

# PRIVACY LAW AND THE SHARING OF MEDICAL INFORMATION DURING EMERGENCIES

555 WEST 57TH STREET, NEW YORK, NY 10019 • T (212) 246-7100 • F (212) 262-6350 • WWW.GNYHA.ORG • PRESIDENT, KENNETH E. RASKE

Questions often arise about the sharing of patient information and the applicability of Health Insurance Portability and Accountability Act (HIPAA) regulations during emergencies. HIPAA applies to covered entities such as hospitals, nursing homes, physician practices, and managed care companies. In general, HIPAA safeguards protected health information (PHI) from disclosure. *Hospitals and other covered entities are permitted to share PHI for the purposes of treatment, notification, and in the interest of public safety, within certain bounds, which are discussed below.* Sharing of PHI is regulated by the U.S. Department of Health and Human Services (HHS). To the extent that New York State laws also govern such sharing, the New York State Department of Health (DOH), Office of Mental Health, and Office of Alcohol and Substance Abuse Services also may exercise regulatory oversight.

This document details what PHI can be shared and with whom during specific types of emergency incidents, including:

- Mass casualty events
- Patient evacuation
- Disease outbreaks

This document draws upon guidance produced by the HHS Office for Civil Rights (OCR) in the wake of Hurricane Katrina (**September 2005 OCR Bulletin**) and other storms, and updated guidance released during the 2014 West Africa Ebola Outbreak (**November 2014 OCR Bulletin**). While the document does not specifically address state laws, there is significant alignment between HIPAA and New York State law on the sharing of PHI in the above scenarios. For questions about how HIPAA interacts with state law, hospital attorneys should be consulted.

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## MASS CASUALTY EVENTS

If a hospital receives a large number of victims from a mass casualty event, certain privacy disclosure issues must be considered. The following provisions are existing exceptions under HIPAA that allow for disclosure; no emergency declaration or waiving of enforcement is needed.

### **Disclosures to Public Health Authority or Private Disaster Relief Entities (e.g., the American Red Cross)**

In the event of an emergency, a hospital may use or disclose PHI to such entities in order to notify or assist in the notification of a health care agent (proxy), family member, or other personal representative regarding the patient's location, condition, or death. This could include providing information to a local health department to aid family reunification. A hospital may also disclose information to a foreign government agency (e.g., through an embassy) at the direction of the public health authority, if the foreign government agency is acting in collaboration with the public health authority.



*GNYHA is a dynamic, constantly evolving center for health care advocacy and expertise, but our core mission—helping hospitals deliver the finest patient care in the most cost-effective way—never changes.*

### Disclosures to Identify, Locate, and Notify Family Members, and those Responsible for Care

A hospital may share relevant information about a patient with family members, guardians, personal representatives such as a health care proxy, or anyone else responsible for the patient's care.

A hospital also may share information about a patient as necessary to identify, locate, and notify such individuals about a patient's location, general condition, or death. HHS has indicated that disclosure to police, the press, or the public at large, if necessary, would also be permissible for this purpose.

When possible, the hospital should obtain oral permission from patients. If the patient is unable to provide permission, hospital personnel may make the disclosure anyway, if in their professional judgment disclosure of this information is in the patient's best interests.

### Disclosures to Law Enforcement to Help Identify or Locate a Missing Person

If law enforcement requests information to help identify or locate a missing person, a hospital may disclose the following limited information: 1) name and address, 2) date and place of birth, 3) Social Security number, 4) ABO blood type and rh factor, 5) type of injury, 6) date and time of treatment, 7) date and time of death, and 8) a description of distinguishing physical characteristics. Information related to the individual's DNA, dental records, body fluid or tissue typing, samples, or analysis cannot be disclosed under this provision, but may be disclosed in response to a court order, warrant, or written administrative request.

### Disclosures to the Press

Upon request for information about a particular patient by name, a hospital may release limited PHI contained in a facility directory (e.g., patient location in the facility) and his/her general condition. For more information about directory information, please refer to Page 6 of GNYHA's *Revisiting HIPAA* booklet. The hospital must have given the patient the right to opt out of the directory (this is usually provided in a hospital's Notice of Privacy Practices.) If the patient is unable to exercise the opt-out right, hospital personnel still may make the disclosure, if in their professional judgment it is in the best interests of the patient.

## PATIENT EVACUATION

Due to natural or man-made events, it may become necessary to evacuate large numbers of patients from one health care facility to another. In general, hospitals may disclose PHI, without a patient's authorization, as necessary to treat the patient. Treatment includes the coordination or management of health care and the referral of patients for treatment. This provision allows the sharing of PHI between evacuating and receiving facility providers, as well as members of their workforce, including personnel responsible for patient transport. Disclosures made for treatment purposes are not subject to HIPAA's "minimum necessary" rule (see below). No emergency declaration or waiving of enforcement is needed.

New York State law allows sharing of PHI in such circumstances. Hospitals, nursing homes, adult care facilities, and State-run facilities are required to use New York's Evacuation of Facilities in Disaster Systems, known as eFINDS, to track patients during evacuations. This bracelet system enables DOH to monitor the movement of patients and residents between evacuating and receiving facilities. Such disclosures are allowable under HIPAA.

Many hospitals have existing transfer agreements with a small number of hospitals or other health care facilities to which they frequently transfer patients. These agreements often outline what types of PHI can be shared, under what circumstances, and by whom. Hospitals are encouraged to review transfer agreements to ensure that the sharing of PHI for treatment purposes is well defined. Transfer agreements can be useful for setting in advance each facility's expectations and understanding of information sharing.

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## COMMUNICABLE DISEASE OUTBREAKS

In addition to the above disclosure issues, there are further considerations during communicable disease outbreaks:

- A hospital, may disclose PHI to a person who is at risk of contracting or spreading a disease or condition if state law authorizes the hospital to notify such individuals as necessary to carry out public health interventions or investigations.
- Under New York State law, a physician treating a person with a highly communicable disease may advise members of the person's household about precautions to be taken to prevent further spread of the disease, and appropriate specific preventive measures.
- Hospitals are also obligated to disclose to the appropriate public health authorities that the institution is treating a patient suspected or confirmed to have the disease of concern, and then work with the public health authorities to support contact tracing and notification activities.

These disclosures can be made without patient authorization.

### The Role of Regulatory Waivers

During significant emergencies, the HHS Secretary and DOH can waive enforcement of certain provisions of HIPAA and other privacy laws. For HHS to waive enforcement, the President must declare an emergency and the HHS Secretary must then declare a public health emergency. Hospital counsel and regulatory staff, along with GNYHA, generally will monitor such declarations and actions.

It is important to note, however, that no such waiving of enforcement is needed for hospitals to share PHI for the purposes detailed above, as long as such sharing does not violate state laws.

### Minimum Necessary Disclosures and Safeguarding of PHI

While disclosure of PHI is allowable to certain entities during emergency incidents, hospitals must make reasonable efforts to limit the information disclosed to the "minimum necessary" to accomplish the disclosure's purpose, and must continue to implement reasonable safeguards to protect PHI against intentional or unintentional uses and disclosures.

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## ADDITIONAL RESOURCES

- [Frequently Asked Questions: Is the HIPAA Privacy Rule suspended during a national or public health emergency?](#)
- [New York Codes, Rules and Regulations, Title 10](#). Department of Health, Chapter 1. State Sanitary Code, Part 2. Communicable Diseases Isolation, Quarantine and Restriction
- U.S. Department of Health and Human Services, Disclosures for Emergency Preparedness – [A Decision Tool: Overview](#)