

Module 2- HIPAA Releasing Protected Health Information (PHI) to the Media and HIPAA Complaints/Incident Reporting

Objectives

- Define the process for responding to Media requests.
- List sources for guidance.

HIPAA- Releasing Protected Health Information (PHI) to the Media

Policy Purpose



It is Memorial Hermann Health System's (Memorial Hermann, MHHS) policy to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and Memorial Hermann privacy policies regarding information that is released to the media.

Policy Statement



1. Memorial Hermann is responsible for protecting the privacy and confidentiality of our patients' Protected Health Information (PHI). Memorial Hermann will cooperate with the media whenever possible in order to promote a positive image to the public while continuing to ensure the patient's right of privacy.
2. All media requests must be directed to the Memorial Hermann System Services Communications Department to coordinate the release of information and ensure maintenance of a consistent image. No Memorial Hermann employee should talk to the media or any public officials without first conferring with a representative of the System Services Communications Department.

3. A patient Authorization is required prior disclosing ANY information about a patient to the media, public officials or any other sources outside of Memorial Hermann.
4. For the acute care facilities, representatives of the System Services Communications Department are available after hours through the hospital page operator. For the ambulatory care facilities, contact your direct manager who has a list and phone numbers of the communications on-call staff and will assist you in contacting them.
5. Information about the condition and location of an inpatient or emergency department patient may be released ONLY if the inquiry specifically contains the patient's name and the patient is listed in the facility directory.

6. Ambulatory facilities do not have a facility directory therefore no patient information will be disclosed. This includes whether or not the patient is or will be at the facility. You may inform the patient that you received an inquiry and it is the patient's discretion whether or not the patient returns the call.
7. As a matter of policy, the patient's location should not routinely be given to the media. Employees should be sensitive to our patient's need for privacy. When a patient is a public figure, celebrity, or VIP, journalists should not have access to their location without prior patient Authorization.

Policy Statement cont.

8. As long as the patient or the patient's legal representative has not requested that information be withheld, you may release the patient's one-word condition and location without obtaining prior patient Authorization.
9. Information on births will be released only by the parents or with their written authorization.
10. No information will be released on psychiatric patients, and photographs of psychiatric patients may not be taken under any circumstances.

11. The following activities or uses and disclosures *require written Authorization from the patient*:
 - a. Drafting a detailed medical statement (i.e., anything beyond the one-word condition) for approval by the patient or the patient's legal representative;
 - b. Taking photographs of patients;
 - c. Any type of public request or disclosure;
 - d. Interviewing patients; and
 - e. Posting any information regarding a patient on the MHHS internal website or any external website.

NOTE: Under no circumstances, without patient Authorization and, regardless as to what information is already in the public sphere, Memorial Hermann may not disclose a patient's name or any other health or personal information to the media, public officials or internet posts or any other public outlet.

12.If the patient is a minor, authorization for disclosure of any patient information must be obtained from the parent or legal guardian.

13.Patients can “Opt-Out” of providing information altogether. If the patient is incapacitated or an emergency situation exists, the facility representative may disclose the directory information if such disclosure is consistent with any known preference of the patient and the facility believes it is in the patient's best interest. The patient must be notified and provided an opportunity to opt-out as soon as possible.

14. Under the following circumstances, no information of any kind will be given out to the media, including confirmation of the patient's presence in the facility:
 - a. Psychiatric patients;
 - b. Chemical dependency/substance abuse patients;
 - c. Isolation patient's being treated for an infectious disease;
and
 - d. Obstetric patients following a miscarriage, ectopic pregnancy or other adverse outcome.

15. Matters of public record refer to situations that are reportable by law to public authorities, such as law enforcement agencies, the coroner, child abuse, gunshot wounds or public health officer. The facility has an obligation to report certain confidential information to a governmental agency, but do not make that information public and available to the media. (See Policy: HIPAA – Release of Protected Health Information Not Requiring Consent, Authorization or Opportunity for Objection).
16. In natural disasters or terrorist incidents, Memorial Hermann is permitted to disclose hospital directory information to anyone who asks for the patient by name.

17. Individuals who have been transported to a Memorial Hermann facility by ambulance, police or life flight from an accident, crime scene or fire is a matter of public record. These public records may prompt media calls. Only the one-word condition of the patient will be given.
18. When feasible, notify the next-of-kin prior to releasing patient information.
19. In disaster situations, Memorial Hermann may release information to other hospitals, health care providers and relief agencies in situations where multiple facilities are receiving patients from one disaster. You may facilitate the exchange of information regarding patients' location and status. (See Policy: HIPAA – Release of Protected Health Information Not Requiring Consent, Authorization or Opportunity for Objection).

20. Memorial Hermann 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. (See Policy: HIPAA – Release of Protected Health Information Not Requiring Consent, Authorization or Opportunity for Objection).
21. Current information should be made available to the media as soon as possible. If information is not yet available or if next-of-kin has not been notified, all media inquiries should be logged and callbacks made as soon as information is releasable.

22. Each Memorial Hermann facility must designate a secure area for media to gather so that information can be released in a press conference format that does not compromise patient privacy or the health care facility's need for added security in a disaster situation.

23. The following definitions will be used in a statement of Patient Conditions:

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

Questions

For questions please contact:

System Services Communications Department at 713-242-4941,
Legal In-house Counsel at 713-242-2420, or
the Privacy Office at 713-338-5751.

Scope



This Policy applies to (i) Memorial Hermann Health System (“Memorial Hermann”), (ii) all facilities and entities wholly-owned by Memorial Hermann and (iii) all facilities and entities controlled and operated by Memorial Hermann.

