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PATIENT PRIVACY GUIDE FOR MEDIA

Introduction

The first responsibility of a health care institution is to protect the health and welfare of its patients. With this in mind, it is the policy of the Guam Memorial Hospital Authority (GMHA) to respect and protect the privacy rights of patients, their families, employees and related third parties. Federal laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rule of 2003 mandate regulations that establish standards to protect the privacy of each person's individually identifiable health information.

The GMHA is obligated to ensure that patient privacy is protected and the facts it is authorized to release are as accurate as possible. *In all cases, the GMHA's first responsibility is to protect the confidentiality, health and legal rights of all patients.*

This guide has been prepared for news media professionals to provide an understanding of the hospital's responsibilities and policies to protect patient privacy. This document is provided to help both the GMHA and the news media in communicating facts about patients with the protection of these patients' privacy as a shared goal.

What is HIPAA?

The Health Insurance Portability and Accountability Act (HIPAA), and ensuing related regulations, changed how health care facilities use and release patient's personal health information. More relevant to the news media, HIPAA limits how patient information can be released to the public.

What can be released on the condition of patients currently under treatment?

Media requests for information on the condition of patients currently under treatment at the Guam Memorial Hospital or the GMHA Skilled Nursing Unit must be directed to the Public Information Officer during normal business hours and to the GMH Nursing Supervisor after normal business hours.

Without a signed, written authorization from the patient, the privacy regulations allow a health care facility to release only the following information:

- A general statement of the patient's condition that does not reveal specific health information (see below); and
- The location of the patient in the facility (e.g. Intensive Care Unit, Pediatric Ward), unless disclosing this would reveal protected health information about the patient. For example, releasing that a patient is in the Operating Room would reveal that she or he is undergoing surgery.

Requests must meet the following requirements:

- **The media professional must ask about the patient by name.** No information may be disclosed if a request does not include a specific patient's name.
- The patient has been informed that this information may be released, through the hospital's Privacy Policy, and the patient has not expressly stated that she or he does not want this information released.

What if a patient's name is not available?

Then no information about the patient can be disclosed. While it may be difficult for the media to obtain names of certain patients, such as accident or crime victims, federal regulations prohibit the hospital from releasing any information if a request does not contain a patient's name. This measure is mandated by federal privacy regulations.

What patient condition descriptions will be used?

The following one-word condition descriptions, developed by the American Hospital Association, will be used for public statements in most instances:

- **Undetermined** – Patient is awaiting physician and/or assessment.
- **Good** – Vital signs are stable and within normal limits. Patient is conscious and comfortable. Indicators are excellent.
- **Fair** – Vital signs are stable and within normal limits. Patient is conscious, but may be uncomfortable. Indicators are favorable.
- **Serious** – Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.
- **Critical** – Vital signs are unstable and not within normal limits. Patient may be unconscious. Indicators are unfavorable.

Note: While nurses and physicians often use the phrase "critical but stable" amongst themselves, a condition of "critical" by definition means that at least some vital signs are unstable. In general the AHA has recommended the term "stable" should not be used, especially in combination with other conditions which by definition often indicate a patient is unstable.

What other information can be provided?

No patient information that is not included in the Hospital Directory may be disclosed without express written authorization, according to the privacy regulations. Prohibited disclosures include:

- The age, gender or ethnicity of a patient;
- What the patient is being treated for; or the nature of his or her injuries or illness;
- How the injuries or illness may have occurred; and
- What procedures the patient is undergoing or is scheduled to undergo.
- Additionally, disclosure of a patient's prognosis requires a written release from his or her physician.

Can GMHA confirm a patient's admission or discharge?

Yes, if the request includes a patient's name. Since this type of disclosure only provides information on a patient's general condition and location, GMHA can confirm to individuals who ask about a patient by name that the patient is being treated at the hospital or that the patient is no longer at the hospital. Disclosure of time and date of admission or discharge is not allowed.

Can GMHA confirm a patient was “treated and released?”

Yes. Under the HIPAA privacy rule, GMHA may disclose, to individuals who ask for the patient by name, that a patient was treated and released because this only provides the patient’s general condition (that they were treated at the hospital) and the patient’s location (that the patient is no longer at the hospital). No specific health information may be provided and time and date of admission or release may not be disclosed.

