

GUIDE FOR COOPERATION



October 2014

For Physicians, Hospitals and Media in the
State of Washington

This document is intended to provide a common understanding of how state and federal law affect the way that hospitals and health care providers handle patient information. It also seeks to provide uniform guidelines under which hospitals and physicians will cooperate with news outlets to provide accurate, timely coverage of medical and other health-related events in Washington state.

GUIDE FOR COOPERATION

FOR PHYSICIANS, HOSPITALS AND MEDIA IN THE STATE OF WASHINGTON

Hospitals, health systems and health care providers are responsible, under both state and federal law, for protecting the privacy of their patients and the confidentiality of their records. At the same time, hospitals and providers also have a responsibility to work with the media to keep the public informed about key health issues.

This document is intended to provide a common understanding of how state and federal law affect the way that hospitals and health care providers handle patient information. It also seeks to provide uniform guidelines under which hospitals and physicians will cooperate with news outlets to provide accurate, timely coverage of medical and other health-related events in Washington state.

The media and provider organizations who have developed this guide agree that there is a shared responsibility to ensure that accurate information is provided on matters of public interest, as long as the reporting of these facts does not infringe upon the patients' right to privacy or their ability to access quality health care.

Failure to abide by the spirit and letter of this guide should be shared with any or all of the participating associations so that all parties can learn to better meet our shared goals.

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Relevant Law and Legal Considerations

Below is a brief summary of some of the laws that impact disclosure of protected health information that are particularly relevant for this guide. Those who are interested may also wish to consult the Hospital and Law Enforcement Guide to Disclosure of Protected Health information, posted on the WSHA website (www.wsha.org/publications.cfm). Hospitals are encouraged to consult with legal counsel before finalizing any policy on the release of patient information or dealing with a new or difficult question about disclosure.

HIPAA: The federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 mandated regulations that govern privacy standards for health care information. HIPAA's privacy regulations specify the purposes for which information may and may not be released without authorization from the patient.

Hospitals are required by federal law to adhere to the HIPAA privacy regulations which took effect April 2003 and have since been amended. Several Washington State laws also govern the release of patient information.

Washington State's Uniform Health Care Information Act (UHCIA, codified within RCW 70.02), provides additional state law direction on disclosure of health care information. Generally, where HIPAA and the UHCIA provide different privileges, rights, or obligations, the law that affords greater protections, rights, or remedies to the patient governs.

The Washington State Public Disclosure Law: Generally, RCW 42.56 exempts from public disclosure records recognized as health care information under RCW 70.02.

Other relevant laws and regulation regarding certain diseases and behavioral health: Federal regulations 42 CFR, Part 2, issued July 1975, amended in 1987 and 1995, prevent the release of information about alcohol or drug abuse or psychiatric disorders without specific written authorization from the patient or the patient's personal representative.

State laws RCW 70.02.220, RCW 70.02.230 and RCW 70.96A.150 prevent the release of information about sexually transmitted diseases (including HIV), psychiatric disorders and drug and alcohol abuse without specific written authorization to the hospital from the patient or the patient's personal representative. For drug and alcohol abuse and sexually transmitted disease cases, hospitals can confirm the patient is in the hospital (location) and the patient's one-word condition in these cases, as long as the confirmation does not identify the diagnosis or treatment the patient is receiving for these conditions.

No information can be released about a patient being treated for psychiatric conditions without his or her explicit and separate authorization for the information's disclosure, including confirmation that they are in the hospital.



Release of Patient Information by Hospitals

Media inquiries should be directed to the hospital public information spokesperson or the person delegated to speak in his or her absence.

Information about the condition and location of an inpatient, outpatient, or emergency department patient may be released only if the inquiry specifically contains the patient's first and last name, and the patient is at least 18 years old and is listed in the facility directory. No information is to be given to anyone requesting it if the request does not include a specific patient's first and last name. This includes inquiries from the press.

As long as the patient has not requested that information be withheld, or the patient is unable to request having information withheld because of incapacity, hospitals may release a one-word description of the patient's condition and the patient's location within the hospital without obtaining prior patient authorization.

