

Guide to HIPAA Compliance in News Media Relations



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Introduction

The Nebraska Hospital Association, in collaboration with the American Hospital Association, other state hospital associations and health organizations, has prepared this material to provide hospital executives with an understanding of a hospitals' responsibilities to their patients' privacy, balanced with the media's responsibility to inform the public. The release of patient information to the public takes great thought on the part of the hospital representative. He or she must make numerous decisions when releasing information to the public and the news media — decisions that almost always differ with each situation.

As a provider of information, hospitals have a responsibility to ensure that the facts they are authorized to give are as accurate as possible. In addition, hospitals must protect the privacy of the patients receiving care in their facilities and comply with state and federal privacy laws, including the health information privacy standards of the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act (HIPAA). Hospitals must comply with the HIPAA privacy standards, so please review this information carefully. This guide is designed as a practical ethics code for the release of hospital-based news. Recognizing that few rules are made for which no exceptions exist, the guide is intended as a statement of guiding principles only. Your own hospital legal counsel should be consulted for specific questions regarding particular situations or regulations.

As you use the guide, temper it with your own good judgment and understanding of circumstances that surround each newsworthy situation. In the event of a disaster or major newsworthy occurrence, the hospital should be following a disaster communications plan, a separate process outlined in your organization's disaster plan.

Each hospital in Nebraska should have "release of patient information" and "media relations" policies that are HIPAA compliant and have been adopted by administration, endorsed by the hospital's governing board and reviewed by legal counsel. Official hospital policy should state that all media inquiries be directed to the public relations department, or the appropriate office, which will designate an official spokesperson to respond. This individual should have experience in dealing with the media and should be sensitive to patients' needs and concerns. He or she may be the public relations director, a member of the public relations staff, the chief executive officer, the house supervisor or another designated person who will ensure that media questions are responded to in a timely manner by the most knowledgeable source. Policies should also list a specific procedure for contacting the spokesperson, or a designated alternate, on weekends, holidays and after regular business hours.

Individuals serving as official spokespersons should combine straightforward, ethical behavior with good judgment and common sense. While it is the intent of these guidelines that information be made available to the public at the request of credible media sources, every patient's well-being and right to privacy takes precedence over all other factors. The hospital's primary responsibility is to preserve the patient's dignity and right to privacy. Hospitals are under no obligation to disseminate news and information about patients, unless required by law or court process. Information is usually not released in cases involving suicide, sexual assault, psychiatric admission, substance abuse or child abuse. Information about minors can be released with a parent or legal representative's consent.

The guidelines contained in this booklet are based on those established by the American Hospital Association (AHA) and are endorsed by the Nebraska Hospital Association. They have changed significantly from the 1997 edition, in order to meet HIPAA-mandated regulations that govern privacy standards for health care information.

To achieve the maximum benefits from this guide, it is recommended that you:

1. Review the contents with members of the board of trustees, the hospital's HIPAA privacy official, medical staff, county medical society (which probably has a formal policy on media relations), emergency department personnel, individuals who serve as spokespersons for the hospital and others who may be involved in the news communications process, such as nurses, medical record administrators, telephone operators, admitting clerks, information desk employees or volunteers.
2. Discuss this guide, or one specific to your hospital, with members of the local news media. A hospital may follow a news media code rigorously, but if it has not explored mutual obligations and responsibilities with local news personnel, a less-than-cooperative climate may develop.

Hospital and News Media Cooperation

The relationship between the health care industry and members of the news media has grown considerably over the last decade into one that is mutually beneficial. Hospitals need the support of the media to promote programs, physicians, new technology and more. In turn, the media relies on hospitals to provide timely information when requested, to identify interesting newsworthy patients or to find clinical experts to discuss the latest medical advances — all within publication or broadcast deadlines.

There is sometimes a fine line between information that is confidential and information that the public has the right to know. Understanding that the hospital's first responsibility is to protect the confidentiality, health and legal rights of each patient, the following is a guide for the request and release of patient information.

Mutual Obligations

Members of the news media have the responsibility of determining what constitutes news, and to report the news accurately, fairly and in a timely manner. Hospitals and the news media have a responsibility and a joint interest in working together to see that the news is reported promptly and is readily available.

Hospitals and physicians have a moral and legal responsibility to ensure the proper and safe care of their patients, to protect their rights to privacy and confidentiality, and to abide by federal and state privacy laws, including the HIPAA privacy standards. This includes recognizing that the patient's medical record is private and confidential and that the information in it is the patient's personal property.

With medical technology advancing at such a rapid pace, and enormous changes taking place within the health care industry, there continues to be a great deal of public interest in hospital and health care news. Both hospitals and the media should work to respect the other's objectives within the limits of their mutual obligations and capabilities, since both have a vested interest in working together in order to accomplish their respective goals.

The Joint Commission

According to The Joint Commission (Comprehensive Accreditation Manual for Hospitals - 2002 edition), "*the hospital addresses ethical issues in providing patient care*" (Standard RI.1). In addition, "*the hospital demonstrates respect for the patient's needs of confidentiality, privacy and security.*" (Standards RI.1.3.1; RI.1.3.2; and RI.1.3.3).

HIPAA Privacy Standards

Hospitals and health systems are responsible for protecting the privacy and confidentiality of their patients and patient information. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandated regulations that govern privacy standards for health care information. HIPAA regulations specify the purposes for which information may and may not be released without authorization from the patient. This document updates our 2001 *Guidelines for Releasing Information on the Condition of Patients*. This revised edition ensures that our suggestions are consistent with the final changes to the HIPAA medical privacy regulations published in August 2002, as well as the guidance document released by the Department of Health and Human Services (HHS) in December 2002. These updated guidelines:

- Focus on how and when to release patient information to the media.
- Contain advice about releasing information to family members, other hospitals, relief agencies and the media in everyday and disaster situations.