Can GMHA confirm a patient’s death?

Yes, disclosing that a patient is deceased is a permissible facility directory disclosure as a statement of the patient’s general condition. A patient death may be confirmed by GMHA after notification of next of kin, provided that the above requirements are met. Cause of death and the time and date of death can only be released by the Office of the Chief Medical Examiner.

What other regulations apply in special circumstances?

Federal laws prohibit the disclosure of *any* information about psychiatric, alcohol and drug abuse cases. Additionally, information on patients who are on isolation or victims of sexual assault may be restricted pursuant to local and federal law and GMHA policy. Other restrictions may be enforced subject to local and federal law and GMHA policy.

Can information be released on minor patients?

The privacy regulations do not make special accommodations for minor patients’ exclusion from the Hospital Directory. Generally, minor children (under the age of 18) may have information released with the consent of a parent or legal guardian, in accordance with the preceding guidelines.

What if a patient is incapacitated and cannot consent to disclosure?

If a patient is unable to state a preference about having his or her information released, information generally still can be released if the media professional asks about the patient by name. However, the hospital’s practice in these cases must be (a) consistent with a prior expressed preference of the individual, if any, that is known – such as if the individual has asked his or her information to be private during a past stay. The release of information also must be (b) in the individual’s best interest as determined by the health care provider, in the exercise of professional judgment. Both conditions must be true for a provider to release patient information.

What if details about a patient are already “public knowledge?”

The fact that a patient’s personal health information may already have been made public through some other circumstance does not affect GMHA’s obligation to protect that patient’s information under HIPAA. Police and fire departments and other organizations are not entities covered under HIPAA, and often can release information a health care facility cannot. Information in these cases will be released by the GMHA following the same guidelines for any other disclosures.

Are interviews, photos and videos of patients allowed?

Photographs, video or interviews can be granted only if a hospital representative obtains the patient’s written authorization. When the patient is a minor, written authorization of a parent or guardian must be obtained. Media must be escorted by the GMHA Public Information Officer or a designated representative at all times.

What about patients who are public figures?

HIPAA does not distinguish between public or private persons and ordinary or infamous injuries. A public figure does not forfeit a right to privacy of their medical information, and information in these cases will be disclosed according to the above guidelines.

What penalties apply to wrongful disclosure?

Hospitals and individuals can face serious penalties for disclosing personal health information about patients without proper permission. The Department of Health and Human Services views wrongful disclosure of such information as a violation of civil rights and has delegated the civil enforcement responsibilities for the Privacy Rule to its Office of Civil Rights. Criminal violations are referred to the U.S. Department of Justice.

A person who knowingly uses, obtains and/or discloses private health information in violation of these rules faces a fine of not more than \$50,000, imprisonment of not more than 1 year, or both. A person who does so with the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain or malicious harm faces a fine of not more than \$250,000, imprisonment of not more than 10 years, or both.

Members of the press: Any person who uses, obtains and/or discloses personal health information under false pretenses – such as if a reporter does not identify herself or himself as such – could be subject to a fine of not more than \$100,000, imprisonment of not more than 5 years, or both.

For More Information

- GMHA Notice of Privacy Practices:
<http://www.gmha.org/HIPAA/Notice%20of%20Privacy%20Practices%20for%20gmha.org.pdf>
- GMHA Confidential Information Policy:
<http://www.gmha.org/HIPAA/Confidential%20Information%20policy%20for%20gmha.org.pdf>
- U.S. Department of Health and Human Services's *Summary of the HIPAA Privacy Rule*:
<http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf> (see Page 6, "Facility Directories")
- 45 CFR, § 164.510: http://edocket.access.gpo.gov/cfr_2002/octqtr/45cfr164.510.htm
- American Hospital Associations Advisory: HIPAA Updated Guidelines for Releasing Information on the Condition of Patients: <http://www.aha.org/aha/advisory/2003/030201-media-adv.html>
- U.S. Department of Health and Human Services's HIPAA Privacy Rule FAQs:
<http://www.hhs.gov/hipaafaq/administrative/483.html>