Condition Classifications

The following patient condition classifications should be used by hospitals, and have the following meanings:

UNDETERMINED: The patient is awaiting a physician and an assessment.

TREATED AND RELEASED: The patient has been treated in the emergency department, and has been released from there. In this instance, "treated" is the condition and "released" is the location. Generally, this indicates the patient's condition was satisfactory upon release.

STABILIZED AND TRANSFERRED: The patient was stabilized at the hospital, and has been transferred to another facility for further care. In this instance, "stabilized" is the condition and "transferred" is the location. Hospitals should not release where the patient was transferred. This classification does not imply a patient condition; only that the patient is in another facility.

SATISFACTORY: Vital signs (heartbeat, breathing, blood pressure, temperature) are stable and within normal limits. The patient is conscious and comfortable. Indicators are good.

SERIOUS: Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.

CRITICAL: Vital signs are unstable or not within normal limits. The patient may be unconscious. There is some doubt the patient will recover. Death could be imminent.

DECEASED: The death of a patient may be reported to the authorities by the hospital, as required by law. Typically, a report will be made after efforts have been made to notify the next-of-kin. The death of a patient may also be reported to the media after the next-of-kin has been notified, as long as the patient's body is still in the hospital. Otherwise, the hospital should respond to media inquiries that no information is available on a patient by that name.

RELEASED: If a patient was admitted as an inpatient and has been released, and the hospital receives an inquiry about the patient by name, the hospital may confirm that the patient is no longer in the hospital, but cannot give the release date, admission date, length of stay or any other information.

Patients Can Opt Out

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 and to whom that information will be disclosed. The patient has the option to expressly state that he or she does not want information released, including confirmation of his or her presence in the facility.

If a patient opts out of providing directory information, the hospital will not provide any information to any public requestor (including the media) regarding the patient. Hospitals will simply tell the requestor there is no information available on a patient by that name.

When Patients Cannot Express a Preference

In some cases, patients will not have had the opportunity to state a preference about having their information released. Their medical condition may prevent hospital staff from asking about information preferences upon admission. If the patient has a personal representative, the hospital may ask the personal representative for a decision regarding the release of directory information.

If the patient cannot express a preference and there is no personal representative, the 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. When the patient recovers sufficiently or a personal representative is appointed, the hospital must ask about information preferences.

Each hospital should develop policies and procedures to guide staff in making these judgments.

Patient Location

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

Although HIPAA does not expressly prohibit disclosure of patient's room location to the media (because the media are accorded the same access to information as other callers), 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 policies prohibiting disclosure of specific patient room location to the media without patient permission.

The media should not contact patients directly. Instead, they should request an interview through the designated hospital public information representative. Hospitals may deny the media access to the patient if it is determined that the presence of photographers or reporters would aggravate the patient's condition or interfere with patient care, or if the patient refuses the interview.



Beyond the One-Word Condition: Media Access to Patients

Media can have further access to or information about a patient when the patient has given written authorization to the hospital. The hospital can help to facilitate that authorization, but obtaining written authorizations can be time-consuming and some hospitals may not have adequate personnel to respond to every media request.

The following activities require written authorization from the patient or their personal representative:

- Confirmation of the patient age, gender, extent of injuries, admission date, discharge date;
- Providing any statement beyond the one-word condition that has been approved by the patient or the patient's personal representative (in order for a hospital's designated spokesperson to obtain the information to draft a statement, written authorization also may be required);
- Taking photographs of patients; and
- Interviewing patients.

Authorizations must include a start date and an end date. Under Washington state law, the authorization is not valid for longer than 90 days if it covers future health information or does not include an expiration date.

If the patient is a minor, permission for any of these activities must be obtained from a parent or legal guardian. Under certain circumstances such as treatment for sexually transmitted diseases, chemical dependency and mental health, minors who have independently consented to the treatment can authorize disclosure of information without parental approval or notification.

Giving Patient Information with the Patient's Authorization

If written authorization from the patient or patient's personal representative is obtained, further medical information dealing with specific injuries or conditions may be given by hospital spokespeople as follows:

BURNS: State the extent of the burns (first degree, redness; second degree, blistering and swelling; third degree, destruction of tissue) and the specific part of the body or percentage of total body involved. Source (steam, sun, surface contact) of the burn may be stated.

