Introduction
The federal Health Insurance Portability and Accountability Act (HIPAA) gives patients and their medical records specific legal rights to privacy and confidentiality. HIPAA’s privacy provisions specify what kinds of patient information must remain confidential and the circumstances under which certain patient information may be released. This Guide is designed to help hospital spokespersons and privacy officers understand the parameters of the law regarding the release of information to the media and the public.

Hospitals are required to comply with HIPAA’s privacy provisions by April 14, 2003. In preparation, hospitals must review and revamp their current policies and procedures regarding the disclosure of health information to the media and to the public.

HIPAA mandates minimum standards that hospitals must follow when releasing patient information. Hospitals or states may have individual policies that are more restrictive than what HIPAA requires. In such cases, the more restrictive policy or law takes precedence. New York does not have more restrictive privacy standards.

The final privacy regulations, which include changes issued in August 2002:

- Require hospitals and other “covered entities” (which include physicians, health plans, nursing homes, home care agencies, and other health care providers) to provide each patient with a written notice of privacy protections.
- Require “covered entities” to obtain written acknowledgement from patients of receipt of this privacy notice.
- Although federal officials dropped a proposal to mandate written consent by patients to release of medical information, written consent is an option.
- Allow the disclosure of “facially de-identified” data (data that do not identify an individual patient) for health care operations and research pursuant to a data use agreement.
- Simplify the research authorization requirements and criteria for waiver of authorization.

The HIPAA privacy regulations also restrict the information health care providers may include in a patient directory and release to the public and the news media. Directory information is limited to the following, and patients have the option of further restricting release of their directory information:

- **Name:** Information can be given only to members of the public who ask about a patient by name.
- **Patient condition:** This Guide includes acceptable condition terminology and definitions.
• **Location within the hospital:** The patient’s room location can be included in the directory, provided that it does not reveal prohibited information, such as that the patient is being treated for substance abuse or mental illness.

• **Religion.** Hospitals are not required to ask a patient’s religious affiliation, but the patient may want the information to be available to clergy.

**Opt Out**
HIPAA requires that patients be allowed to “opt out” of being listed in the directory. Every patient must be apprised of the directory and its content at the earliest reasonable opportunity. Patients should be told what the hospital’s practice is regarding who may receive information and how they may receive it. The patient may restrict the type of information provided and to whom it may be provided. The patient may do so orally or in writing. Once the patient has been informed and does not restrict the release of information, the hospital may release the patient’s directory information to the media, except for religious affiliation information.

**When a Patient is Incapacitated**
The HIPAA regulations say that if the opportunity to “opt out” of the facility directory is impossible due to the patient’s incapacity or emergency treatment, the hospital may disclose some or all of the allowed information if such disclosure is consistent with a prior expressed preference of a patient or is considered in the best interest of the patient.

Facilities must use discretion in making this decision and the patient must be informed of the use or disclosure of information as soon as it is practical to do so. The HIPAA privacy provisions encourage facilities to consider the following when deciding whether to include some or all of an incapacitated patient’s information in the directory:

- whether disclosing that an individual in the facility could reasonably cause harm or danger to the patient (e.g., an unconscious patient appears to have been abused and disclosing the information could give an attacker sufficient information to seek out the person and repeat the abuse);
- whether it is necessary or appropriate to give information about patient status to family or friends, such as the case where a friend or family member of an unconscious patient can share information about what medications the patient is currently taking or has taken in the past; and
- whether an individual had, before becoming incapacitated, expressed a preference not to be included in the directory.

Patients also may authorize the hospital to release information beyond the facility directory strictures, but the authorization must be specific as to the information releasable, the timeline, and the recipient.

**Clergy**
Directory information, including religious affiliation information, may be disclosed to any member of the clergy, even if the clergy member does not request information by patient name.
Methods of Release

HIPAA requires that only the minimum amount of medical information necessary to the specific treatment or payment circumstance be disclosed. Therefore, hospitals must tailor the information disclosed to the request and ensure that they disclose no more than is absolutely necessary.

Various entities may request that information be sent via facsimile. Hospitals are not prohibited from faxing, but should carefully regulate the practice. Faxing could put information in unauthorized hands. Hospitals should put sufficient safeguards in place to ensure that their faxing practices protect the confidentiality of patients’ information to the greatest extent possible.

Government Reporting

Hospitals are required to report certain confidential information, such as child abuse and gunshot wounds, to certain government agencies. This does not make that information public. Hospitals may want to refer reporters to the public or government agency that receives the information, such as the police, fire department, or health department. The law will dictate whether the public agency can disseminate any of the information. The fact that the hospital is required by law to disclose patient health information to a governmental authority does not alter the hospital’s obligation to protect the patient’s privacy under the HIPAA privacy regulations.

Patients’ Rights

Patients have specific legal rights to privacy under several federal and state laws, as well as under standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Section 2803 of the New York State Public Health Law spells out the Patient’s Bill of Rights, saying that patients have the right to privacy while in the hospital and confidentiality of all information and records regarding their care.

In addition to HIPAA, federal laws prohibit hospitals from releasing any information regarding a patient being treated for alcohol or substance abuse. State laws also address privacy of health information, such as human immunodeficiency virus status and mental health information.