This information is provided only as a guideline. Consult with legal counsel before finalizing any policy on the release of patient information. Also, be aware that health care facilities must comply with state privacy laws. Contact your legal counsel or your state hospital association for further information about the application of state and federal medical privacy laws to the release of patient information.

Attending Physician

The hospital will not provide media representatives the name of the attending physician, without the consent of the physician. The wishes of the attending physician should be respected regarding the use of his/her name and/or quotations.

Physicians must comply with the HIPAA privacy standards and applicable Nebraska laws in connection with the use and disclosure of a patient's protected health information. The Current Opinions with Annotations of the Council on Ethical and Judicial Affairs of the American Medical Association contains several policies dealing with health information. These include Policy E-5.04 Communications Media: Standards of Professional Responsibility; Policy E-5.051 Confidentiality of Medical Information Post-mortem; and Policy E-5.05 Confidentiality. To the extent these are consistent with the HIPAA privacy standards and other applicable laws and regulations, physicians should comply with these policies. Physicians should consult with the hospital's public relations department prior to any media interaction.

Professional Journalists

The preamble of the Code of Ethics of The Society of Professional Journalists, Sigma Delta Chi, states:

“Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. **Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility.** Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.”

The section titled, “Minimize Harm” states, “*Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.*” It further states that Journalists should:

- *Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.*
- *Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.*
- *Recognize that gathering and reporting information may cause harm or discomfort.*
- *Pursuit of the news is not a license for arrogance.*
- *Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.*
- *Show good taste. Avoid pandering to lurid curiosity . . .”*

A copy of the entire Code of Ethics is available at www.spj.org/ethics_code.asp.

Release of Patient Information

The Hospital Directory

Most hospital public relations departments currently follow their own institution-specific guidelines concerning inquiries regarding particular patients by family, friends, and the media, among others. These policies recognize – and prioritize – a patient's right to privacy, and therefore most hospitals' current operating practices should bring them very close to compliance with the Privacy Rule. The Privacy Rule, however, does set forth specific requirements concerning the Hospital Directory that will have an impact on the hospital public relations department.

Under the Privacy Rule, a hospital must provide each of its patients with a Notice of Privacy Practices that, among other things, describes the uses and disclosures that the hospital may make of patients' PHI, including uses and disclosures in its Hospital Directory of patients. HIPAA privacy regulations restrict the information health care providers may include in a patient directory and release to the public, including news media. Hospital Directory information, as it pertains to media, is limited to three (3) elements and patients have the option of further restricting release of the directory information.

Directory Information

The Notice of Privacy Practices must inform the patient of the specific PHI that the hospital includes in the Hospital Directory. Under the Privacy Rule, the Hospital Directory may include:

- The patient's name – information can be released only to those who ask about patients by name
- The patient's location in the hospital (e.g., room number) – based on standard definitions
- The patient's condition – based on standard definitions
- The patient's religious affiliation – may be provided to members of the clergy ONLY

Inquiries That Identify the Patient by Name

Information about the patient's general condition and location of an inpatient, outpatient or emergency department patient may be released *only if the inquiry specifically identifies the patient by name*. No information may be given if a request does not include a specific patient's name or if the patient requests that the information not be released. This includes inquiries from the press.

Inquiries From Clergy

The HIPAA privacy regulations expressly permit hospitals to release the patient's name, location in the hospital, general condition and religion to clergy members, unless the patient has asked that the information not be released. Clergy do not need to ask for the individual by name. For example, clergy could request information regarding patients of a particular religion. However, hospitals are not required to ask about patients' religious affiliations and patients do not have to supply that information.

Release of Patient's General Condition and Location

As long as the patient has not requested that information be withheld, you may release the patient's one-word condition and location to individuals who inquire about the patient by name or to clergy, without obtaining prior patient authorization.

The following terms are recommended by the American Hospital Association's Society for Healthcare Strategy & Market Development (SHSMD):

- **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.
- **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.)

Clinicians find the "critical but stable" term useful when discussing cases amongst themselves because it helps them differentiate patients who are expected to recover from those whose prognosis is worse. But a critical condition means that at least some vital signs are unstable, so this is inherently contradictory. 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.

Death of Patient

The death of a patient may be reported to the authorities by the hospital, as required by law. Typically, public information about a death will be disclosed after efforts have been made to notify the next-of-kin. Information about the cause of death must come from the patient's physician, and a legal representative of the deceased must approve its release. This means that hospitals cannot share information with the media on the specifics about sudden, violent or accidental deaths, or deaths from natural causes without the permission of the decedent's next-of-kin or other legal representative.

Question: *Can the hospital tell the media the patient has died without getting the family's permission? In other words, is "deceased" a condition that can be disclosed?*

Under the HIPAA privacy rule, if a patient has not asked that his or her information be kept out of the hospital's directory, the hospital may disclose the patient's general condition to anyone who asks for the patient by name. HIPAA does not define what constitutes a "general condition." Disclosing that a patient is deceased, however, appears to be a permissible facility directory disclosure as a statement of the patient's general condition. A hospital may not disclose information regarding the date, time or cause of death.

Question: *For deceased patients, can the hospital provide the media with the date and time of death, as recorded on the death certificate?*

No. The hospital may not disclose a patient's date or time of death to the media. A hospital may disclose to the media only that information maintained in the hospital directory, which is a patient's name, location in the hospital and general condition, if the media asks for the patient by name. No other information may be provided without individual authorization. In the case of a deceased patient, authorization must be obtained from a personal representative of the deceased.

