

## **Media Guide for Hospitals in Ohio**

### **General Guidelines for Hospitals and the News Media**

Distributed by:  
Ohio Hospital Association

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#### **General Guidelines for Hospitals and the News Media Regarding Patient Information**

The purpose of this document is to assist both hospital public relations personnel and the news media with the communication of facts and data regarding patients. This document will provide reporters with information regarding hospitals’ legal and ethical responsibilities to patients in reporting admission and patient status and in sharing other data about the patient.

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandated regulations that govern privacy, security and administrative simplification standards for healthcare information. Final privacy regulations became effective in April 2001, and hospitals have until April 14, 2003, to come into compliance. HIPAA requires major changes in how healthcare organizations handle all facets of information management, including patient records.

***HIPAA sets forth minimum standards that hospitals must follow with regard to the release of patient information. Hospitals may have individual policies, however, that are more restrictive than what is required in the HIPAA guidelines. If this is the case, the more restrictive policy will take precedence.***

Among other things, the HIPAA privacy regulations restrict the information healthcare providers may include in a patient directory and release to the public, including news media. Directory information is limited to four elements and patients have the option of further restricting release of the directory information. The directory elements are:

1. Name
2. Condition
3. Location within the hospital
4. Religion

**Name** – information can be released only to those who ask about patients by name

**Condition** – using terms defined within this guide

**Location within the hospital** – provided it does not reveal prohibited information, such as that the patient is being treated for substance abuse. (See Addendum I regarding Other Pertinent Federal Law)

**Religion** – although hospitals are not required to ask a patient's religious affiliation and this information is available only to clergy, upon request. (See Addendum II regarding Release of Information to News Reporters Q&A.)

**NOTE:**

- Unless the patient has exercised the “opt-out” provision, directory information about a particular patient (excluding the religious affiliation information) can be shared with any person who asks for the patient by name.
- Directory information, including religious affiliation information, can also be disclosed to a member of the clergy even if the clergy member does not request information by patient name.

While the HIPAA privacy regulations restrict the information healthcare providers may release, patients are free to release their own personal information or to consent to interviews providing it does not interfere with their medical treatment. (See Addendum II regarding Release of Information to News Reporters)

### **The Rights of Patients**

Hospitals have both legal and ethical responsibilities to preserve patient confidentiality. Patients have specific legal rights to privacy as governed by several federal and state laws, as well as standards set forth by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Each hospital has a Patient Bill of Rights, which includes confidentiality issues. This information is available by contacting the hospital's public relations department.

According to JCAHO, related patient rights include:

**Respect and Dignity** – The patient has the right to considerate, respectful care at all times and under all circumstances, with recognition of his/her personal dignity.

**Privacy and Confidentiality** – The patient has the right, within the law, to personal and informational privacy, as manifested by the following rights:

- To refuse to talk with or see anyone not officially connected with the hospital, including visitors, or persons officially connected with the hospital but not directly involved in his/her care;
- To expect that any discussion or consultation involving his/her case will be conducted discreetly and that individuals not directly involved in his/her care will not be present

without his/her permission;

- To have his/her medical record read only by individuals directly involved in his/her treatment or in the monitoring of quality and by other individuals only on his/her written authorization or that of his/her legally authorized representative;
- To expect all communications and other records pertaining to his/her care, including the source of payment, to be treated as confidential.

### **The Hospital Designated Representative (Spokesperson)**

The hospital spokesperson is familiar with the special needs and deadlines of the media and works to provide patient information where appropriate and arrange interviews. This is the person who will be best able to help the media. Calls made to others in the organization will be channeled to the official spokesperson.

### **Gaining Access to the Hospital**

Media representatives and photographers must contact the hospital spokesperson for access assistance. Hospitals require that a hospital representative accompany news personnel at all times. It is not possible to grant free access to some areas in the hospitals due to laws and regulations. Areas most likely to fall in the non-accessible category include operating rooms, intensive care units, maternity units, emergency departments, psychiatric departments, nurseries and substance abuse units. At times, circumstances may necessitate that other areas be designated as off-limits.

### **Gaining Access to Patients**

Written permission of the patient is needed for photos or interviews. Consent forms will be available through the hospital spokesperson. If the patient is a minor, permission must be obtained from a parent or legal guardian.

