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**Disaster Planning for
California Hospitals**

September 23 – 25, 2013



**Disclosures of Protected Health
Information (PHI) in Disasters**



**CALIFORNIA
HOSPITAL
ASSOCIATION**

The following chart provides information on permissible disclosures of protected health information (PHI) in disaster situations. PHI means individually-identifiable health information (including demographic information) that identifies, or there is a reasonable basis to believe it can be used to identify, the patient. Information that cannot be linked to a specific patient, such as the number of victims by gender or age group (e.g., adults, teens, children, etc.) and the general cause of their treatment needs (e.g., an explosion, earthquake, etc.) may be disclosed.

Health care providers should not use this chart to develop policies and procedures or to make decisions about the disclosure of:

1. HIV test results,
2. Information regarding mental health services provided under the Lanterman-Petris-Short Act, or
3. Information obtained by federally-assisted substance abuse programs.

In addition, health care providers should keep the “minimum necessary” standard in mind, and disclose only that information that is necessary to accomplish the intended purpose of the disclosure.

Health care facilities and professionals should use common sense and good judgment, in addition to consulting the following chart, when developing their policies and procedures regarding the disclosure of PHI during disasters. 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.

See CHA’s *California Health Information Privacy Manual* at www.calhospital.org/privacy for additional information.

The U.S. Department of Health and Human Services (HHS) may issue a waiver of HIPAA sanctions and penalties following a disaster. This does not mean that the rule is suspended; however, no penalties will be assessed by HHS against a hospital for any violations of HIPAA requirements as described in the waiver. There is no process to waive penalties for violations of state health information privacy laws.

POTENTIAL RECIPIENT OF PHI

Another health care provider

This can be an individual provider (such as a doctor or nurse) or an institutional provider (such as another hospital or skilled nursing facility)

Purpose of Disclosure

Diagnosis or treatment of the patient

Notes

PHI may be freely shared with other health care providers to diagnose or treat the patient.
[Civil Code Section 56.10(c)(1);
45 C.F.R. Section 164.506(c)(2)]

To assist the other provider to obtain payment for services it rendered

Disclosure of PHI is limited to that information necessary to assist the other provider to obtain payment.
[Civil Code Section 56.10(c)(2);
45 C.F.R. Section 164.506(c)(3)]

POTENTIAL RECIPIENT OF PHI

Clergy

Purpose of Disclosure

Patient directory. Patients must be told of the information that may be included in the directory and the persons to whom it may be disclosed, and given the opportunity to restrict or prohibit some or all of the disclosures. This is usually accomplished via the Notice of Privacy Practices. If the opportunity to object cannot practicably be provided because of the patient's incapacity or an emergency treatment circumstance, the hospital may use or disclose the information (general condition, location and religious affiliation) 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.

The provider must inform the patient about the directory information (this is usually accomplished via the Notice of Privacy Practices) and provide an opportunity to object when it becomes practicable to do so.

Notes

Unless the patient has requested that information be withheld, the following information may be released to clergy upon request:

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

This applies to an inpatient, outpatient or emergency patient.

No other information may be released under this provision of law.

[Civil Code Section 56.10(c)(14);
45 C.F.R. Section 164.510(a)]

POTENTIAL RECIPIENT OF PHI**Coroner*****Purpose of Disclosure***

Coroner investigation

Notes

Hospitals are *required* to disclose PHI to a coroner “without delay upon request” when requested in the course of an investigation to identify a decedent or locate next of kin; or an investigation of deaths that may involve public health concerns, organ or tissue donations, abuse, suicides, poisonings, accidents, suspicious deaths, unknown deaths, criminal deaths, or when authorized by the decedent’s representative. The coroner must limit his/her request to PHI related to the decedent who is the subject of the investigation.

In addition, a hospital *may* (but is not required to) disclose PHI to a county coroner upon request for other purposes, if the disclosure is made in the course of another type of investigation by the coroner’s office.

[Civil Code Section 56.10(a)(8) and (c)(6); 45 C.F.R. Section 164.512(g)(1)]

POTENTIAL RECIPIENT OF PHI

Family member, other relative, domestic partner, or close personal friend of the patient, or any other person identified by the patient

Purpose of Disclosure

For involvement in the patient’s care or payment for the care

Notes

The hospital must follow the steps below before disclosing information if the patient is present (or otherwise available prior to the disclosure) and has the capacity to make health care decisions:

1. Obtain the patient’s agreement to the disclosure;
2. Provide the patient with the opportunity to object to the disclosure (if the patient objects, no disclosure may be made); or
3. The hospital may reasonably infer from the circumstances based on the exercise of professional judgment that the patient does not object to the disclosure. (Psychotherapists may not disclose information pursuant to this provision.)

