

# *Disclosures and Release of Information*



*Practical Tools for Seminar Learning*

## Disclaimer

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- Step 4: After you complete the evaluation, you will receive your **CE certificate which you should print for your records**. The certificate must be retained by each participant as a record of their participation, along with a copy of their completed quiz.

## Faculty

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Nanette Sayles has extensive health information management in hospitals, a computer vendor and a consulting company. She was the 2005 Triumph Educator award winner. She has held numerous offices and other volunteer roles for the American Health Information Management Association, the Georgia Health Information Management Association, the Alabama Association of Health Information Management, Middle Georgia Health Information Management Association and Birmingham Regional Health Information Management Association.

Dr. Sayles has published two books: *Professional Review Guide for the CHP, CHS, and CHPS Examinations* and *Case Studies in Health Information Management*. She is currently the Program Director of the Health Information Management and Technology Programs/Associate Professor at Macon State College in Macon, Georgia.

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## Table of Contents

---

Disclaimer .....	i
How to earn one (1) CEU for participation .....	i
Faculty .....	ii
Discussion Topics .....	1
Federal Laws .....	1
Reasons for Disclosure and Release of Information Include.....	2
State Laws .....	2
Use vs. Disclosure .....	3
Authorization vs. Consent .....	3
Who can consent to release of information? .....	4
Who can consent when patient can't? .....	4
Authorization to Release Information .....	5
Valid Authorization .....	5-6
Revoke Authorization.....	6
Authorization Required .....	7
Authorization Not Required .....	7-8
Methods of Release .....	8
Faxing Requests.....	9
Patient Access.....	9
Denying Access.....	10
Individuals do not have right to .....	11
Subpoena .....	11
Valid Subpoena – General Requirements .....	12
Court Order .....	12
Valid Court Order – General Requirements .....	13
Redisclosure .....	13
Accounting of Disclosure .....	14-16
Minimum Necessary .....	16
Resource/Reference List .....	17-19
AHIMA Audio Seminars .....	19
About assessment quiz .....	20
Thank you for attending (with link for evaluation survey) .....	20
Appendix .....	21
Articles ( <i>Journal of AHIMA</i> ):	
HIPAA on the Job: Release of Information under HIPAA (Journal of AHIMA)	
Release of Information: The Basics	
Sample Forms:	
ABC Medical Center Return of Invalid Authorization for Release of Information	
Sample Health Record Correction/Amendment Form	
Assessment Quiz	
CE Certificate and Sign-in Instructions	
Quiz Answer Key	

***Discussion Topics***

- Discuss the privacy laws and regulations, both federal and state specific, governing the disclosure of health information
- Review best practices in responding to release of information requests
- Discuss how to manage HIPAA's patient access

1

***Federal Laws***

- Health Insurance Portability and Accountability Act of 1996
- Clinical Laboratory Improvement Act of 1988
- Privacy Act of 1974
- USA Patriot Act
- Freedom of Information Act
- Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1972

2

### ***Reasons for Disclosure and Release of Information include***

- Patient care
- Legal process
- Life insurance
- Medical insurance
- Accident settlement
- Quality of care
- Risk management

3

### ***State Laws***

- State laws vary from state to state
- Good resources are state hospital association or medical association

4

***Use vs. Disclosure***

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- Disclosure
- Use

5

***Authorization vs. Consent***

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- **Authorization:** patient authorizes release of protected health information that has already been created
- **Consent:** patient authorizes release of protected health information that has not been created

6

***Who can consent to release information?***

- **Competent legal adult**
- **Legal guardian or parent of minor**
- **Executor**
- **Emancipated minor**
  - Married
  - Self-supporting and does not live with parents
  - Pregnant
  - Military
  - 16 and living independently

7

***Who can consent when patient can't?***

- **Varies by state, but typically**
  - Legal guardian
  - Spouse
  - Adult child
  - Parent
  - Adult brother or sister
- **Documentation to support claim of legal guardian required**

8



***Authorization to release information***

- **Authorization must be in writing**
- **Fax or copies OK if policy allows**
- **Emergent release**
  - Call back process
  - Documentation
  - Get release after the fact