Disclosures of Location to the Media

The patient's location may be included in the hospital directory to facilitate visits by friends and family as well as the delivery of flowers, cards and gifts. However, as a matter of policy, the patient's location should not routinely be given to the media.

Although HIPAA does not expressly prohibit disclosure of patients' room location to the media (because the media are accorded the same access to information as other callers who ask for the patient by name), this omission was not intended as a loophole to give journalists access to celebrity or other patients who do not wish them to have it. To safeguard patient privacy, it is recommended that hospitals adopt or maintain policies prohibiting disclosure of patient location to the media without patient permission. Furthermore, the hospital should not enable media to contact patients directly. Instead, the patient's public relations or other designated representative should handle interviews and calls. A hospital may deny the media access to a patient if the hospital determines that the presence of photographers or reporters would aggravate the patient's condition or interfere with patient care.

A hospital representative should accompany the media at all times while they are in the hospital. At their discretion, hospitals may deny the media access to any area, including (but not limited to) operating rooms, intensive care units, maternity units, emergency departments, psychiatric departments, nurseries, pediatric units, and substance abuse units where all patients present have an expectation of a certain degree of privacy.

Question: *For obstetrical patients, can the hospital confirm that the patient is in labor and delivery or has been released from labor and delivery?*

No. Disclosing the fact that a patient is in labor provides more information than the patient's general condition. A hospital may not disclose that a patient is in labor or has been released from labor and delivery without individual authorization, unless the disclosure is to family members or friends **involved in the patient's care** or payment for the patient's care. Except in cases where the patient has requested that such a disclosure not be made, a hospital may disclose to the patient's family members or friends information relevant to the person's involvement in the patient's care. For example, a hospital may disclose the fact that a patient is in labor

and delivery to the patient's back-up delivery coach, as such information is relevant to the delivery coaches' involvement in the patient's care. Similarly, if a person is picking-up a patient from the hospital, the hospital may provide the person with information related to the proper transportation of the patient.

Question: *Since hospitals can only use one-word patient condition reports, may a hospital disclose that a patient was treated and released?*

Yes. Under the HIPAA privacy rule, a hospital may disclose, to individuals who ask for the patient by name, that a patient was treated and released because this only provides the patient's general condition (that they were treated at the hospital) and the patient's location (that the patient is no longer at the hospital). No specific health information is provided. Therefore, assuming the other requirements for disclosures of directory information are met, this appears to be a permissible disclosure of directory information under HIPAA.

Question: *If the hospital can say that someone has been "treated and released" without getting permission, may the hospital disclose when the patient was released or to where the patient was released?*

No. Although a hospital may disclose that a patient was treated and released as information regarding the patient's location (or lack thereof) in the hospital, it may not release information regarding the date of release or where the patient went upon release without patient authorization. A hospital may release this information, however, to the patient's family members or friends involved in the patient's care, so long as the patient has not opted-out of such disclosures and such information is relevant to the person's involvement in the patient's care.

Question: *Can the hospital tell the media that the patient has been discharged from an inpatient admission without getting the patient's permission?*

Under the HIPAA privacy rule, if a patient has not asked that his or her information be withheld from the hospital's directory, the hospital may disclose the patient's location in the hospital to anyone who asks for the patient by name, without the patient's authorization. If the patient is no longer at the facility, the hospital may disclose that fact in response to such an inquiry.

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. Each hospital should have a Patient Bill of Rights, which includes confidentiality issues. This information is available by contacting the hospital's public relations department.

According to the The Joint Commission, 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.

Minimum Necessary Rule

The Privacy Rule also requires that whenever a hospital uses or discloses PHI (except in certain limited circumstances, the most notable being uses and disclosures of PHI for treatment purposes), it “must make reasonable efforts to limit the [PHI used or disclosed] to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.” Thus, although most uses for public relations purposes are circumscribed by the specific requirements set forth in the Privacy Rule, hospital public relations personnel must keep in mind the minimum necessary rule in making any use or disclosure of PHI. Most importantly, the minimum necessary rule should be factored into all policies and procedures developed to address the Privacy Rule’s provisions that impact public relations.

Beyond the One-Word Condition: Media Access to Patients

The following activities require written authorization from the patient:

- Drafting a detailed statement (i.e., anything beyond the one-word condition) for approval by the patient or the patient’s legal representative
- Taking photographs of patients
- Interviewing patients

In general, if the patient is a minor, permission for any of these activities must be obtained from a parent or legal guardian. Under certain circumstances, minors can authorize disclosure of information without parental approval or notification. State laws may vary.

***Question:** Should the hospital obtain consent from individuals who appear in the background of photos taken in a public place such as the hospital lobby?*

The HIPAA privacy rule does not speak to background photos. Under the HIPAA privacy rule, however, hospitals may not release identifiable photographs of patients at the hospital, without the patient’s authorization.

Condition and Location of Patients: When You Should NOT Release Any Information

1. **Patients can “opt out” of providing information altogether.** The hospital has a responsibility to tell patients what information will be included in the hospital directory (name, general condition, location, and religion) and to whom that information will be disclosed (to people, including media, who ask for the patient by name, and to clergy). The hospital may inform the patient of this information verbally or in writing. The patient has the option to expressly state that he or she does not want information released—including information confirming his or her presence in the facility. The hospital may obtain the patient’s agreement or objection verbally or in writing. If a patient opts-out of the hospital directory, information still may be disclosed to family and friends who are involved in the patient’s care or payment for care. In such case, only information directly relevant to the person’s involvement in the patient’s care or payment may be released.
2. **Do not release information that could embarrass or endanger patients.** Spokespersons should not report any information that may embarrass a patient. Situations where room location information could embarrass patients include (but are not limited to) admission to a psychiatric or substance abuse unit; admission to an obstetrics unit following a miscarriage, ectopic pregnancy or other adverse outcome; or admission to an isolation room for treatment of an infectious disease. In addition, where knowledge of a patient’s location could potentially endanger that individual (i.e., the hospital has knowledge of a stalker or abusive partner), no information of any kind should be given, including confirmation of the patient’s presence at the facility.
3. **Consider other applicable federal laws.** Be aware that federal laws prohibit hospitals from releasing any information regarding a patient undergoing treatment for alcohol or substance abuse. These 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. Other state laws also may apply.

