

Communicating with a Patient's Family, Friends, or Others Involved in the Patient's Care

U.S. Department of Health and Human Services • Office for Civil Rights

This guide explains when a health care provider is allowed to share a patient's health information with the patient's *family members, friends, or others identified by the patient as involved in the patient's care*¹ under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. HIPAA is a Federal law that sets national standards for how health plans, health care clearinghouses, and most health care providers are to protect the privacy of a patient's health information.²

Even though HIPAA requires health care providers to protect patient privacy, providers are permitted, in most circumstances, to communicate with the patient's family, friends, or others involved in their care or payment for care. This guide is intended to clarify these HIPAA requirements so that health care providers do not unnecessarily withhold a patient's health information from these persons. This guide includes common questions and a table that summarizes the relevant requirements.³

COMMON QUESTIONS ABOUT HIPAA

1. If the patient is present and has the capacity to make health care decisions, when does HIPAA allow a health care provider to discuss the patient's health information with the patient's family, friends, or others involved in the patient's care or payment for care?

If the patient is present and has the capacity to make health care decisions, a health care provider may discuss the patient's health information with a family member, friend, or other person if the patient agrees or, when given the opportunity, does not object. A health care provider also may share information with these persons if, using professional judgment, he or she decides that the patient does not object. In either case, the health care provider may share or discuss only the information that the person involved needs to know about the patient's care or payment for care.

Here are some examples:

- An emergency room doctor may discuss a patient's treatment in front of the *patient's friend* if the patient asks that her friend come into the treatment room.

¹ Persons who come with, live with, or are otherwise directly involved with the patient, but are not officially designated as a legal patient representative.

² The HIPAA Privacy Rule applies to those health care providers that transmit any health information in electronic form in connection with certain standard transactions, such as health care claims. See the definitions of "covered entity," "health care provider," and "transaction" at 45 C.F.R. § 160.103.

³ The full text of these requirements can be found at 45 C.F.R. § 164.510(b). Note that this guide does not apply to a health care provider's disclosure of psychotherapy notes, which generally requires a patient's written authorization. See 45 C.F.R. § 164.508(a)(2).

- A doctor's office may discuss a patient's bill with the *patient's adult daughter* who is with the patient at the patient's medical appointment and has questions about the charges.
- A doctor may discuss the drugs a patient needs to take with the *patient's health aide* who has accompanied the patient to a medical appointment.
- A doctor may give information about a patient's mobility limitations to the *patient's sister* who is driving the patient home from the hospital.
- A nurse may discuss a patient's health status with the *patient's brother* if she informs the patient she is going to do so and the patient does not object.

BUT: • A nurse may not discuss a patient's condition with the patient's brother after the patient has stated she does not want her family to know about her condition.

2. If the patient is not present or is incapacitated, may a health care provider still share the patient's health information with family, friends, or others involved in the patient's care or payment for care?

Yes. If the patient is not present or is incapacitated, a health care provider may share the patient's information with family, friends, or others as long as the health care provider determines, based on professional judgment that it is in the best interest of the patient. When someone other than a friend or family member is involved, the health care provider must be reasonably sure that the patient asked the person to be involved in his or her care or payment for care. The health care provider may discuss only the information that the person involved needs to know about the patient's care or payment.

Here are some examples:

- A surgeon who did emergency surgery on a patient may tell the *patient's spouse* about the patient's condition while the patient is unconscious.
- A pharmacist may give a prescription to a *patient's friend* who the patient has sent to pick up the prescription.
- A hospital may discuss a patient's bill with her *adult son* who calls the hospital with questions about charges to his mother's account.
- A health care provider may give information regarding a patient's drug dosage to the *patient's health aide* who calls the provider with questions about the particular prescription.

BUT: • A nurse may not tell a patient's friend about a past medical problem that is unrelated to the patient's current condition.

- A health care provider is not required by HIPAA to share a patient's information when the patient is not present or is incapacitated, and can choose to wait until the patient has an opportunity to agree to the disclosure.

3. Does HIPAA require that a health care provider document a patient's decision to allow the provider to share his or her health information with a family member, friend, or other person involved in the patient's care or payment for care?

No. HIPAA does not require that a health care provider document the patient's agreement or lack of objection. However, a health care provider is free to obtain or document the patient's agreement, or lack of objection, in writing, if he or she prefers. For example, a provider may choose to document a patient's agreement to share information with a family member with a note in the patient's medical file.

4. May a health care provider discuss a patient's health information over the phone with the patient's family, friends, or others involved in the patient's care or payment for care?

Yes. Where a health care provider is allowed to share a patient's health information with a person, information may be shared face-to-face, over the phone, or in writing.

5. If a patient's family member, friend, or other person involved in the patient's care or payment for care calls a health care provider to ask about the patient's condition, does HIPAA require the health care provider to obtain proof of who the person is before speaking with them?

No. If the caller states that he or she is a family member or friend of the patient, or is involved in the patient's care or payment for care, then HIPAA doesn't require proof of identity in this case. However, a health care provider may establish his or her own rules for verifying who is on the phone. In addition, when someone other than a friend or family member is involved, the health care provider must be reasonably sure that the patient asked the person to be involved in his or her care or payment for care.

6. Can a patient have a family member, friend, or other person pick up a filled prescription, medical supplies, X-rays, or other similar forms of patient information, for the patient?