FRACTURES: Indicate the area of the body involved and whether a simple or compound fracture was sustained. The words "possible" or "probable" should be used until X-ray diagnosis is made.

HEAD INJURIES: State that the head is injured. Skull fracture may be reported if confirmed by a physician.

INTERNAL INJURIES: State that the patient suffered internal injuries. A more specific diagnosis may be released if based on a physician's report.

SHOOTING AND STABBING: State only that there is a gunshot wound or stab wound. Hospital personnel should not speculate on how or why this was inflicted.

UNCONSCIOUSNESS: If a person is unconscious when brought to the hospital, this may be reported if authorized by the patient's personal representative. Hospitals will make no statement as to cause until determined by a physician.

UNUSUAL ILLNESSES: Hospitals will confirm any unusual illnesses or potentially epidemic conditions as reported to local health authorities. Patient identification will not be released without permission of the patient or the patient's personal representative.

Information for Hospitals

Hospitals are urged to work effectively with the media. Good working relationships can help reassure and educate the public about important health issues.

- Hospitals agree to have a spokesperson available at all times to respond to media inquiries. This spokesperson should be knowledgeable about patient privacy and confidentiality laws and concerns to ensure that protected information is not inadvertently disclosed.
- Current information should be made available to the media as soon as possible, within the guidelines of the law.
- If information is not yet available, all media inquiries should be logged and callbacks made as soon as information is releasable.
- In cases of substantial media interest or when the media will be at the hospital for an extended period of time, hospitals are encouraged to provide a location for media to gather so information can be released in a news conference format that does not compromise patient privacy. Hospitals may also want to provide media an area to work with desks, telephones, access to rest-rooms, and other resources.

Health care facility spokespeople and physicians should be aware they generally will not have the opportunity to review or edit interviews before publication or broadcast. Although reporters and editors try to double check the accuracy of information whenever possible, each news organization determines what it will publish or air.

Birth Announcements

Policies on publication of birth announcements vary in different communities and are a matter for the hospital, the press and the individual patient to decide. Hospitals must obtain the mother's written authorization before releasing a birth notice.

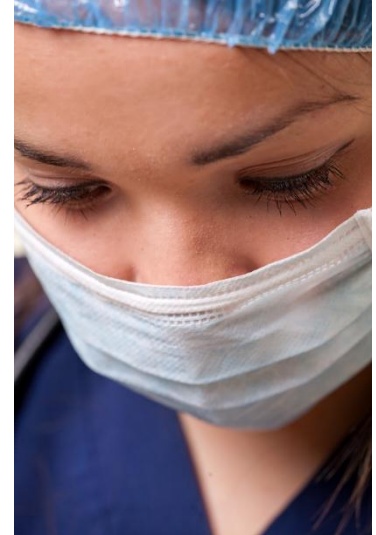
Information for Physicians

Physicians and other providers, as appropriate to the circumstances, should try to be accessible to news media to the extent possible consistent with patient care. Physicians agree to be aware of and respect the time requirements of the news field.

Public Statements by Physicians

The executive offices of the Washington State Medical Association (WSMA) are available to representatives of the news media to provide prompt responses on issues related to health care and medically related injuries. If the information sought is not readily available, the executive offices will attempt to obtain the information promptly or assist the inquirer in finding another source.

Members of the Executive Committee of the Washington State Medical Association, or their spokesperson, may be quoted by name in matters of public interest. County medical societies are urged to adopt a similar policy in regard to designated spokespersons. A list of these spokespersons is available to the news media. In responding to queries or issuing statements which are in the public interest, these spokespersons are not to be considered as seeking personal publicity.



Physicians may give information to the news media as long as this does not compromise the physician-patient relationship or violate the confidence or privacy of the patient's medical records or legal rights.

Speakers at medical meetings and local physicians connected with such meetings sponsored by WSMA or other medical organizations will be accessible to the news media without prior approval of the association.

Responsibility for arranging news coverage rests with the sponsoring group. It is understood that notifying the news media of an event carries an indication that coverage of the presentations will be welcomed.