4. **Exercise good judgment in situations where patients can't express a preference.** In some cases, patients will not have had the opportunity to state a preference related to the release of their information. For example, a patient's medical condition may prevent hospital staff from asking about information preferences upon admission. In those circumstances, condition and location information should be released only if, in the hospital's professional judgment, releasing such information would be in the patient's best interest. As soon as the patient recovers sufficiently, the hospital must ask about information preferences. Each hospital should develop policies and procedures to guide staff in making these judgments.

***Question:** When a patient has opted-out of the hospital directory, what should the hospital say? If the hospital states that it has no information on the patient or that it is unable to confirm the patient's presence in the facility, the media may infer that the patient is at the hospital.*

Under the HIPAA medical privacy rule, a hospital is permitted to release only directory information (i.e., the patient's one-word condition and location) to individuals who inquire about the patient by name unless the patient has requested that information be withheld. In response to a media inquiry about a patient who has opted-out of the directory, therefore, the hospital should respond by stating that the federal medical privacy regulations allow the hospital to release to the media only the information in the hospital's directory and that the hospital does not have any information about the person in its directory.

***Question:** If a patient opts to make directory information available, but does not want information released to the press, how can the hospital assure that directory information is not provided to reporters who provide the patient's name?*

The hospital is obligated to ensure that no impermissible disclosures are made. Therefore, at a minimum, the hospital will be required to ask for additional information from anyone inquiring about a patient in an attempt to determine whether the person making the inquiry is with the press.

Off the Record Information

"Off the record" information and comments should be avoided. If it's "off the record," there is no need to mention it.

Matters of Public Record

Matters of public record refer to situations that are reportable by law to public authorities, such as law enforcement agencies, the coroner or public health officer. While laws and/or regulations require health care facilities to report a variety of information to public authorities, it is not the responsibility of facilities to provide that information in response to calls or other inquiries from the media or other parties, including law enforcement officials. Instead, such calls should be directed to the appropriate public authority.

Are Public Record Cases Different From Other Cases?

No. Patients who are involved in matters of public record have the same privacy rights as all other patients, as far as the hospital is concerned. The mode of transportation by which a patient arrives at the hospital should have no bearing on the hospital's approach to releasing information about the patient. The fact that someone has been transported to the hospital by the 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 may prompt media calls to the hospital requesting a patient's condition. As long as the patient has not requested that information be withheld, you may release the patient's one-word condition and location to individuals who inquire about the patient by name. In those circumstances where a patient's medical condition may prevent hospital staff from asking about information preferences upon admission, condition and location information should be released **only if, in the hospital's professional judgment**, releasing such information would be in the patient's best interest. For many hospitals, this may represent a change from previous policies.

There are numerous state statutes addressing reporting of incidents ranging from child abuse to 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. In fact, state laws may provide enhanced privacy protection for some reportable information, such as HIV status; sexually transmitted diseases; child, spouse or elder abuse; and reportable genetic anomalies.

Refer media questions to the public entity (such as the coroner's office, police, fire or health department) that receives such reports. The public entity will be guided by the applicable statute as to whether it can release any or all of the information received.

Are Celebrity Cases Different?

No. Celebrities, public figures and public officials are not subject to different standards than other patients when it comes to hospital policies for releasing information to the media.

The following information may be offered regarding specific illnesses or injuries if it exists in the public record or if the patient's consent has been secured:

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| Burns | A hospital may release severity and location of burns. |
| Child Abuse | No comment is made regarding the possibility of child abuse. |
| Drugs/Poisoning | A statement may be made regarding the patient's condition, but statement will be given concerning the motivation or circumstances. |
| Fractures | Only the patient's injured body part is described. No other details are given. |
| Head Injuries | A simple statement may be made if the head was injured. "Fracture" is not a term used in cases of head injury unless stated by a physician. |
| Intoxications | A condition report may be given, but the hospital cannot reveal that a patient was intoxicated. |
| Sexual Abuse | No statement is made regarding the nature of the incident. Only condition is reported the patient's name may not be released. |
| Shootings/Stabbings | The number of wounds and their locations may be disclosed. |
| Suicide | No comment is made on the possibility of a suicide. |

Police or Fire/Rescue Transport

The mode of transportation by which a patient arrives at the hospital should have no bearing on the hospital's approach to releasing information about the patient. The fact that a police or fire department has transported someone to the hospital from an accident, crime scene or fire is a matter of public record likely to be reported by those agencies. These public records may prompt media calls to the hospital requesting a patient's condition. Only the one-word condition should be given, unless the patient has objected to such disclosure. For many hospitals, this will represent a change from previous policies.

Photographs/Taping by the Media

Hospital policies should require that a hospital representative accompany news personnel ANY time they are on hospital grounds. No pictures of patients may be taken within the facility or on hospital property without the patient's written consent, or the written permission of a parent or legal representative. Hospital personnel, however, will do what they can to cooperate with news media to facilitate obtaining permission. Even with permission to film or photograph, news media representatives should use good judgment when airing images or printing photographs of patients who are ill or injured.

Deceased or unconscious patients are **not to be photographed under any circumstance**, regardless of whether they are in the hospital or on hospital property.