9

***Valid Authorization***

- Description of information to be released
- Name of person who is requesting release
- Name of org/person to release information
- Purpose of request
- Expiration date
- Statement regarding patient's right to revoke/exceptions to right to revoke
- Potential for redisclosure
- Signature of individual and date

10

***Valid Authorization***

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- **Authorization is invalid if:**
  - Expiration date has passed
  - Not completely filled in
  - Authorization has been revoked in writing
  - Required elements are missing
  - Facility knows that information provided is false

11

***Revoke authorization***

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- Patient has right to revoke
- Must request revocation in writing
- Can't revoke what has already been sent

12

***Authorization Required***

- **Psychiatric information/psychotherapy notes**
- **Marketing**
- **Insurance**
- **Law enforcement**
- **Patient**

13

***Authorization not required***

- **Treatment, Payment, Healthcare Operations (TPO)**
- **Accreditation and licensure**
- **Courts**
- **Employers: worker's compensation**
- **Funeral home: limited**

14

***Authorization Not Required***

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- **Health Departments**
- **Medical Examiner**
- **Research**
  - Institutional Review Board approval
- **As required by law**

15

***Methods of Release***

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- Mail
- Picked up
- Fax
- Electronic

16

### ***Faxing requests***

- Allowed under HIPAA
- Decide based on state laws and needs of your organization
- Check pre-programmed numbers
- Attach confidentiality statement
- Place in secure areas

17

### ***Patient Access***

- Right to review and/or copy
- Should make appointment
- Get request for access in writing
- Facility has 30 days to comply for onsite records and 60 days to comply for off site records
- Someone should sit with patient
- Only physician can interpret clinical contents of record
- Can charge reasonable fee for making copies or summary report

18

***Denying Access***

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**Patient cannot challenge if:**

- Patient is inmate
- PHI collected through research and the patient previously agreed to limitation on access which is still in place.
- Government record
- Obtained under promise of confidentiality

19

***Denying Access***

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- **Notify patient of reason**
- **Patient can challenge if**
  - Patient endangered if he or sees record
  - Someone referred to in record may be harmed
  - Personal representative makes request and you believe that request may harm patient or someone else.
- **Another professional must review if challenged. That decision is binding.**

20

***Individuals do not have right to:***

- Psychotherapy notes
- Information compiled in reasonable anticipation of, or for use in, civil, criminal, or administration or action or proceeding
- PHI when CLIA prohibits

21

***Subpoena***

- Command by court or other authorized official
- Subpoena ad testificandum
- Subpoena duces tecum
- Satisfactory assurance

22

***Valid Subpoena – General Requirements***

- Jurisdiction
- Name of court
- Names of the parties involved
- Docket (case) number
- Date, time and place
- Documents to be produced (when appropriate)
- Signature, stamp, seal of official
- Witness fees, where allowed

23

***Court Order***

- Court authorizes what would be prohibited by statute

24



### ***Valid Court Order – General Requirements***

- Name of court
- Names of parties involved
- Limitations of content
- Limitations of who content is disclosed to
- Other limitations
- Signature of judge

25

### ***Redisclosure***

- Records from other hospitals
- Part of permanent record

26

***Accounting of Disclosure***

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**Do not require tracking**

- Treatment, Payment, Healthcare Operations
- Individual (patient or according to authorization signed by patient)
- National security or intelligence
- Correctional institutions or
- Law enforcement, if requested
- Prior to date of HIPAA implementation

27

***Accounting of Disclosure***

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- Disclosures by practice
- Disclosure by business associate

28

***Accounting of Disclosure***

- **What must be maintained?**
  - Date of disclosure
  - Name and address of entity receiving PHI, if known
  - Brief description of PHI
  - Statement of why released
  - If multiple disclosures to same, then first everything, after that frequency and date of last event

29

***Accounting of Disclosure***

- **Health Oversight agency or law enforcement – temporary suspension**
- **Account of disclosure information must be retained for 6 years**
- **60 days turnaround**
  - 1-30 day extension possible
  - Notify patient of delay

