HIPAA Privacy and the Novel Coronavirus – Some Key Points to Remember

Information from the CommonSpirit Health Privacy Office

In light of the Novel Coronavirus (Covid-19) outbreak, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) issued a bulletin on February 3, 2020 to ensure that HIPAA covered entities and their business associates are aware of the ways that patient information may be shared under the HIPAA Privacy Rule in an outbreak of infectious disease or other emergency situation. This bulletin also serves as a reminder that the protections of the Privacy Rule are not set aside during an emergency.

The HIPAA Privacy Rule protects the privacy of patients’ health information (protected health information or PHI) but is balanced to ensure that appropriate uses and disclosures of PHI may be made when necessary to treat a patient and to protect the nation’s public health.

Below is some specific guidance included in the OCR bulletin and from other regulatory bodies on how PHI may be used or disclosed during the Covid-19 pandemic. For ANY questions about HIPAA and the use and disclosure of PHI, you are encouraged to contact your Division or Service Line Privacy Officer.

***How may I share and disclose PHI during the Covid-19 event?***

**For Treatment**: Under the Privacy Rule, health care providers may disclose, without a patient’s authorization, PHI about the patient as necessary to treat the patient or to treat a different patient. Treatment includes the coordination or management of health care and related services by one or more health care providers and others, consultation between providers and the referral of patients for treatment.

**To a Public Health Authority**: PHI may be shared with a public health authority, such as the CDC or a state or local health department, that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability. For example, a covered entity may disclose to the CDC PHI on an ongoing basis as needed to report all prior and prospective cases of patients suspected or confirmed to have Covid-19.

**To a Foreign Government Agency**: PHI may be disclosed to a foreign government agency IF that agency is working with the public health authority and then ONLY at the direction of the public health authority with oversight and approval from the Privacy Officer.

**To Persons at Risk of Contracting the Disease:** The minimum necessary amount of PHI may be shared with persons at risk of contracting or spreading a disease or condition in order to prevent or control the spread of the disease or carry out public health interventions or investigations if other law, such as state law, authorizes the covered entity to notify such persons.

**To Prevent a Serious and Imminent Threat of Harm**: Health care providers may share patient information with anyone deemed necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public – consistent with applicable law (e.g., state statutes, regulations or case law) and the provider’s standards of conduct. Thus, providers may disclose a patient’s health information to anyone who is in a position to prevent or lessen the serious and imminent threat, including family, friends, caregivers, and law enforcement without a patient’s permission. HIPAA expressly defers to the professional judgment of healthcare provider in making determinations about the nature and severity of the threat to health and safety. HOWEVER, the reasons for the determination must be documented in the patient’s record, including the risk of harm and why the PHI was shared without obtaining the patient’s permission.

***Practical Application:***

***If one of our employees presents to a CommonSpirit Health provider (as a patient, not as an on-the-job presentation) with Covid-19 symptoms, may the provider contact CommonSpirit Health Human Resources about this patient/employee?***

This is a sensitive situation which must be handled carefully in order to protect both our patients and our employees when they present as patients.  Please follow these steps, in sequence:

* Do not share PHI on patient/employees until there is laboratory confirmation that the COVID-19 test is confirmed.
* Once confirmed by lab testing and not solely based on symptomatic presentation, if the provider desires to share that information with the applicable CommonSpirit Human Resources Department personnel, FIRST contact the patient/employee and ask for verbal permission to share this information with the Human Resources Department only – not the patient/employee’s supervisor.
* If the patient/employee agrees, then document that permission and follow established processes put in place by your local Human Resources and infection control departments.
* If the patient/employee declines AND the provider believes that the patient/employee may not follow the instructions and guidance given to manage the spread of the illness AND may pose a serious and imminent risk of harm to our patients and/or other staff, the provider may give the information to the applicable CommonSpirit Human Resources Department.
* Again, the provider must not contact the patient/employee’s supervisor.  In either case, the patient/employee’s verbal permission or denial of permission must be documented before taking any appropriate action.