Interviews

No patient shall be interviewed without his or her written permission, or the written authorization of a parent or legal representative. The release form should be obtained through the public relations office.

Audio/Video Recording

Recording equipment, video, cameras and similar tools of the trade may not be used without the hospital's consent. The same policy on patient's permission that applies to photographs and interviews also pertains to these mediums of communication.

Hospital consent must be secured prior to interviews, photographs or videotaping of a patient by a news media representative. Prior to radio taping of remarks by a hospital spokesperson (public relations director, physician, administrator, etc.) for broadcast, federal regulations require the radio station to inform the individual of its intention to record and broadcast the conversation. Over-the-phone recordings must also be announced. These federal regulations do NOT apply to television or the print media.

Releasing Patient Information in Disaster Situations

All Nebraska hospitals should have disaster plans that become effective when there are mass casualties. Provisions for media relations should be included in these plans.

1. **When feasible, notify the next of kin first.** While it is desirable to notify next of kin before releasing patient information, in disaster situations involving multiple casualties, it may be necessary to share patient information with other hospitals and/or rescue/relief organizations before the next of kin has been notified.
2. **Don't hesitate to cooperate with other hospitals, health departments or relief agencies.** You may release patient information to other hospitals, health care facilities, state health departments and relief agencies in situations where multiple facilities are receiving patients from one disaster. Public relations representatives from different facilities are encouraged to cooperate and facilitate the exchange of information regarding patients' location and status. Specifically, you may disclose information about a patient's condition, location or death to a public or private organization assisting in relief efforts, for the purpose of notifying family members or others responsible for a patient's care.
3. **When appropriate, release general information to help dispel public anxiety.** In highly charged situations such as disasters, the public may benefit from the release of general information when specific information is not yet releasable. For example, you might say that "the facility is treating four individuals as a result of the explosion." You may state the number of patients who have been brought to the facility by gender or by age group (adults, children, teenagers, etc.) This type of general information can help reduce undue anxiety.
4. **Work effectively with the media.** Current information should be made available to the media as soon as possible. If information is not yet available or if next of kin has not been notified, all media inquiries should be logged and callbacks made as soon as information is releasable. A media room should be provided for all media to gather so that information can be released in a press conference format that does not compromise patient privacy or the health care facility's need for added security in a disaster situation.

Question: *If a hospital has a "John Doe" patient and decides to publicize this person's hospitalization as a method of finding the patient's family, would that violate the HIPAA privacy standards?*

It is unclear whether this disclosure would be permissible under the HIPAA privacy rule. Although a hospital is permitted to notify a patient's family about the patient's location in the hospital and general condition, the rule does not permit notification of the general public. A hospital should not release a photograph of the patient without the patient's authorization, but may be able to release information describing the patient's general characteristics (e.g., age, gender, height, weight) that would not be considered protected health information under the privacy rule. A hospital should use its professional judgment regarding the best interests of the patient with respect to any such publicity.

Bomb Threats

As with mass casualties and disasters, individual hospitals have acceptable procedures and plans to follow in the event of a bomb threat or other unusual problems. Patient safety is the primary concern. The cooperation of all media is needed to minimize risks and confusion during an actual threatening situation. Further, it is hoped that minimal or no attention be given in the news to the individual who caused such a situation. While such treatment will not eliminate all such calls or problems, it will hopefully serve as a deterrent for those who are strictly seeking vicarious thrills through the media and will discourage copycat behavior.

Public Pleas

Prior to the issuance of any public pleas by news media for blood donors or other forms of emergency assistance involving utilization of hospital personnel, medical equipment and facilities, the news media should first contact the community-wide Emergency Operations Center (EOC), if you have one, or the hospital. Advance notification to the EOC or hospital will determine whether there is an actual need for blood or other forms of assistance. In the event there is such need, advance notification will allow the EOC or hospital to allocate required personnel and facilities for receiving donors at scheduled time intervals. A direct consultation with the EOC's public information officer or the hospital public relations director will ensure proper handling of responses to public pleas.

Written Policies and Procedures

The Privacy Rule specifically requires that each hospital adopt and implement written policies and procedures that are designed to ensure its compliance with the Privacy Rule. Hospital public relations departments will need to develop, adopt, and implement (including training all affected staff) written policies and procedures that address the uses and disclosures of PHI for the purposes and in the circumstances described in this guide.

Hospitals should develop:

- Policies and procedures regarding what constitutes Hospital Directory information and how to handle related inquiries.
- Policies and procedures regarding how to deal with disclosures of Hospital Directory information regarding incapacitated patients and in emergency treatment circumstances.
- Reliable procedures to provide patients with an opportunity to “opt out” – to agree or object to uses and disclosures – of PHI for Hospital Directory purposes, including making sure that patients who have objected to being listed in the Hospital Directory are not listed, both now and in the future.
- Policies and procedures regarding use and disclosure of PHI to notify or assist in notifying (including locating or identifying) persons responsible for a patient's care.
- Policies and procedures concerning use and disclosure of PHI for disaster relief purposes.
- Hospital public relations staff should understand these policies and procedures, and should change the public relations department's administrative policies and procedures to reflect any protocols that have been changed to comply with the Privacy Rule. Training of front-line staff in policies and procedures that are new or have been modified to comply with the Privacy Rule will be critical and is required by the Privacy Rule.

Penalties for Wrongful Disclosure

Hospitals: Hospitals can face serious penalties for disclosing PHI about their patients without proper permission. The U.S. Department of Health and Human Services views wrongful disclosure of PHI as a violation of civil rights and has delegated the civil enforcement responsibilities for the Privacy Rule to its Office for Civil Rights (OCR). OCR will monitor compliance with, and enforce civil penalties for violations of the standards set forth in, the Privacy Rule, which penalties are \$100 per violation, up to \$25,000 per standard per year, and will refer criminal violations to the U.S. Department of Justice.