30

***Accounting of Disclosure***

- First request is provide free
- Any additional requests in 12 month period reasonable fee
- Facility must provide opportunity to withdraw before charging

31

***Minimum Necessary***

- **HIPAA covered entity**
- **Release only the minimum necessary for purpose**
- **Does not apply to:**
  - Disclosures for patient care
  - Disclosures to patient
  - Disclosures per patient authorization
  - Disclosure required to meet HIPAA transactions
  - Disclosure to DHHS for enforcement
  - Disclosures required by law

32

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33

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34

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- **Practice Brief: Release of Information Reimbursement Laws and Regulations (Updated)**  
[http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1\\_023132.hcsp?dDocName=bok1\\_023132](http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_023132.hcsp?dDocName=bok1_023132)
- **HIPAA on the Job: Release of Information under HIPAA**  
[http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1\\_009470.hcsp?dDocName=bok1\\_009470](http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1_009470.hcsp?dDocName=bok1_009470) (Note: this article is available to AHIMA members only, through the FORE Library Body of Knowledge.)
- **Release of Information: The Basics**  
[http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1\\_009547.hcsp?dDocName=bok1\\_009547](http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1_009547.hcsp?dDocName=bok1_009547) (Note: this article is available to AHIMA members only, through the FORE Library Body of Knowledge.)
- **ABC Medical Center Return of Invalid Authorization for Release of Information**  
[http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1\\_027652.pdf](http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1_027652.pdf) (Note: this article is available to AHIMA members only, through the FORE Library Body of Knowledge.)

35

## Resource/Reference List

- **Laws and Regulations Governing the Disclosure of Health Information (Updated)**  
[http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1\\_016464.hcsp?dDocName=bok1\\_016464](http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_016464.hcsp?dDocName=bok1_016464)
- **Sample Health Record Correction/Amendment Form**  
[http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1\\_016258.hcsp?dDocName=bok1\\_016258](http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1_016258.hcsp?dDocName=bok1_016258) (Note: this article is available to AHIMA members only, through the FORE Library Body of Knowledge.)
- **Practice Brief: Patient Access and Amendment to Health Records (Updated)**  
[http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1\\_000027.hcsp?dDocName=bok1\\_000027](http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_000027.hcsp?dDocName=bok1_000027)
- **Redisclosure of Patient Health Information (Updated)**  
[http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1\\_018169.hcsp?dDocName=bok1\\_018169](http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_018169.hcsp?dDocName=bok1_018169)

36

## Resource/Reference List

- **Practice Brief: Understanding the Minimum Necessary Standard (Updated)**  
[http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1\\_018177.hcsp?dDocName=bok1\\_018177](http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_018177.hcsp?dDocName=bok1_018177)
- **Preemption Analysis Under HIPAA—Proceed with Caution by Pritt**  
[http://library.ahima.org/xpedio/groups/public/documents/ahima/bok3\\_005197.hcsp?dDocName=bok3\\_005197](http://library.ahima.org/xpedio/groups/public/documents/ahima/bok3_005197.hcsp?dDocName=bok3_005197)

37

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***Assessment***

To access the assessment quiz that follows this seminar, download the seminar's resource book at

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Your sign-in form and certificate of completion are also found in the resource book.



***Thank you for attending!***

**Please visit the AHIMA Audio Seminars Web site to complete your evaluation form online at:**

<http://campus.ahima.org/audio/fastfactsresources.html>





## Appendix

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### Articles (*Journal of AHIMA*):

HIPAA on the Job: Release of Information under HIPAA (Journal of AHIMA)

[http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1\\_009470.hcsp](http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1_009470.hcsp)

Release of Information: The Basics

[http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1\\_009547.hcsp](http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1_009547.hcsp)

### Sample Forms:

ABC Medical Center Return of Invalid Authorization for Release of Information

[http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1\\_027652.pdf](http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1_027652.pdf)

Sample Health Record Correction/Amendment Form

[http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1\\_016258.hcsp](http://library.ahima.org/xpedio/groups/secure/documents/ahima/bok1_016258.hcsp)

Assessment Quiz

CE Certificate and Sign-in Instructions

Quiz Answer Key



# HIPAA on the Job: Release of Information under HIPAA

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by Margret Amatayakul, RHIA, FHIMSS, and Kathleen A. Frawley, JD, MS, RHIA

With tighter rules and greater penalties, many hospitals are reassessing their disclosure practices, release of information functions, and copy service contracts. What are the issues to be concerned about?

