



MLN Matters® Number: SE0726 **Revised**

Related Change Request (CR) #: N/A

Related CR Release Date: N/A

Effective Date: N/A

Related CR Transmittal #: N/A

Implementation Date: N/A

Clarification about the Medical Privacy of Protected Health Information

Note: This article was revised on July 10, 2014, to reflect updated Web addresses for several products referenced in the article.

Provider Types Affected

Physicians, providers, and suppliers who bill Medicare contractors (carriers, durable medical equipment Medicare Administrative Contractors (DME MACs), fiscal intermediaries (FIs), regional home health intermediaries (RHHIs), and/or Part A/B Medicare Administrative Contractors (A/B MACs) for services provided to Medicare beneficiaries

Provider Action Needed

The purpose of this Special Edition (SE) article, SE0726, is to ensure that health care providers are aware of the helpful guidance and technical assistance materials the U.S. Department of Health and Human Services (HHS) has published to clarify the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), specifically, the educational material below. Remind individuals within your organization of:

- the Privacy Rule's protections for personal health information held by providers and the rights given to patients, who may be assisted by their caregivers and others, and
- that providers are permitted to disclose personal health information needed for patient care and other important purposes.

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HHS Privacy Guidance

HHS' educational materials include a letter to healthcare providers with the following examples to clarify the Privacy Rule:

HIPAA does not require patients to sign consent forms before doctors, hospitals, or ambulances can share information for treatment purposes:

Providers can freely share information with other providers where treatment is concerned, without getting a signed patient authorization. Clear guidance on this topic can be found in a number of places:

- Review the answers to frequently asked questions (FAQs) by searching the FAQs on a likely word or phrase such as "treatment." The link to the FAQs may be found at <http://www.hhs.gov/hipaafaq/> on the HHS website.
- Consult the Fact Sheet, "Uses and Disclosures for Treatment, Payment, and Health Care Operations," which is at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveridentities/usesanddisclosuresfortpo.html> on the HHS website.
- Review the "Summary of the HIPAA Privacy Rule" at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html> on the HHS website.

HIPAA does not require providers to eliminate all incidental disclosures:

- The Privacy Rule recognizes that it is not practicable to eliminate all risk of incidental disclosures. That is why, in August 2002, HHS adopted specific modifications to that Rule to clarify that incidental disclosures do not violate the Privacy Rule when providers and other covered entities have policies which reasonably safeguard and appropriately limit how protected health information is used and disclosed.
- OCR guidance explains how this applies to customary health care practices, for example, using patient sign-in sheets or nursing station whiteboards, or placing patient charts outside exam rooms. At the HHS/OCR website, see the FAQs in the "Incidental Uses and Disclosures" subcategory; search the FAQs on terms like "safeguards" or "disclosure"; or review the Fact Sheet on "Incidental Disclosures". The fact sheet is at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveridentities/usesanddisclosuresfortpo.html> on the HHS website.

HIPAA does not cut off all communications between providers and the families and friends of patients:

- Doctors and other providers covered by HIPAA can share needed information with family, friends, or with anyone else a patient identifies as involved in his or her care as long as the patient does not object.

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- The Privacy Rule also makes it clear that, unless a patient objects, doctors, hospitals and other providers can disclose information when needed to notify a family member, or anyone responsible for the patient's care, about the patient's location or general condition.
- Even when the patient is incapacitated, a provider can share appropriate information for these purposes if he believes that doing so is in the best interest of the patient.
- Review the provider's guide on communications with a patient's family, etc. at http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/provider_ffg.pdf on the HHS website.

HIPAA does not stop calls or visits to hospitals by family, friends, clergy or anyone else:

- Unless the patient objects, basic information about the patient can still appear in the hospital directory so that when people call or visit and ask for the patient, they can be given the patient's phone and room number, and general health condition.
- Clergy, who can access religious affiliation if the patient provided it, do not have to ask for patients by name.
- See the FAQs in the "Facility Directories" at http://www.hhs.gov/ocr/privacy/hipaa/faq/facility_directories/483.html on the HHS website.

HIPAA does not prevent child abuse reporting:

Doctors may continue to report child abuse or neglect to appropriate government authorities. See the explanation in the FAQs on this topic, which can be found, for instance, by searching on the term "child abuse;" or review the fact sheet on "Public Health" that can be reviewed at

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/publichealth/> on the HHS website.

HIPAA is not anti-electronic:

Doctors can continue to use e-mail, the telephone, or fax machines to communicate with patients, providers, and others using common sense, appropriate safeguards to protect patient privacy just as many were doing before the Privacy Rule went into effect. A helpful discussion on this topic can be found at

<http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/se0726factsheet.pdf> on the CMS website.

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Additional Information

The HHS complete listing of all HIPAA medical privacy resources is available at <http://www.hhs.gov/ocr/hipaa/> on the HHS website.

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