The criminal penalties for wrongful disclosure of PHI fall into three categories:

| | Fines | Imprisonment |
|---|-----------------|---------------------|
| Knowingly | Up to \$50,000 | Up to one year |
| False Pretense | Up to \$100,000 | Up to five years |
| Intent to Sell, Transfer or Use for Commercial Advantage, Personal Gain or Malicious Harm | Up to \$250,000 | UP to ten years |

Members of the Press: A reporter who obtains PHI in violation of the Privacy Rule under “false pretenses” (for example, where the reporter impersonates a physician) could be subject to a criminal penalty under HIPAA of up to five years in prison and/or a \$100,000 fine. In addition, members of the press could be subject to common law tort liability for breach of privacy by writing, producing and publishing a story that uses PHI disclosed to them in violation of the Privacy Rule.

Building Effective Media Relations

Feature – Human Interest – Exclusive Stories

All news media should be given equal access to hospital news. The hospital spokesperson or public relations department will make every effort to cooperate with media representatives who request assistance in identifying possible human interest story topics. The hospital representatives will also assist in getting consent from the parties who will be involved in the interviewing/photographing/filming process.

In situations where the idea of a story (generally not a breaking news story) originates with a news media representative, the hospital representatives will not share this idea with another news organization. However, if the hospital representative is approached by two media representatives pursuing similar or identical story concepts, the hospital is obliged to provide equal access to information and resources.

Whether or not the story idea originates with the hospital or the news media, any interviews occurring on hospital property require certain consent forms/clearances and should be coordinated through the hospital marketing/public relations department or a designated spokesperson. A member of the public relations staff should be with the media when they are on the hospital grounds.

Special Events

Sometimes special health events occur that are cooperative efforts between health organizations or other community service agencies. Frequently, these events involve some type of public health screenings, health fair or educational program. During these special events, sponsors may divide up responsibilities and workload. In many cases, this may include assigning different agencies to work with the area newspapers, radio and television stations. However this contact is handled, every effort should be made to share credit with all organizations in any resulting news coverage.

Media Tips

The key to getting positive media attention is having an understanding of how the media works. Reporters and editors respond best to news stories and ideas that:

1. Have a local angle
2. Have widespread interest
3. Feature well-known people and/or
4. Have human interest

A story always has a better chance of making the news if it hits home in the community. Be familiar with the types of stories each publication or station covers, and look for angles that will fit the media’s need for news.

Ways to Strengthen Relationships With the News Media

Remember that most media representatives are trying to do their job by reporting a newsworthy event fairly and factually, within a certain deadline.

1. Establish relationships with the media before you need them. Know their beats, their deadlines, how to spell their names correctly, and whether or not they prefer that you use mail, faxes, e-mail or phone calls when you are sending a press release. Unless you have something to report that is very time sensitive, most reporters prefer that you mail or fax press releases, then follow up with a phone call. If you need a listing of media outlets, the “Finder Binder” and the annual Nebraska Press Association’s Media Directory are both good sources of current information. For more information on how to order these directories, call OHA.
2. Serve as a resource person for media representatives, even when you don’t need a story. Let them know they can contact you even if they aren’t sure you are the best source for their story. They’ll be appreciative of your help.
3. When a reporter calls for an interview, find out what questions they would like answered during the interview. Ask what their deadline is, when they plan to run the story and in what format the story will appear (i.e. feature/news/tabloid supplement). If the interview is for broadcast, ask if it will be live or taped, and the length (i.e., will it be used for a 30-second sound bite or a one-hour talk show?)
4. When you are in a situation that has a national or international media focus, remember to treat local reporters as fairly or more fairly than those from out-of-town. You have to live with the local media after those from out of state go home.

When You are Interviewed

1. Focus on 3-5 key points you would like to convey, starting and ending with the most important point. Include these key points in all press releases and interviews.
2. Avoid saying “no comment,” or making “off the record” responses. If you can’t divulge certain information, tell the reporter why you can’t. And tell them when you might be able to release more information. If you aren’t prepared to comment at the moment you are asked to do so, tell the reporter you’d like to comment once you’ve had some time to review the information and the questions he or she would like answered.
3. If you don’t know the answer to a question, say that you will find the answer. Then be sure to follow up with the reporter.
4. Never deal with hearsay. Deal with facts. Until something becomes a reality, avoid responding to a reporter’s “what if” scenario.
5. Remember to keep your audience in mind when crafting your message. Keep your message simple, and unless the publication is a trade publication, avoid using health care jargon. Translate your message into English before a reporter arrives for an interview. When we in health care talk about PPOs, IPAs, capitation, DRGs, HIPAA, CMS and fiscal intermediaries, we often lose our audience, starting with the reporter.
6. Don’t speak negatively of other organizations or competitors. This might become the focus of the rest of the interview or could damage your own reputation.
7. Never, ever, ever lie to a reporter. Reporters keep track (as we all do) of people who have “burned” them and will remember it for many years. They will also share this information with colleagues.
8. When a reporter asks, “Do you have anything else to add?” Take the opportunity to do so by reiterating your key message or anything you would like to emphasize.
9. Strive for dialogue with a reporter. Arguing with a reporter — even if you are right — doesn’t accomplish anything. Keep your message and your audience the focus of your thoughts during the interview.
10. Don’t ask to see the story before it is printed or aired. No reporter is ever required to do this and to ask appears unprofessional. However, the hospital spokesman should offer to verify quotes or facts, or to answer follow-up questions.
11. Be brief. Be positive. Be patient. Be polite.

