



Minnesota Hospital Association

Guidelines on the release of patient information to the media and public

Minnesota's hospitals have a long history of working collaboratively with members of the media providing timely, accurate information about hospitalized patients. Federal guidelines on the release of patient information, pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and state requirements under the Minnesota Health Records Act may both apply when disclosing information about a patient. All health care providers and hospitals have legal obligations to protect the personal and medical privacy of patients and their families.

The first obligation of Minnesota health care organizations is to safeguard the life, health, privacy and other legal rights of the patient. It is the policy of the Minnesota Hospital Association (MHA) and its member hospitals and health systems to cooperate with the news media, in accordance with state and federal privacy regulations.

Below is a general summary of the legal and practical considerations that may apply in dealing with the media. Hospital and health system staff should consult with legal counsel and follow organizational policies to ensure patient information is protected when dealing with public disclosures of patient information.

Federal requirements

HIPAA has set forth minimum standards that hospitals must follow to release patient information. With respect to public disclosures, HIPAA allows a health care provider to disclose limited patient information (described in more detail below) as part of a directory of individuals in the facility.¹ Directory information may be shared with the general public and news media when the person requesting the information identifies the patient by name.

In order to include a patient in a directory, the provider must inform the patient in advance that the information will be available in the directory and allow the patient to object to the directory inclusion. Both the notice to the patient and the patient's objection to the inclusion (if any) may be verbal.

When a patient is unable to object because of incapacity or emergency treatment circumstances, the provider may include the patient information in a directory if that inclusion is consistent with prior expressed preferences from the individual or in the individual's best interest as determined by the provider. MHA recommends that hospitals use discretion in determining what should be released when a patient is unable to provide consent. For example, if a patient is brought to the hospital as a result of an attack, the release of information could be harmful to the patient or hospital staff.

In the case of patients under age 18, a parent or guardian must be asked if they object to the release of information about the patient. Similarly, a family member or authorized decision-maker of an adult unconscious patient may provide the necessary consent.

¹ 45 CFR § 164.510.

If a patient objects to the release of information, the objection should be noted and the hospital public relations/media relations staff should be immediately informed, whenever possible. No information, including directory information, will be provided to anyone.

Patient information that may be included in a directory under HIPAA guidelines

HIPAA restricts the information health care providers may include in a patient directory and release to the public. Directory information is limited to four elements and patients have the option of further restricting directory information.

As long as a patient has not objected to being included in the directory, hospitals may release the following information to the public, including the news media:

1. **Name:** Information can be released to those people (media included) who ask for the patient by name. Information cannot be released to an individual unless that person knows the patient's name.
2. **Condition:** Pursuant to HIPAA, the patient's condition may be "described in general terms that does not communicate specific medical information..." For convenience, many hospitals provide a one-word condition status, as outlined below, but additional information may be shared as long as it meets the HIPAA limitation.
3. **Location within the hospital:** As long as prohibited information is not revealed, such as the patient being treated for substance abuse or another sensitive condition, the location can be released.
4. **Religion:** This information can be released only to clergy on request. Hospitals are not obligated to collect this information. If hospitals collect this information, they should inform the patient why they are collecting it and inform the patient that it will be handed over to clergy if asked.

Releasing information

All media inquiries should contain the patient's name. Information about the condition and location of a patient may be released only if the inquiry specifically contains the patient's name. This includes inquiries from the press. Furthermore, individual hospitals may adopt more restrictive guidelines than those required by HIPAA. Potential limitations that may be considered include:

1. Hospitals may withhold information on a patient if the release of that information jeopardizes the safety of the patient or hospital personnel.
2. Hospital staff may withhold information on a patient if that patient is admitted to the hospital due to a physical attack, such as a gunshot wound, stabbing wound or beating injury.
3. A hospital may limit disclosure when disclosure may embarrass the patient because of the nature of the patient's condition or the type of treatment sought.

Requests from clergy

It is important to note that inquiries from clergy are an exception to the requirement that an inquirer must identify the patient by name. HIPAA permits hospitals to release the patient's name, location in the hospital and general condition and religion to clergy members, so long as the patient has not told the hospital not to release the information. Clergy do not need to ask for the individual by name.

Hospital personnel would be wise to separately confirm the identity and affiliation of a clergy member prior to disclosing information. For example, if a member of the clergy seeks information over the phone, hospital personnel should ask for the name and phone number of the clergy member's religious institution and return the call before providing information to ensure this is a legitimate request. Should the member of the clergy present in person, ask for identification. While this may seem uncomfortable, it prevents people from claiming to be a member of the clergy and receiving information to which they are not entitled.

Conditions

One-word conditions should be phrased as follows:

- **Undetermined:** Patient 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.

The term “stable” should not be used as a condition and it should not be used in combination with other conditions, which by definition often indicate a patient is unstable.

With written consent from the patient, a more detailed condition statement can be drafted and approved by the patient or legal representative.

Once the patient is no longer receiving care at the facility

The HIPAA authorization to disclose directory information only applies so long as the patient is in the facility. Once the patient has left the facility, either by transfer or discharge, no information should be shared with the public.

The death of a patient, while considered a matter of public record, is protected information under HIPAA guidelines. Information on the death of a patient may not be released to the public, including the news media.

Location

The patient’s location may be included in the hospital directory to facilitate visits by friends and family as well as delivery of flowers and gifts. However, to safeguard privacy, patients can direct the hospital to withhold this information from the media.