If the patient is not present or the opportunity to agree or object to the disclosure cannot practicably be provided due to incapacity or an emergency circumstance, then the hospital may determine whether the disclosure is in the best interest of the patient and, if so, disclose only the information that is directly relevant to the person’s involvement with the patient’s health care.

[Civil Code Section 56.1007; 45 C.F.R. Section 164.510(b)]

POTENTIAL RECIPIENT OF PHI

General public

Purpose of Disclosure

Patient directory. Patients must be told of the information that may be included in the directory and the persons to whom it may be disclosed, and given the opportunity to restrict or prohibit some or all of the disclosures. This is usually accomplished via the Notice of Privacy Practices.

If the opportunity to object cannot practicably be provided because of the patient's incapacity or an emergency treatment circumstance, the hospital may use or disclose the information (general condition and location) 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.

The provider must inform the patient about the directory information (this is usually accomplished via the Notice of Privacy Practices) and provide an opportunity to object when it becomes practicable to do so.

Notes

Unless the patient has requested that information be withheld, the following information may be released upon request, *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, which is meant to allow visitors, florists, and others to find patients. However, CHA recommends that hospitals use their discretion when exercising this authority. For example, it is reasonable to give a room number to a florist who asks, "Which room is Bernice Hathaway in?" However, disclosing this information to a television camera crew 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 notify third parties of a patient's death before the next-of-kin is notified. 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 the death.

[Civil Code Sections 56.10(c)(14) and 56.16; 45 C.F.R. Section 164.510(a)]

POTENTIAL RECIPIENT OF PHI

Media

Notes

There is no law specifically regarding disclosures of PHI to the media.
(See “General public,” page 6.)

Payers

Purpose of Disclosure

To obtain payment for services rendered by the provider

Notes

PHI may be disclosed to an insurer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for payment to the extent necessary to allow responsibility for payment to be determined and payment to be made.
[Civil Code Section 56.10(c)(2);
45 C.F.R. Section 506(c)(1)]

POTENTIAL RECIPIENT OF PHI**Public health officials*****Purpose of Disclosure***

Preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, investigations, and interventions

Notes

PHI may be disclosed to a local health department (such as a county public health officer) or state health services officials if permitted or required by a state or federal law. [Civil Code Sections 56.10(c)(18) and 56.30(c); 45 C.F.R. Section 164.512(b)]

POTENTIAL RECIPIENT OF PHI

A public or private entity authorized by law or by its charter to assist in disaster relief efforts

A “public or private entity authorized by law or by its charter to assist in disaster relief efforts” could include the Red Cross, other hospitals, first responders, embassies or consulates, etc., depending upon their charter or relevant laws that establish them. Hospitals should ascertain in advance of a disaster which organizations that may request information fit into this category.

Purpose of Disclosure

For disaster relief purposes, to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the patient, or another person responsible for the care of the patient, of the patient’s location, general condition or death.

The law does not define the term “disaster.” A declaration of disaster by the Governor or the President is not required.

Notes

Unless the following steps interfere with the ability to respond to the emergency, the hospital must follow the steps below before disclosing information if the patient is present (or otherwise available prior to the disclosure) and has the capacity to make health care decisions:

1. Obtain the patient’s agreement to the disclosure;
2. Provide the patient with the opportunity to object to the disclosure (if the patient objects, no disclosure may be made); or
3. The hospital may reasonably infer from the circumstances based on the exercise of professional judgment that the patient does not object to the disclosure. (Psychotherapists may not disclose information pursuant to this provision.)

If the patient is not present or the opportunity to agree or object to the disclosure cannot practicably be provided due to incapacity or an emergency circumstance, then the hospital may determine whether the disclosure is in the best interest of the patient and, if so, disclose only the information that is needed for notification purposes.

Hospitals may disclose only the minimum information necessary to identify the individual or inform family or other persons responsible for the patient of the patient’s location, general condition or death.

[Civil Code Section 56.10(c)(14) and (15);
45 C.F.R. Section 164.510(b)(4)]