If You Are Ambushed by the Media

The news media could arrive anywhere at any time in order to pursue a story. One likely place is in your hospital's parking lot. If you are "ambushed" outside your facility, you should attempt to deter the press and their need for an interview at that particular time, but do so in a helpful and professional manner. One technique you could use would be to acknowledge their presence, then smile and say, *"I know you need a statement, and I am working to get you accurate information. As soon as I have the information, I will call you."*

The odds of this statement appearing on the six o'clock news are much less likely to occur than if you seem agitated, are verbally abusive, and say "no comment" as you push your way through the crowd of reporters.

Television

Television provides an opportunity to reach a mass audience. Many different types of television programs offer potential for airing your messages:

1. News broadcasts
2. Public affairs programs
3. Talk shows
4. Editorials
5. Public service announcements
6. Feature segments

Watch these programs to become familiar with the reporters and anchors, their interviewing styles and the types of stories they prefer. When you are interviewed on radio or television, keep your remarks brief and well-structured. Your delivery and tone of voice is also very important. In the case of television, so is your appearance and gestures.

The following tips will make an appearance on the broadcast media more successful:

1. Rehearse the message in advance.
2. Dress conservatively. Never wear white and avoid jewelry that will flash and cause a distraction.
3. Never look for, or talk into the camera. Try not to be conscious of the camera at all. The cameramen will get all of the shots that they need.

Radio

Most radio stations tailor their programming to very specific and different audiences — from country and classical music lovers, to rock 'n' roll fans and all-talk enthusiasts. In recent years, many stations have expanded their news coverage and provide more airtime for talk shows and call-in programs that focus on community interests and other issues. This provides a wonderful opportunity to communicate through radio by coordinating your message to the station's audience.

1. Radio stations should be notified of events through news releases.
2. News releases should be written in inverted pyramid style (i.e. most important fact, first, second, third, etc.)
3. A hospital spokesperson should offer to participate in talk shows or community affairs programs, in order to inform the community about current health care issues.

Newspapers

Newspapers provide in-depth coverage of stories and are particularly good for reaching decision makers who are interested in more than "headline" news that is available on television and radio.

1. In addition to regular news and features, newspapers print editorials, commentaries, letters to the editor, investigative reports and opinion columns.
2. Newspapers have larger staffs to cover news.
3. They spend more time learning and explaining complex issues.
4. They appreciate all the documentation, facts and figures you can provide.
5. Since newspapers are in print, stories can be clipped, saved and used for other audiences that may have missed the initial publication.
6. Letters to the editor should be reserved for important issues. They should be thoughtfully prepared, based on fact, and should be between 100-400 words in length.

News Releases

Much of the news that is printed or broadcast originates from press releases. The release is a basic tool for generating publicity, and is a powerful public relations tool. It can serve one of the following functions:

1. To publicize an issue or a story
2. To provide background information of a news event
3. To announce an upcoming activity

The well-prepared news release must follow some guidelines, or it will end up in the editor's trash can, along with scores of others he or she receives each day.

The Lead. The first paragraph or two of a news release (the lead) must answer the "five Ws" and an "H" — who, what, when, where, why and how. This important information must be prominently placed to grab the editor's attention, since they don't have time to read through the entire release in order to get all of the facts.

The Body. A release should follow an "inverted pyramid" format, with information appearing in the order of its importance. The inverted pyramid allows an editor to easily cut the story as needed without losing the most important facts.

Tips For Writing a Release:

1. Make it no longer than two double-spaced pages.
2. Use short sentences and paragraphs.
3. Make certain that facts are absolutely accurate.
4. Check for proper spelling of names.
5. Avoid jargon and technical terms or explain them if they must be used.
6. Don't use abbreviations (i.e., CMS, DRGs, PPOs, HIPAA) without indicating what they stand for in the first reference.
7. Write factually and objectively, avoiding personal opinions, editorializing and using adjectives.
8. Insert pertinent quotes, specific examples and anecdotes which will localize the story.
9. Double space the release on plain white paper or letterhead.
10. The top of the release should include:
 - a. The name and telephone numbers (home and office) of the media contact and when they can be reached.
 - b. The date and time for the story's release (example: For Release, 9 a.m., June 20, 2002, or For Immediate Release.)
 - c. A short headline that describes the content at a glance.
11. When there is more than one page, type "-more-" at the bottom of each page except the last page;
12. Number each additional page;
13. End the release with the marks "###", "-30-", or "-end-."

News Conferences

A news conference is an excellent way to launch campaigns, announce important future events or a new service to the community, provide new information on a previous news story, or release the results of a study or survey.

The key to a successful news conference is to make sure there really is important news to announce. If you "cry wolf" too often with "no news" conferences, the media may not show up when you do have something important to say.

Notification

When justified, news conferences should be arranged by:

1. Sending a news release to every community news outlet three to five days before the event. In urgent situations, notification can be handled by telephone.
2. Directing the release to assignment editors, news directors and reporters, giving them the date, time, place and topic of the conference.
3. Scheduling the conference to coordinate with media deadlines.
4. Making follow-up calls the day before the conference, urging reporters to attend.

Logistics

Site arrangements are important aspects of a successful press conference.

1. Choose a location and room for the press conference that is large enough to accommodate members of the media, cameras and other equipment.
2. Make sure there are plenty of electrical outlets for reporters' equipment (lights, recorders, cameras).
3. Provide a lectern that can hold several media microphones.
4. If possible, display an appropriate logo in a prominent spot that does not have a glare.
5. Provide chairs for reporters, name cards for speakers and an easel for visual aids.

Visuals

Almost all news conferences should offer visual presentations for television cameras and print photographers.