Information on patients that are transferred to another hospital must be obtained from the hospital where the patient is located. HIPAA regulations do not allow hospitals to comment on patients once they have left that facility.

As a matter of courtesy, hospital public relations staff can provide a call to alert their peers at the hospital where the patient is transferred.

State requirements

The Minnesota Health Records Act (MHRA) applies to health care providers in the state of Minnesota. The MHRA provides no specific guidance on releasing patient information to the news media. Disclosure under MHRA is prohibited unless a statutory exception applies.² Hospitals should consult legal counsel and establish an internal process to comply with the MHRA.

Additional considerations

In addition to the federal and state legal requirements, hospitals may want to consider a variety of other factors in responding to media inquiries. While not specifically defined by law, the following additional guidance may be helpful in dealing with media inquiries.

² Minn. St. § 144.293.

Accommodating interview requests

At times, reporters may be invited into the hospital by a patient or the patient's family. Hospitals should establish clear policies to govern such situations. Potentially applicable policies may include visitor restrictions, limitations on recording on facility property or guides for staff on media interactions. Hospitals may deny the media access when generally applicable policies impose relevant restrictions or if the presence of photographers or reporters may aggravate the patient's condition or interfere with patient care. Often, reporters who are invited by patients believe these requests give them access to the hospital. Public relations staff should seek to manage these interactions to ensure that they are consistent with hospital policy, assure that the privacy of other hospital patients is maintained and avoid interactions that would affect quality or patient safety.

Public record

Patients involved in matters of public record are accorded the same privacy rights as all other patients. How a patient is transported to a hospital has no bearing on whether or not a hospital releases information on that patient. The fact that the police or fire department has transported someone to the hospital from an accident, crime scene or fire is a matter of public record to be reported by those agencies. These public records may prompt media calls to the hospital requesting a patient's condition. Hospitals may respond as discussed more fully above.

In Minnesota, state statutes call for hospitals to report certain information to public agencies such as county social services or the Minnesota Department of Health in cases such as child abuse or 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. The government agencies are responsible for releasing that information.

Information on children

Releasing information on children admitted to a hospital poses its own set of unique circumstances. While the condition of a child can be released, a parent or guardian must grant permission in all cases. If a reporter or a member of the public calls the hospital and identifies the patient, directory information may only be released if a parent or guardian has consented.

Unusual cases

Every day, hospitals are faced with a number of unusual cases that may cause media interest. In addition to the legal considerations, MHA recommends hospitals adopt additional restrictions on sharing information in special circumstances.

Sexual assault and abuse

Hospitals have certain reporting requirements related to sexual assault and abuse of vulnerable individuals. Even if this information is reported to the police by the patient or another entity, the hospital should not publicly disclose the name or location of the patient. If asked, the hospital should decline to issue a statement on the matter.

Suicide attempt

No statement should be made of a suicide or suicide attempt.

Medical examiner cases

Hospitals are not authorized to release any information on the general cause of death of a patient. Hospitals may release information on the deceased only to law enforcement authorities; those involved in the care, treatment or payment of services for the patient; or government or private entities involved in an investigation of death or making funeral arrangements (e.g. the Minnesota Department of Health, coroners, medical examiners or funeral directors).

Disaster situations

Disaster situations present numerous challenges for hospital public relations officers. The need to be aware of disaster information protocol is highly important.

Whenever possible, hospitals should attempt to notify the next-of-kin of a patient involved in a disaster before releasing patient information. But in the case of a disaster or terrorist attacks involving multiple casualties, HIPAA regulations allow for the sharing of patient information with other hospitals and/or rescue and relief organizations before the next-of-kin is notified.

Hospitals may release patient information to other hospitals, health care facilities and relief agencies in situations where multiple facilities are receiving patients from one disaster. Hospitals may disclose patient information to public or private organizations assisting in relief efforts for the purpose of notifying family members or others responsible for a patient's location, general condition or death.

It is also permissible to release patient information to help dispel public anxiety in a disaster situation. Hospitals may state the number of patients brought to the facility by gender or age group, without releasing names or conditions.

Public figures

Highly public individuals from the area, such as television news anchors, elected officials, actors and celebrities, may generate interest from the media and the public. These public figures may bring with them spokespersons who handle media requests for information. Hospital staff should work with these spokespersons whenever possible.

The public status of a patient may prompt media inquiries; public persons may not be subject to different standards than other patients when it comes to a hospital's policy for releasing information to the media.

Births

Births are a matter of public record, but public disclosure of a birth is subject to the same legal standards as for any other patient. Information about a newborn may be included in the hospital directory, and publicly disclosed, only if the newborn's family is provided with an opportunity to opt out of public disclosure.

Mental and behavioral health

It is recommended that hospitals not release information that could cause shame or stigma for the patient. Situations could include information about room location in a psychiatric or substance abuse unit. A hospital's public disclosures related to alcohol abuse or treatment would exceed the information authorized by HIPAA. In the case of psychiatric patients, hospital spokespersons should err on the side of caution. Even if a patient has given written permission to release basic information, there may be a question concerning that person's legal competency to give such authorization. Further, federal law prohibits hospitals from releasing any information regarding a patient being treated for alcohol or substance abuse. These laws 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.

If related to a law enforcement interaction or investigation, any statement on the use of drugs, alcohol or narcotics should come from the investigating authorities.