According to JCAHO, 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 or her personal dignity.
- **Privacy and Confidentiality**—The patient has the right, within the law, to personal and informational privacy. Specifically, the patient has the right:
  - to refuse to talk with or see anyone not officially connected with the hospital, including visitors or persons officially connected to the hospital but not directly involved with his or her care;
to expect that any discussion or consultation involving his or her case will be conducted discreetly and that individuals not directly involved in his or her care will not be present without his or her permission;

- to have his or her medical record read only by individuals directly involved in his or her treatment or in the monitoring of quality and by other individuals only on his or her written authorization or that of his or her legally authorized representative; and

- to expect all communications and other records pertaining to his or her care, including the source of payment, to be treated as confidential.

**HIPAA Privacy Officer**

Every “covered entity” must appoint a privacy officer whose duties include:

- Assessing who has access to what patient information.
- How patient information moves through the provider facility.
- Training all staff in the privacy rules.
- Being the internal “enforcer” and patient privacy advocate.

**Authorized, Hospital-Designated Spokesperson**

Each hospital also should have a person on duty at all times, either at the hospital or on call, with the authority to release information to the news media. This person must be familiar with the special needs and deadlines of the media. The hospital representative works to provide patient information when appropriate and arrange interviews. Anyone else in the organization receiving media calls should redirect the calls to this person. The hospital should supply local media with the name and title of its designated spokesperson.

**Gaining Access to the Hospital**

Media representatives—reporters and photographers—should be directed to contact the hospital spokesperson for access to the facility when acting in a reportorial capacity. Hospitals should require that a hospital representative accompany media representatives at all times. The following areas are typically not accessible to the public, including the media: 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**

Patients must give written permission for photographs or interviews. The hospital spokesperson will provide consent forms. If the patient is a minor, a parent or legal guardian must give permission.

However, hospitals may deny the media access to the patient—even if the patient is willing to provide an interview or photo opportunity—if the hospital determines the presence of reporters or photographers would aggravate the patient’s condition or interfere with appropriate clinical care.
**Condition of Patient**
As long as the patient has not opted out of the directory, the hospital may release the patient’s one-word condition and location. The American Hospital Association (AHA) recommends the following definitions of patient condition:

- **Undetermined**—The patient is awaiting physician assessment.
- **Good**—The patient’s vital signs are stable and within normal limits. The patient is conscious and comfortable. The patient’s indicators are excellent.
- **Fair**—The patient’s vital signs are stable and within normal limits. The patient is conscious, but may be uncomfortable. The patient’s indicators are favorable.
- **Serious**—The patient’s vital signs may be unstable and not within normal limits. The patient is acutely ill. The patient’s indicators are questionable.
- **Critical**—The patient’s vital signs are unstable and not within normal limits. The patient may be unconscious. The patient’s indicators are unfavorable.

The term “stable” should not be used as a condition or in combination with other conditions.

**Deceased/Coroner’s Cases**
A patient’s death may be released if the patient did not opt out of the directory. Of course, hospitals should first notify the next of kin or make an attempt to do so. Information regarding the cause of death must come from the patient’s physician, and a legal representative of the deceased must approve its release.

When a county coroner is investigating a death, questions about the cause of death should be addressed to the coroner’s office. The coroner’s office may also have information about which funeral home is handling arrangements for the deceased.

**Releasing Information After Hours**
Employees who answer calls during late night or weekend shifts may release directory information, absent religious affiliation, but should refer reporters or persons seeking information to the designated hospital spokesperson.

**Public Records**
State law generally defines any information kept by any public office or agency as a public record and not privileged or confidential. Police or fire departments are likely to report whether a person has been transported from an accident or crime scene to a hospital. It is up to the public agencies to determine whether they will release the information. Hospitals, however, cannot release information other than what is permitted in the directory and cannot release any information if the patient has opted out of the directory.

Hospitals may not differentiate between patients transported to the hospital by public or private vehicles.
**Public Figures/Public Officials**
Public figures, such as elected officials or celebrities, may be considered newsworthy, but are subject to the same privacy standards as other patients under HIPAA. Hospitals should work with the public figure’s spokesperson when possible.

If a prominent or well-known person wishes not to make his or her hospitalization known, the hospital must comply with his or her wishes and exclude the person’s name or other information from the facility directory.

**Penalties for HIPAA Violations**
The U.S. Department of Health and Human Services (HHS) views wrongful disclosure of PHI as a civil rights violation punishable by fines and/or imprisonment. HHS’s Office of Civil Rights is charged with enforcing the regulation. The criminal penalties for wrongful disclosure of patient health information are as follows:

<table>
<thead>
<tr>
<th>Violation</th>
<th>Fines</th>
<th>Imprisonment</th>
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<tbody>
<tr>
<td>Single violation</td>
<td>$100</td>
<td>none</td>
</tr>
<tr>
<td>Multiple violations in a year</td>
<td>up to $25,000</td>
<td>none</td>
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<tr>
<td>Knowingly</td>
<td>up to $50,000</td>
<td>up to one year</td>
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<tr>
<td>False pretenses</td>
<td>up to $100,000</td>
<td>up to five years</td>
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<tr>
<td>Intent to sell, transfer, or use for commercial advantage, personal gain, or malicious harm</td>
<td>up to $250,000</td>
<td>up to ten years</td>
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Any reporter who gains patient health information in violation of the Privacy Rule under false pretenses such as impersonating a health care professional is subject to a criminal penalty of up to five years in prison and/or a $100,000 fine.