Before granting interviews to representatives of the general press, physicians should be aware that they probably will not be permitted to edit the material before publication.

Physicians are not authorized to participate in public controversial discussions as spokespersons for WSMA without prior approval by the association. However, any physician has the right to express opinions as an individual.

Doctors of medicine are expected to refrain from sponsoring or endorsing, directly or by implication, any nonprescription products. Physicians appearing on the air or in other non-professional situations should be introduced by titles and credentials that relate to that appearance only.

Sound judgment, good common sense and adherence to the principles of medical ethics are expected of any physician appearing on radio or television or at a general press conference.

Information for Reporters

Editors, reporters and photographers agree to seek information through officially designated spokespersons, and to take pains to ensure they are getting their information from such individuals. Working with designated spokespeople will help ensure that patient privacy rights are being respected.

Reporters should only enter patient care areas with the express, specific permission of the hospital and should expect to be accompanied by a hospital representative at all times, except when a hospital specifically waives this requirement. While in patient care areas, members of the media agree to report on only those specific patients or areas of care agreed to by the hospital and the affected patients.

Media in the Hospital

A hospital representative should accompany the media while they are in the hospital and/or be aware of where any reporter is within a hospital at all times. Hospitals may deny the media access to any area at their discretion, including (but not limited to) operating rooms, intensive care units, maternity units, emergency departments, psychiatric departments, nurseries, pediatric units and substance abuse units.

In emergencies or disasters, access to other areas in the hospital that are normally available to the news media may also be restricted temporarily. For infection control purposes, members of the media may be required to wear special clothing and/or have their equipment disinfected or protected.



Photographs and Interviews

Reporters and photographers will seek hospital permission before entering patient care areas for interviews and photographs. These will be arranged if the patient is willing and his or her condition permits. The hospital will be responsible for obtaining written authorization from the patient or the patient's personal representative before any type of photography is permitted.

Special Circumstances

In all situations, protection of the patient's privacy and the confidentiality of his or her medical records are the guiding principle for hospitals and health care providers.

Cases of Public Record

Information about police and accident situations is the most frequent request a health care facility receives from the news media. However, in cases of public record, (those reportable to fire, police, sheriff, health department, or other public authority), patients have the same privacy rights as all other patients, as far as the hospital is concerned.

Because 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. Additionally, the fact that someone has been transported to the hospital by police or firefighters from an accident, crime scene or fire is a matter of public record likely to be reported by those agencies. These public records are often of interest to the media. However, hospitals are limited to providing a one-word description of the patient's condition and may do so only if information about the patient is requested by name.

For example, hospital personnel may not speculate on how or why gunshots, stabbing wounds, or head injuries were inflicted. The hospital may not make a statement as to whether a patient was intoxicated, whether injuries were the result of assault or an attempted suicide, whether a patient is addicted to drugs, the details relating to an automobile accident, or whether the patient has been or will be arrested.



Hospitals may refer media questions to the public entity (such as the coroner's office, police, fire, or health department) that make the hospitalization part of a public record. The public entity will be guided by the applicable statute as to whether it can release any or all of the information received. Requests to interview or photograph a patient under arrest or in custody will be handled in consultation with the police department or government agency having jurisdiction.

Restricted Information

Hospitals are encouraged to use good judgment and not release information that could endanger patients or hospital staff, such as room location of a person being abused or stalked. News media will also exercise discretion in identification of patients who have been victims of assault or abuse.

Cases Involving a Public Personality

Information about celebrities and public figures is subject to the same standards for releasing information to the media as other patients. With the permission of the patient or his / her representative, the hospital will respond to queries regarding the patient's condition and give the details of the reason for hospitalization. A system of regular bulletins on the patient's progress will be instituted if warranted and the patient or his / her representative agrees to this.

The prominent person may elect to name his or her own spokesperson, to whom all requests for information may be directed. If this is the case, members of the media may inquire with the individual's spokesperson when requesting information. It is expected, however, that such special spokespeople will coordinate with hospital public information representatives to ensure the accuracy of information being publicly disclosed and compliance with all applicable laws and regulations.

