they need to ask about the elder by name.
- 8. True, False.** You can give out religious information about an elder to clergy, even if they do not know the elder's name.
- 9. True, False.** When friends and relatives come calling, it is okay to give out basic "directory" information about an elder... room number and general condition... if they ask about that elder by name, unless the elder objects.
- 10. True, False.** Since most of your elders will have signed some type of instructions relative to how, and to whom, to give out information about themselves... you should be familiar with these instructions.

Name _____ Date _____

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