Yes. HIPAA allows health care providers to use professional judgment and experience to decide if it is in the patient's best interest to allow another person to pick up a prescription, medical supplies, X-rays, or other similar forms of information for the patient. For example, the fact that a relative or friend arrives at a pharmacy and asks to pick up a specific prescription for a patient effectively verifies that he or she is involved in the patient's care. HIPAA allows the pharmacist to give the filled prescription to the relative or friend. The patient does not need to provide the pharmacist with their names in advance.

7. May a health care provider share a patient's health information with an interpreter to communicate with the patient or with the patient's family, friends, or others involved in the patient's care or payment for care?

Yes. HIPAA allows covered health care providers to share a patient's health information with an interpreter without the patient's written authorization under the following circumstances:

- A health care provider may share information with *an interpreter who works for the provider* (e.g., a bilingual employee, a contract interpreter on staff, or a volunteer).

For example, an emergency room doctor may share information about an incapacitated patient's condition with an interpreter on staff who relays the information to the patient's family.

- A health care provider may share information with an *interpreter who is acting on its behalf (but is not a member of the provider's workforce)* if the health care provider has a written contract or other agreement with the interpreter that meets HIPAA's business associate contract requirements.

For example, many providers are required under Title VI of the Civil Rights Act of 1964 to take reasonable steps to provide meaningful access to persons with limited English proficiency. These providers often have contracts with private companies, community-based organizations, or telephone interpreter service lines to provide language interpreter

services. These arrangements must comply with the HIPAA business associate agreement requirements at 45 C.F.R. 164.504(e).

- A health care provider may share information with an *interpreter who is the patient's family member, friend, or other person* identified by the patient as his or her interpreter, if the patient agrees, or does not object, or the health care provider determines, using his or her professional judgment, that the patient does not object.

For example, health care providers sometimes see patients who speak a certain language and the provider has no employee, volunteer, or contractor who can competently interpret that language.

If the provider is aware of a *telephone interpreter service* that can help, the provider may have that interpreter tell the patient that the service is available. If the provider decides, based on professional judgment, that the patient has chosen to continue using the interpreter, the provider may talk to the patient using the interpreter.

8. Where can I find additional information about HIPAA?

The Office for Civil Rights, part of the Department of Health and Human Services, has more information about HIPAA on its Web site. Visit <http://www.hhs.gov/ocr/hipaa> for a wide range of helpful information, including the full text of the Privacy Rule, a HIPAA Privacy Rule Summary, fact sheets, over 200 Frequently Asked Questions, as well as many other resources to help health care providers and others understand the law.

The full text of Section 164.510(b), on which this information is based, is included here:

Sec. 164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.

(b) *Standard: uses and disclosures for involvement in the individual's care and notification purposes.*

(1) Permitted uses and disclosures.

- (i) A covered entity may, in accordance with paragraphs (b)(2) or (3) of this section, disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person's involvement with the individual's care or payment related to the individual's health care.
- (ii) A covered entity may use or disclose protected health information to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death. Any such use or disclosure of protected health information for such notification purposes must be in accordance with paragraphs (b)(2), (3), or (4) of this section, as applicable.

(2) Uses and disclosures with the individual present. If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph (b)(1) of this section and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it:

- (i) Obtains the individual's agreement;
- (ii) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or
- (iii) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.

(3) Limited uses and disclosures when the individual is not present. If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's health care. A covered entity may use professional judgment and its experience with common practice to make reasonable inferences of the

individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

(4) Use and disclosures for disaster relief purposes. A covered entity may use or disclose protected health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted by paragraph (b)(1)(ii) of this section. The requirements in paragraphs (b)(2) and (3) of this section apply to such uses and disclosure to the extent that the covered entity, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

HIPAA Privacy Rule Disclosures to a Patient's Family, Friends, or Others Involved in the Patient's Care or Payment for Care

	Family Member or Friend	Other Persons
Patient is present and has the capacity to make health care decisions	<p>Provider may disclose relevant information if the provider does one of the following:</p> <ul style="list-style-type: none"> (1) obtains the patient's agreement (2) gives the patient an opportunity to object and the patient does not object (3) decides from the circumstances, based on professional judgment, that the patient does not object <p>Disclosure may be made in person, over the phone, or in writing.</p>	<p>Provider may disclose relevant information if the provider does one of the following:</p> <ul style="list-style-type: none"> (1) obtains the patient's agreement (2) gives the patient the opportunity to object and the patient does not object (3) decides from the circumstances, based on professional judgment, that the patient does not object <p>Disclosure may be made in person, over the phone, or in writing.</p>
Patient is not present or is incapacitated	<p>Provider may disclose relevant information if, based on professional judgment, the disclosure is in the patient's best interest.</p> <p>Disclosure may be made in person, over the phone, or in writing.</p> <p>Provider may use professional judgment and experience to decide if it is in the patient's best interest to allow someone to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of health information for the patient.</p>	<p>Provider may disclose relevant information if the provider is <u>reasonably sure that the patient has involved the person in the patient's care</u> and in his or her professional judgment, the provider believes the disclosure to be in the patient's best interest.</p> <p>Disclosure may be made in person, over the phone, or in writing.</p> <p>Provider may use professional judgment and experience to decide if it is in the patient's best interest to allow someone to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of health information for the patient.</p>