## What Rules Apply?

The entire set of privacy standards relates to the appropriate use and disclosure of protected health information. These include issues of:

- consent
- authorization
- opportunity to agree or object
- minimum necessary
- de-identification
- right to request restrictions
- right to an accounting for disclosures

All have important new considerations.

## Who's Responsible?

Traditionally, the burden of obtaining consent would fall first on admissions personnel. Many hospitals are concerned that obtaining consent at this point will slow down the process of admissions, which they are trying to speed up. Admissions personnel may also not have adequate background to respond to questions concerning the clinical implications of some of the individuals' rights.

For reasons both related to work flow as well as obtaining informed consent for treatment, some hospitals have started to make significant changes in the admissions area—essentially eliminating patient contact with admissions. Many admissions functions related to information collection, insurance coverage, financial counseling, and preadmissions testing are performed before the patient arrives at the hospital. In other cases, the patient is a direct admit from the emergency department, also bypassing admissions.

What formerly were admissions functions have been taken over by "front end" business office personnel. It has, therefore, become the responsibility of nursing to ensure that appropriate consents exist once the patient arrives at bedside.

One area that remains unclear is the matter of patient-requested restrictions. Although most hospitals are able to admit patients anonymously (as "confidential," "a.k.a.," or VIP patients), this has traditionally been an all-or-nothing process. And, sometimes, it has not worked well between the clinical and financial systems.

Under HIPAA, the patient may request a restriction that is much more granular than in the past. For example, the patient may request that a specific nurse or lab technician not have access to information. While hospitals do not have to accept such restrictions, some hospitals will look to their system vendors for further support for this function. This will also require greater input from clinicians who can evaluate the impact of restrictions on patient care.

## **Authorization and Accounting for Uses and Disclosures**

Because of the privacy rule's specificity with respect to when an authorization is required and when it is not required, many hospitals are cracking down on areas that release information—other than the HIM department. Where in the past radiology may have released a copy of "just the last x-ray report," everyone is becoming much more cognizant of privacy requirements.

Nursing areas are refusing to speak to callers concerning the status of patients, requesting them to contact the patient or his or her personal representative directly. And organizations are beginning to recognize that when an individual presents to an ancillary area, the identity of the individual requesting information must be verified.

All members of the healthcare team are more aware of rules associated with what may and may not be released. They are also more aware of the need to obtain an authorization should a patient later request an accounting of use and disclosure. Many patient care areas that formerly were fairly lax about releasing information have come to realize the associated issues and are directing such requestors routinely to the HIM department.

## **Minimum Necessary and De-Identification**

The final privacy rule requires that organizations limit the personal health information disclosed to the "minimum necessary to accomplish the intended purpose of the use, disclosure, or request." The rule also specifies how health information can be shared without an authorization when it has been properly "de-identified." Determining what the "minimum necessary" is and when to de-identify information requires special expertise. In particular, the jury may still be out on how to determine the minimum necessary.

HIM departments have traditionally been good at gatekeeping for these functions. However, minimum necessary and de-identification require renewed attention in all areas. For example, an HIM department that provides copies of records to a physician for a non-IRB approved research study with patient's name and medical record number removed may not truly remove all identifying information.

The "minimum necessary" standard applies to other areas as well. Some accounting systems dump all accounts receivable files into a collections file, although not all accounts qualify for collections. Further, some of these files contain far more information than is minimally necessary for collections agencies. Many hospitals refuse participation in any surveys requesting patient-identifiable information. However, not all hospitals follow this practice.

To respond to such surveys, hospitals will need to negotiate business associate contracts with such requestors or fully de-identify the data according to HIPAA requirements.