Unusual Injuries, Illnesses, or Treatments

In situations where the physician and hospital administration deem the case to be an unusual injury, illness or treatment, the hospital may release scientific or other pertinent information which may lead to a better public understanding. Hospitals will confirm any unusual illnesses or potentially epidemic conditions as reported to local health authorities. Any physician or hospital official becoming aware of unusual cases is urged to notify the hospital's designated spokesperson for immediate communication of appropriate information to the media. Patient identification will not be released without permission of the patient or the patient's personal representative.

Public Hospital Districts

As local governments, Public Hospital Districts in Washington state are subject to laws and regulations governing public access to their information. However, these laws do not apply to patient records. Members of the media and other community members may have access to more information from public hospital districts (such as financial records or minutes of board meetings) than from other hospitals, but patients at public hospital districts are afforded the same privacy rights as any other patients.

Administrative Information

Many details of hospital administration are a matter of public record. Public Hospital Districts also are required to comply with the Open Public Meetings Act (Chapter 42.30 RCW) in the conduct of their board meetings and with the Public Records Act (Chapter 42.56 RCW) for many of their other administrative functions.

Disasters or Civil Disorders

For purposes of this guide, “disaster” means any man-made or natural event that causes significant loss of life, injury or illness. A disaster would exist when a hospital or the local government agency responsible for the area where the hospital is located has implemented its disaster preparedness plan.

In a disaster, hospitals should coordinate with other hospitals or relief agencies on all aspects of disaster response, including information coordination. Here are some considerations for both hospitals and media to keep in mind:

- Public relations representatives from different facilities are encouraged to cooperate and facilitate the exchange of information regarding patients’ location and status.
- In case of disaster or civil disorders, hospitals will likely alter routine communication patterns. Where possible, hospitals involved will establish information centers with telephones and other facilities for the media and will implement a plan to give all interested media equal access to information.
- Current information should be made available to the media as soon as possible.
- Media representatives should understand that hospital involvement with the media cannot compromise the health care facility’s potential need for added security in a disaster situation.
- Hospitals may release patient information to other hospitals, health care facilities and relief agencies in situations where multiple facilities are receiving patients from one disaster.
- Specifically, hospitals may disclose patient information 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 about the patient’s location, general condition, or death. When feasible, notify the next-of-kin first.
- Hospitals may also decide to release general information in a disaster to help dispel public anxiety. In highly charged situations, the public may benefit from the release of general information when specific information is not yet releasable. For example, the hospital might say that “the facility is treating four individuals as a result of the explosion.”
- The hospital may state the number of patients who have been brought to the facility by age group (adults, children, teenagers) and assure the public hospital staff are providing the best care possible. This type of general information can help reduce undue anxiety. However, hospitals must exercise caution to ensure that any information released will not allow individual patients to be identified.

Breach of Private Health Information

If an entity covered under HIPAA experiences a breach of unsecured protected health information, the entity may be required to report such a breach to the media.

Under 45 CFR 164.406, in the event of a breach of unsecured protected health information involving more than 500 residents of a state or jurisdiction, a covered entity must notify prominent media outlets serving that state or jurisdiction. The notification must be made within 60 days after discovery of the breach and include:

- (1) A description of the events surrounding the breach including the date of the breach and discovery;
- (2) The type of unsecured private health information involved;
- (3) Steps individuals should take to protect themselves from potential harm;
- (4) A statement of what the entity is doing to investigate the breach, mitigate harm, and protect against future breaches; and
- (5) Contact procedures for individuals to learn more information or ask questions, i.e. a toll-free number, email address, or website.

Hospitals, however, must delay notification to the media if law enforcement informs the hospital that notification would impede a criminal investigation or cause damage to national security (45 CFR 164.412).

Conclusion

We believe that reporters, hospitals and physicians all serve the community, and that the community is best served when all parties are at their most professional. State and federal law both protect the media's right to report on public events and the patient's right of privacy. Having mutual understanding of the relevant laws will help ensure the public is served and the patients are protected.

If you have questions or comments about this guide, or would like to share your experiences, please contact one or all of the participating organizations listed at the front of this guide.

This guide is available for public download at www.wsha.org/downloadpublications.cfm