Medical judgment: Hospitals may deny the media access to the patient if it is determined the presence of photographers or reporters would aggravate the patient's condition or interfere with appropriate clinical care.

### **Release of Patient Information**

A hospital's first responsibility is to the health and welfare of the patient. The patient has specific legal rights to privacy. The patient's medical records by law are private and confidential. The medical records are subject to release only with the permission and written authorization of the patient or patient's legal representative or as required by law. (*See Addendum III regarding Cases of Public Record*)

Directory information will be released to the media after a patient has been given the opportunity to review and chooses not to restrict directory information, providing the request includes the patient's name. Directory information may be delayed or unavailable for an emergency or unconscious patient. (*See Addendum IV regarding Public Figures/Public Officials*)

### **Condition of Patient**

Only a physician can determine the patient's diagnosis and/or prognosis. Most physicians in hospitals use the following terms to describe a patient's condition:

**Undetermined** – Patient currently being evaluated.

**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.

**Treated and Released** – Patient received treatment but was not admitted.

**Treated and Transferred** – Received treatment. Transferred to a different facility. *(Although a hospital may disclose that a patient was treated and released, it may not release information regarding the date of release or where the patient went upon release without patient authorization.)*

**Deceased/Coroner's Cases** – The death of a patient, while considered a matter of public record under Ohio law, is considered protected health information under HIPAA. Thus, the condition of death may be released for expired patients who have not opted out of the directory. However, hospitals are advised to first notify the next of kin or make a reasonable attempt to do so. Information regarding the cause of death must come from the patient's physician, and its release must be approved by a legal representative of the deceased.

When a death is investigated by the county coroner, questions about the cause of death should be addressed to that public office. The coroner's office may also have information about which funeral home is handling arrangements for the deceased. *(See Addendum V regarding types of coroner's cases)*

**NOTE:**

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

**Releasing Information After Hours**

Most hospitals have an after hours phone or pager number to allow the news media access to hospitals at all hours. Employees who answer calls during late-night or weekend shifts may release basic information or refer the reporter to the person with authority to release information during non-business hours. The after hours number can be obtained by calling a hospital's main phone

number and asking to speak to someone in media relations.

## **Addendum I**

### **Other Pertinent Federal and State Law**

In addition to HIPAA, federal laws prohibit hospitals from releasing any information regarding a patient being treated for alcohol or substance abuse. (The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Drug Abuse Office and Treatment Act of 1972; and 42 C.F.R. Part 2, 188) There are also various state laws which address privacy of health information, such as HIV and mental health statutes.

## **Addendum II**

*Provided by the Ohio Hospital Association and Bricker & Eckler LLP*

### **Release of Information to News Reporters Privacy/HIPAA-Related Questions and Answers**

#### **Do news reporters have the right to receive information regarding a hospitalized patient?**

Under Ohio's public records law, the public has the right to access information regarding births, deaths, admissions and discharges from hospitals deemed public entities. Under the HIPAA privacy regulations, however, this component of Ohio's public records law would be preempted since it provides for more access to protected information than HIPAA. HIPAA does allow a hospital to develop a directory that may contain the patient's name, location, the individual's condition described in general terms that do not communicate specific medical information (i.e., the condition can be described as "fair," "critical," etc.) or religious affiliation. (The HHS commentary makes it clear that the facility is not required to inquire about the religious affiliation of an individual and individuals are not required to supply that information. In addition, religious affiliation is available only to clergy, upon request.)

Every patient must be apprised of the directory and its content, informed what the practice is as to the types of entities and individuals that may receive the information upon request, and given the opportunity to restrict the type of information provided and to whom the information may be provided. (This may be done orally.) Thus, if the patient has not restricted the hospital from release of hospital directory information to the media and has been informed that such information is routinely released to the media, then the hospital may give the directory information to the media, absent religious affiliation.

#### **How should hospitals handle requests from news reporters regarding admissions, discharges, births and deaths?**

Although this information may be deemed "public information" under Ohio's public records law for purposes of information that must be released by public entities, such as government-owned and government-operated hospitals, the HIPAA privacy regulations will preempt any state statutes which are less stringent than HIPAA in terms of protecting privacy. Thus, whether a hospital is a public entity or not, this information should not be released to news reporters except as allowed in directory information under HIPAA.