## How Is Release of Information Affected?

In addition to hospital-wide issues of use and disclosure, the release of information function is specifically coming under increased scrutiny. Many HIM professionals are reassessing their organization's quality of work in this area. Whether outsourced or not, any information released erroneously—always a cause for concern—is now not only an unfortunate incident but could result in penalties for noncompliance with HIPAA.

## How Can I Assess Our Release of Information Function?

Traditionally, HIM departments have relied on recipients of incorrect information to report errors in release of information. Under HIPAA, a more proactive stance needs to be taken. There are several activities that can be considered.

Start with policies and procedures:

- Have policies and procedures for release of information been **updated with HIPAA requirements**?
- Do policies and procedures for release of information also reflect more stringent **state requirements**?
- Are policies and procedures for release of information **circulated to all applicable areas** (for example, nursing, admissions/registration)?
- Do all personnel in the facility know how to **obtain copies** of policies and procedures on release of information?
- Do policies and procedures reflect **revision dates** to ensure changes are made when there are changes in rules?

Review the authorization form and process. Does the authorization form:

- request sufficient identifying information to be able to positively select the **correct patient's medical record** for copying? (If the hospital's population has a lot of common names, more information than simply the name and address of patient should be obtained.)
- contain checkboxes for the patient to check off what **specific information**, by type and date, is to be released to meet the minimum necessary requirement?
- ask for the **name or class of person** to whom the information is to be released?
- contain an **expiration date** or event that relates to the individual or purpose of the use and disclosure? (This will require obtaining the purpose of the request.)
- contain a **statement** that information used or disclosed may be subject to redisclosure by the recipient and no longer be protected by the privacy rule?
- contain a checkbox to indicate the identity of the requestor has been **verified** and how (for example, by reviewing a photo identification or matching a signature)?
- are patients given a **copy** of the authorization form?
- are staff thoroughly **trained** in this process? (If "checks and balances" are needed, this could be part of the overall QI function.)
- **include**, if the authorization is for the hospital to request information for its own uses or disclosures or for others, statements as to:

- purpose of use or disclosure?
- that the individual has the right to inspect or copy the information to be used or disclosed?
- that the individual has the right to refuse to sign the authorization?
- whether there is any direct or indirect remuneration associated with the use or disclosure?

#### Audit the copying function:

- Is there a **system to review** at least a sample of all information copied before it is released on a regular basis, and if outsourced, that this audit is shared with the provider?
- Does the audit process **check** the copied material against the name and other identifying information as well as the requested content on the authorization form?
- Does the audit process include verification that any material relating to **amendment** from the patient (including a request for amendment that has been denied) that relates to the requested content to be released is also released?
- Does the audit process check that a **copy of the authorization** has been filed in the chart?
- Are **records of the audit** kept in order to provide personnel counseling and to increase the size of the sample as necessary?
- Is there a way to **trend results** and, if necessary, prove oversight of the process?

#### Audit for releases made without authorization:

- Is there documentation of any release of information made for other than treatment, payment, or operations that does not require an authorization?
- Do release of information personnel know when an authorization is required and when an authorization is not required?
- Is release of information occurring elsewhere in the facility? (Consider using an external audit service to test this.)
- Are records of the audit kept in order to provide personnel counseling and to increase the size of the sample as necessary?

#### Track complaints:

- Is there a log of callers or other correspondence to the release of information desk concerning any indications that information was:
  - not received?
  - received erroneously?
  - not received in a timely manner?
- Is there a facility-wide information privacy incident reporting mechanism from which release of information complaints can also be identified?
- Is every incident on the log investigated? (Does the HIM department have the authority to investigate and remediate release of information incidents outside the department? If not, who does? Is there coordination between this individual and the HIM department?)
- Are records of the investigations kept in order to provide personnel counseling?

#### Train:

- Do all personnel in the HIM department receive training on handling requests for release of information (if only to refer them to designated personnel)?
- Are other personnel from key areas periodically provided training on release of information (if only to refer them to designated personnel in the HIM department)?
- Is a log kept of all release of information training, including who attended and what training was provided?
- Is training accompanied by a certification process?
- Do release of information contract service personnel obtain training from the vendor that is equivalent to the training provided by the facility, or does the contract with the vendor include time for the facility to train and retrain contract service personnel?
- Is there a system of awareness building that keeps release of information requirements in the forefront of the minds of all members of the facility's work force?

