



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare for All"

COMPLIANCE ALERT 13-13

HIPAA and Notification of Passing of a Patient

EXECUTIVE SUMMARY: HIPAA provides guidance and new language in the 2013 Omnibus HIPAA Rule for addressing the death of a patient. Generally, unless the patient has expressly indicated that no communication is to be given, staff may disclose the death of a patient without the patient's express permission to appropriate care givers involved in the patient's care when it has been determined to be in the best interest of the patient. Such notification should be documented in the medical record. It is always difficult for staff when confronted with a patient's death at a facility. Details such as cause of death, factors, etc. should only be disclosed to an authorized representative.

ACTION NEEDED: Facilities should have appropriate procedures in place to address the documentation of death notification when no authorization is in place or the patient was unable to convey or withdraw authorization.

INTRODUCTION: Whether a long time patient, someone presenting at the emergency room, or someone arriving unconscious or already dead, the passing of a patient presents challenges emotionally and professionally. HIPAA provides guidance around the notification of death to family and friends.

BACKGROUND: Overall, the privacy protections HIPAA affords are not limited by time; therefore the medical record of a deceased patient is subject to all restraints on disclosure that are applicable to the record of a living patient.

As we know, usually a patient's "authorization" would be required to release the record. When authorization is unavailable, however, HIPAA permits disclosure of medical records of a deceased patient for treatment and to persons legally authorized to act for the decedent of the patient. Specifically, protected health information (PHI) of the deceased can be released to another health care provider to facilitate that provider's treatment of a surviving family member.

HHSC facilities presented with a request from a representative of a decedent should be certain that; 1) the requestor has the legal authority to act for the decedent or the decedent's estate, 2) the requested information is relevant to the requestor's representation, and 3) the requestor in fact has the authority they claim to have. State law dictates whether the requestor has the legal authority to act for the decedent as claimed.

Professional discretion should be exercised to determine the relevancy of the requested information. The authority of a requestor can be verified through presentation of court documents, such as "Letters Testamentary," or in the alternative, "Letters of Administration." Professional judgment can also be relied upon in determining authority.

NEW HIPAA LANGUAGE: The 2013 HIPAA Omnibus Rule includes additional language about the conveyance of PHI in the event of death. The language pertains to uses and disclosures for involvement in the individual's care and notification purposes when the individual is deceased. "If the individual is deceased, a covered entity may disclose to a family member, or other person identified in paragraph (b)(1) of this section who were involved in the individual's care or payment for health care prior to the individual's death, protected health information of the individual that is relevant to such person's involvement, unless doing so is inconsistent with any prior expressed preference of the individual that is known to the covered entity." (45CFR §164.510(b)(5))

OTHER SITUATIONS:

What happens when a patient arrives "dead on arrival" in the ER by ambulance or who dies shortly after arrival in the ER? The applicable regulation is 45 CFR 164.510(b)(1)(ii). To paraphrase, a facility may use or disclose PHI to notify a patient's family member, personal representative or other person responsible for the patient's care of the patient's death on the condition that the disclosure is in the best interests of the individual and only involves PHI directly relevant to the person's involvement with the patient's health care.

May a doctor or hospital disclose protected health information to a person or entity that can assist in the notification a patient's family member of the patient's location and health condition? "Yes. The HIPAA Privacy Rule permits a covered doctor or hospital to disclose protected health information to a person or entity that will assist in notify a patient's family member of the patient's location, general condition, or death...The patient's written authorization is not required to make disclosures to notify, identify, or locate the patient's family members, his or her personal representatives, or other persons responsible for the patient's care. Rather, where the patient is present, or is otherwise available prior to the disclosure, and has capacity to make health decisions, the covered entity may disclose protected health information for notification purposes if the patient agrees or, when given the opportunity, does not object. The covered entity may also make the disclosures if it can reasonably infer from the circumstances, based on professional judgment, that the patient does not object." (From the Office of Civil Rights (OCR))

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." (From the American Hospital Association (AHA))

BOTTOM LINE: Even when the patient is not present or it is impractical because of emergency or incapacity to ask the patient about notifying someone, a covered entity can still disclose a patient's location, general condition, or death for notification purposes **when, in exercising professional judgment**, it determines that doing so would be in the best interest of the patient.

Facilities are advised that they can let family members know that the person passed away, including date, time, name of attending doctor. If the family wants more information, they should get a personal representative appointed.

Finally, facilities should have a procedure in place to document that it was determined that it was in the patient's best interest to disclose only those things. This documentation should include date, summary of what was conveyed, name of person(s) to whom the information was disclosed, and any other pertinent information.

Please direct any additional questions or interpretation issues to the Chief Compliance and Privacy Officer at dlane@hhsc.org so that we can ensure compliance by developing system wide guidance as needed.

Sources: 45 CFR 164.510(b)(1)(ii); 45 CFR164.510(b)(1)(ii) ;45 CFR164.510(b)(2); 45 CFR164.510(b)(3); 45CFR §164.510(b)(5)