#### **If a hospital is obligated by statute to report certain information to a governmental agency, does such reporting obligation then allow the hospital to release the same information to news reporters?**

No. There are numerous reporting statutes in most states which deal with reports for everything from child abuse to gunshot wounds. The fact that a hospital has an obligation to report certain confidential information to a governmental agency, however, does not make that information public and available to news reporters. In addressing questions from news reporters regarding such information, the hospital may want to refer the reporter to the public entity which receives such reports such as the police, fire or health department. The public entity will be guided by the applicable statute as to whether it can release any or all of the information received.

**If a patient arrives unconscious or is incompetent, may the hospital create directory information on that patient and release it to news reporters?**

This practice requires discretion. The regulations provide that if the opportunity to “opt-out” of the facility directory listing cannot practicably be provided due to the patient’s incapacity or emergency treatment situation, the facility may use and/or disclose some or all of the allowed information if such use/disclosure is consistent with a prior expressed preference of the patient that is known to the facility or if such use/disclosure is considered in the best interest of the patient as determined by the facility. In these cases, the patient should be informed of the use/disclosure as soon as it is practical to do so.

The commentary to the rule encourages facilities to take the following into account when deciding whether to include some or all of the patient information in the directory:

- Whether disclosing that an individual is in the facility could reasonably cause harm or danger to the individual (e.g., if it appeared that an unconscious patient had been abused and disclosing the information could give the attacker sufficient information to seek out the person and repeat the abuse);
- Whether disclosing a patient’s location within a facility implicitly would give information about the patient’s condition (e.g., whether a patient’s room number revealed that he or she was in a psychiatric ward);
- Whether it is necessary or appropriate to give information about patient status to family or friends (e.g., if giving information to a family member about an unconscious patient could help a physician administer appropriate medications); and,
- Whether an individual had, prior to becoming incapacitated, expressed a preference not to be included in the directory.

**If a news reporter has a patient’s name and is calling to confirm that the patient has been treated or admitted or is asking for other information regarding the patient, may the hospital confirm the identity or respond to the specific questions?**

The fact that the media may know the name of a patient who may, for example, have been involved in an accident or a crime, does not give them any additional rights with respect to confirming the patient’s treatment, admission or other patient-related information. The only rights they would have would be with respect to information contained in the hospital directory to the extent the patient has not limited or opted out of having that information made available.

**Addendum III**  
**Cases of Public Record**

State law generally defines a public record as information kept by any public office, not otherwise

privileged or confidential. The fact that someone has been transported to the hospital by a 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 are available from the reporting agencies, not the hospital. These public records, however, may prompt media calls to the hospital requesting a patient's condition.

#### **Addendum IV**

##### **Public Figures/Public Officials**

Public figures are individuals well known in their local area, such as a news anchor or community leader. Public officials are elected individuals, such as a city council member, or those in other government positions, such as a school superintendent or a police chief.

Some patients may be considered newsworthy because of their occupation, office or accomplishments. A public figure or public official often may have a spokesperson who handles media requests for information. When possible, hospitals should cooperate with the patient's spokesperson.

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

#### **Addendum V**

##### **Types of Coroner's Cases**

The following conditions of death are examples which require inquiries to public offices; hospitals cannot share information on the specifics.

##### **Sudden or Violent Deaths:**

- Death by suicide
- Death as a result of criminal or other violent means
- Homicidal death including abortion and child abuse
- Sudden death in a suspicious or unusual manner or under unknown circumstances when there are no witnesses and no information
- Death from alcoholism
- Death following injuries at place of employment when circumstances may be subject to investigation
- Stillborn infants when there is suspicion of illegal interference
- Death when decedent not attended by a physician
- Death occurring within 24 hours of hospital admission unless the patient is under care of physician for a natural disease responsible for death.

##### **Accidental Deaths from:**

- Anesthetic accident
- Blows, burns and scalds
- Being crushed beneath falling objects
- Cutting, stabbing and drowning
- Electric shock, explosion and exposure

- Firearms, bone fracture, falls, poisoning
- Strangulation and suffocation
- Vehicular accidents

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