1. Display visuals prominently near the front of the room for easy reference by the speakers.
2. Keep visuals clean and simple. Remember, the visual may receive only two or three seconds of actual television time.
3. Use colorful charts and graphs to demonstrate goals you've set and achieved.

Materials

Media kits should be prepared for reporters attending the conference (and delivered afterward to those who do not attend). They should include:

1. A copy of the spokesperson's statement.
2. A news release detailing the topic.
3. A fact sheet or brochure about the hospital with logo.
4. Reproductions of charts or graphs used.

Preparation of Speakers

Before the news conference:

1. Review the issues with the speaker(s).
2. Take the role of a reporter and ask the spokesperson those difficult questions that may arise.
3. Have other officers attend the news conference to provide expert information and moral support.

Tips For Conducting A News Conference

1. Double-check the conference room about an hour before the event to make sure everything is set.
2. Unlock the room and set up chairs.
3. Provide a media sign-in sheet so that you can follow up and make further contact.
4. Consider serving modest refreshments.
5. Start the conference on time. Limit it to 30 minutes.
6. Introduce the speakers.
7. Consider whether or not a question and answer session will follow the statement/conference.
8. Have a room available for follow-up interviews.

Television – Radio News Coverage

Because of the special nature of the electronic media, it is recommended that, whenever possible, a special place should be set aside, preferably away from patient areas, where broadcasters can have adequate space, properly grounded electrical outlets of sufficient capacity, and enough time to set up equipment prior to taping. Hospital authorities should cooperate in making space available.

“Pooling” Media Coverage

There are times when it may be necessary to limit broadcast coverage because the hospital has an obligation to ensure the safety and well-being of all patients. This overriding factor must be considered by the hospital and the media. This is especially true when videotaping in patient or restricted areas. Under these circumstances, pooling all types of coverage — electronic and print — is encouraged.

Pooling should also be requested when the hospital determines that independent coverage by all media would be disruptive and consequently detrimental to patient care.

In order to ensure patient privacy and confidentiality, it is strongly recommended that public relations staff or an authorized hospital staff member accompany all media while on hospital property. In some instances, to ensure optimal patient care and safety, it might be necessary for the hospital to decline coverage.

Emergency Department Cases

A great deal of news relates to the hospital’s emergency department. The presence of the media in the emergency department can create a severe compromise in patient care and confidentiality; therefore, interviewing or taping in the department should be seriously scrutinized and evaluated. If it is not possible to allow members of the news media in the actual treatment area, the hospital should do its best to provide an alternate area for the news media to photograph, film and interview.

Additional Resources

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established new standards for the confidentiality, security, and transmissibility of health care information. There are three types of standards created by HIPAA: privacy, security and administrative simplification (e.g., transaction standards). Taken together, these regulations have a major impact on the day-to-day functioning of the nation’s hospitals and affect virtually every department of every entity that provides or pays for health care.

HIPAA updates and links to additional resources are available on the NHA website www.nebraskahospitals.org/health_data/hipaa.html.

This guide was produced by the Nebraska Hospital Association (NHA) and is for the express use of NHA member hospitals. The NHA thanks the American Hospital Association, the Greater New York Hospital Association, the Oklahoma Hospital Association and the Ohio Hospital Association for sharing HIPAA communications content and expertise.

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About The Nebraska Hospital Association

The Nebraska Hospital Association (NHA) is a statewide health care trade association representing Nebraska's hospitals and health systems. The NHA was organized in 1927 as a result of an informal meeting called by Miss Homer Harris, superintendent of Clarkson, to discuss pending legislation which affected hospitals in the state of Nebraska. At that meeting, the NHA founded and appointed its first board of directors. Rev. Emil G. Chinlund of Immanuel was named president; Miss Blanche Fuller of Methodist was named vice president; Miss Ida Isaacson of Evangelical Covenant was named secretary; and Miss Homer Harris was named treasurer.

Since that time, the NHA has been representing and supporting the needs of Nebraska's rural and urban hospitals and health systems. The NHA supports and encourages its members in developing various health care delivery systems geared toward improving the health and well-being of each community.

The NHA is governed by a 17-member board of directors that works closely with its membership to provide them with state and federal legislative advocacy, health care trend and regulatory information, educational programming, communication, data reports and special services. Members rely on the NHA for information, education, advice and collaborative leadership to advance Nebraska hospitals' ability to provide exceptional health care.

Hospitals are the stewards of good health. Through our partnerships with representatives in the health care industry, legislators, government and citizens, the NHA is able to assist in the development of strong, healthy communities. The NHA has been the guiding force of its members since 1927. The NHA serves as the influential voice of its members in the health care legislative and public policy arenas, promoting delivery of quality health care and influencing public opinion of hospitals and health networks. Members depend on the NHA for information, advice, education and changes in health care regulations, legislation, trends and other issues.

Mission

The Nebraska Hospital Association is the influential and unified voice for the Nebraska's hospitals and health systems, providing leadership and resources to enhance the delivery of quality patient care and services to Nebraska communities.

Vision

By 2020, the Nebraska Hospital Association will have established partnerships with leaders and be the influential resource for improving Nebraska's health care infrastructure and policies.

Values

The Nebraska Hospital Association is committed to expertly serving members with integrity, transparency, accountability and financial stewardship.

Strategic Framework

The mission of the NHA is supported by a strategic framework comprised of four pillars: advocacy and policy, financial stewardship, strategic partnerships, and quality and safety. To expertly serve NHA members, each pillar is founded in the values of integrity, transparency and accountability. Collectively, this structure, built on a value-based foundation and prominently reinforced by the four pillars, support the NHA's mission of being the trusted leader to improve the health, well-being and quality of life of all Nebraskans.

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