Summary

- All Media requests ***must*** be directed to the Memorial Hermann System Services Communications Department.
- Employees are **not to talk with the media** without direction and approval from the Communications Department.

Summary

- Memorial Hermann may disclose patient information to a public or private organization assisting in relief efforts, such as the Red Cross, for the purpose of notifying family members or others responsible for a patient's care.
- A patient must give written authorization prior to releasing any information to the media.

Summary

- **No patient information**, not even the acknowledgement that the individual is a patient at Memorial Hermann, will be released to the media on a psychiatric, isolation patients, obstetric patients following a miscarriage, ectopic pregnancy or other adverse outcome, or Prevention and Recovery Center (PaRC) patient.
- Memorial Hermann may release a **one-word condition** to the media on a patient if the caller asks for the patient by name (this does not apply to the exceptions listed above).
- If the patient is a minor, written authorization from the parent or legal guardian must be obtained prior to the release of any information to the media.

HIPAA-Complaints/Incident Reporting

Policy Purpose



This Policy identifies a process for filing complaints and reporting violations related to a Patient's right to privacy, and related to the Memorial Hermann Health System's ("Memorial Hermann's") privacy and security policies and procedures.

Policy Statement



Capitalized terms used but not otherwise defined shall have the meaning provided under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) implementing regulations or elsewhere in Memorial Hermann's health information policies and procedures.

1. A person who believes Memorial Hermann is not complying with the applicable requirements of the security processes may file a complaint with the Memorial Hermann Privacy Office or the Secretary of Health and Human Services (Secretary). To ensure an accurate and thorough complaint investigation, complaints made to the Memorial Hermann Privacy Officer should meet the following requirements:
 - a. The complaint should be filed in writing, either on paper or electronically; and
 - b. The complaint should name the entity(ies) or person(s) that is the subject of the complaint and describe the acts or omissions believed to be in violation of the applicable standards, requirements, and/or implementation specifications of any legally mandated privacy and/or security regulations.

Regardless if a complaint satisfies the foregoing conditions, Memorial Hermann will use its best efforts to immediately investigate any and all complaints.

2. Memorial Hermann acknowledges that the Secretary is empowered to and “may investigate” any complaints. Accordingly, Memorial Hermann will cooperate with any investigation or compliance review. Memorial Hermann will keep records including pertinent policies, procedures, or practices and of the circumstances regarding any alleged violation. Subject to legal privileges, Memorial Hermann will submit compliance reports, in a timely manner as requested by the Secretary.

3. Memorial Hermann's Privacy Office, in cooperation with appropriate department managers, will investigate any alleged violation of the organization's privacy and security policies, and take appropriate action to remedy the violation and initiate a corrective action, as appropriate.
 - a. Corrective Actions are the responsibility of the individual's manager/director.
 - b. The Privacy Officer determines the level of breach/violation.
 - c. The manager/director will work with the Privacy Office, Human Resources Advice and Counsel as appropriate, to determine the level of the corrective action.

- d. Employee corrective action must be completed within seven (7) work days, unless other extreme circumstances prevent. Otherwise, the corrective action will be completed and entered into work day on the employees first day returning to work.
 - e. All corrective actions, whether verbal, written, final written or termination must be entered into Workday within seven (7) work days following the corrective action.
4. Memorial Hermann will include contact information for filing a complaint with the Privacy Office and the Secretary in its Notice of Privacy Practices. The contact information will include the name, title, and telephone number of the organization's Privacy Office.

5. Memorial Hermann's workforce members must report any known or suspected Breaches, Privacy Violations, Information Security Violations, or Reportable Events to the Memorial Hermann Privacy Office or to their department managers immediately upon discovery (same day). Department managers will immediately (same day) upon discovery report the incident or allegation to the Privacy Office. All reports should be communicated maintaining strict confidentiality. Workforce members may utilize the Privacy "hot-line" as a means to report a Breach, Privacy Violation, Information Security Violation, or Reportable Event. Reports can be made anonymously.
 - a. **Privacy Office Phone: 713-338-5751**
 - b. **Privacy Office Fax: 713-338-4542**
 - c. **Hot-Line 713-338-5981**
 - d. **Email: HIPAA.Audit@memorialhermann.org**

6. The Privacy Officer will initiate a formal problem management process to record any suspected Breach, Privacy Violation, Information Security Violation, or Reportable Event, to reduce their incidence, and to prevent their recurrence. In addition, the Privacy Officer must prepare an annual analysis of reported Breach, Privacy Violation, Information Security Violation, or Reportable Event.

7. To ensure a quick, effective, and orderly response to incidents, Memorial Hermann will maintain procedures for handling known or suspected Breaches, Privacy Violations, Information Security Violations, or Reportable Events.

Scope



This policy applies to (i) Memorial Hermann Health System (“Memorial Hermann”), (ii) all facilities and entities wholly-owned by Memorial Hermann and (iii) all facilities and entities controlled and operated by Memorial Hermann.

Summary

- Any person who believes that Memorial Hermann is not complying with the Privacy or Security Rule requirements may file a complaint with the Memorial Hermann Privacy Office or the Secretary of Health and Human Services (HHS).
- The Secretary of HHS may investigate any complaints.
- Memorial Hermann Privacy Office investigates all suspected or confirmed policy or privacy violations.

Summary

- Memorial Hermann Privacy Office, along with the employee's manager/director, determines the level of breach and recommends corrective action per Employee Corrective Action Policy.
- Anyone may anonymously report a suspected or confirmed privacy or policy violation.
- Any suspected or confirmed violation must be reported to the Privacy Office immediately (same day).

References

- Policy: HIPAA - Releasing Protected Health Information (PHI) to the Media.
- Policy: HIPAA –Complaints/Incident Reporting.

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