**This course of action only applies to the Covid-19 virus during the declared Covid-19 National Emergency; it does not apply to other situations where our employees seek care from us as patients.**

***Can I share information about a Covid-19 patient with their family, friends or others involved in their care; and if so, how and how much information can I share?***

A health care provider may share PHI with a patient’s family members, relatives, friends, or other persons identified by the patient as involved in the patient’s care. They may also share information about a patient as necessary to identify, locate, and notify family members, guardians, or anyone else responsible for the patient’s care, of the patient’s location, general condition, or death. This may include, where necessary to notify family members and others, law enforcement, the press, or the public at large.

* The covered entity should attempt to get verbal permission from individuals or otherwise be able to reasonably infer that the patient does not object, when possible. For example, a physician can reasonably infer that a patient does not object to disclosure when the patient asks to have a friend or family member present in an exam room. Even in such cases, asking for patient permission before discussing sensitive information is a good idea.
* For patients who are unconscious or incapacitated: A health care provider may share relevant information about the patient with family, friends, or others involved in the patient’s care or payment for care if the health care provider determines, based on professional judgment, that doing so is in the best interest of the patient. For example, a provider may determine that it is in the best interest of an elderly patient to share relevant information with the patient’s adult child, but generally could not share unrelated information about the patient’s medical history without permission.

***Can I share PHI with designated disaster relief organizations?***

A covered entity may share PHI with disaster relief organizations, such as the American Red Cross, that **are authorized by law or by their charters** to assist in disaster relief efforts, for the purpose of coordinating the notification of family members or other persons involved in the patient’s care, of the patient’s location, general condition, or death. It is not necessary to obtain a patient’s permission to share the information in this situation if doing so would interfere with the organization’s ability to respond to the emergency.

***Can I share PHI with the media or other parties NOT involved in the care of the patient or their notification?***

Reporting to the media or the public at large about an identifiable patient, or the disclosure to the public or media of specific information about treatment of an identifiable patient (e.g., specific tests, test results or details of a patient’s illness), cannot be done without the patient’s written authorization (or the written authorization of a personal representative who is legally authorized to make health care decisions for the patient). For any media involved communication that may in any way identify a patient, coordinate with your designated Privacy Officer and local communications team.

***Are we required to distribute a Notice of Privacy Practice (NPP) during this crisis?***

Yes, unless the covered entity has activated its emergency disaster plan. If the entity has activated the plan, for the first 72 hours after plan activation, the facility may suspend the distribution of the NPP to new patients. After the first 72 hours, the facility should make reasonable efforts to reinstitute distribution and ensure that any patient who was previously admitted or seen has a mechanism available to obtain a copy, if desired.

***Other Important Points to Remember:***

* **Snooping or curiosity**: ONLY staff with a legitimate job-related reason may access a patient’s PHI. Even in an emergency situation, covered entities must continue to implement safeguards to protect patient information against intentional or unintentional impermissible uses and disclosures.
* **Minimum Necessary:**For most disclosures, a covered entity must make reasonable efforts to limit the information disclosed to that which is the “minimum necessary” to accomplish the purpose. (Minimum necessary requirements do not apply to disclosures to health care providers for treatment purposes.) Covered entities may rely on representations from a public health authority or other public official that the requested information is the minimum necessary for the purpose, when that reliance is reasonable under the circumstances. For example, a covered entity may rely on representations from the CDC that the PHI requested by the CDC about all patients exposed to or suspected or confirmed to have Covid-19 is the minimum necessary for the public health purpose.
* **Requests for copies of patient records:** Requests for a copy of a medical record by the patient, family, friends, or others not involved in the patient’s care or payment of care, or as noted above, should follow the normal request process and be directed to the proper Health Information Management (HIM) department.

Thank you for your continued commitment to protecting our patients’ information in these extraordinary circumstances.

Lori Lamb, System Vice President and CommonSpirit Health Privacy Officer

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