Finally, remember that any release of information function that is outsourced must have a business associate contract. (See "HIPAA Compliance Questions for Business Partner Agreements" by Michael Roach in the February 2001 *Journal of AHIMA*.)

For a hospital to be fully compliant with HIPAA's privacy rule, much attention needs to be paid to permitted and required uses and disclosures of all kinds—including the function typically considered "release of information."

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## Release of Information: The Basics

by Elaine Yaggie, RHIA

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*Whether you're new to the HIM profession or a long-time expert, release of information presents perennial challenges-especially in light of HIPAA. This article brings you the basics and the latest updates.*

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Release of health information has been a hot topic for years. Today, more than ever, it is fast becoming a global issue as specialized areas of practice, multitudes of release destinations, and the complexities of medical records complicate the scenario.

In an increasingly diverse and complex healthcare environment, HIM professionals find themselves confronting a myriad of circumstances and issues. We also need to keep up with developing issues like HIPAA, which will require us to reassess our existing policies to ensure compliance with new requirements like the new privacy rule. At the same time, protecting the confidentiality and quality of healthcare is still a priority. As the HIM world explodes with demands for information, how do we balance confidentiality and the dissemination of the information requested? This article will address these issues.

### It's a Jungle of Information Out There

Release of information (ROI) comes in all shapes and sizes these days. Every time you think that you've seen or heard it all, a new type of request appears. While in the past we were releasing to insurance companies, attorneys, and regulatory agencies, we are now releasing to business offices of all types for reimbursement of claims, the patients themselves for their own personal files, ombudsmen, social service agencies, law enforcement, research, and more.

What's more, along with the different types of requests, we are dealing with numerous types of records in many specialized areas of practice. These types of records include those related to alcohol and drug abuse, mental health, HIV/AIDS, correctional facility inmate records, independent medical evaluations, Social Security disability evaluations, and photographs, audio tapes, videotapes, and diagnostic tracings.

To make matters more complicated, we're working in a new spectrum of settings-from hospitals to ambulatory clinics, urgent care, physician offices, long-term care, home health, hospice, occupational health, and sports medicine. Some of these practices are free standing and others are affiliated with a hospital or health system.

Some commonly asked questions are:

- how do I know what to release?

- how do I balance the patient's right to privacy with the legitimate need to know by various requesters?
- how do I handle the demanding requester, be it a patient or someone else?
- what medium can I use to release the information?

Each facility should have policies and procedures that define what it can and cannot release. These policies and procedures should be based on federal and state law and standards of practice. AHIMA practice briefs, published monthly in the Journal of AHIMA and available at [www.ahima.org](http://www.ahima.org), are good places to start in designing these policies. Other important sources to reference include HIPAA's final privacy rule, the federal confidentiality of alcohol and substance abuse rule, the federal privacy act, and state laws.

HIM directors should reevaluate every aspect of their ROI processes to assure compliance with the HIPAA final privacy rule by April 2003. This process will need to include:

- establishment of a notice of privacy practices
- development of a consent for treatment, payment, and healthcare operations
- reevaluation of existing authorization forms
- reevaluation of all ROI-related processes
- reevaluation of disclosure tracking
- modification of charges
- formalization of the patient health information complaint process
- establishment of a system for processing patient amendments
- evaluation and action related to the minimum necessary standard
- consultation with legal counsel about where state versus federal law will prevail

In the meantime, HIM professionals may want to start moving to the HIPAA requirements for a valid authorization detailed in "[Authorization Requirements](#)".

Another cardinal rule for release of information is to always document what you have released. The HIPAA final privacy rule requires that covered entities be able to provide an accounting of disclosures for six years prior to the date on which the accounting is requested (with certain exceptions). HIPAA requires the following information be included and provided in such an accounting:

- the date of disclosure
- the name of the entity or person who received the protected health information and, if known, the address of such entity or person
- a brief description of the protected health information disclosed and a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or in lieu of such statement, a copy of the individual's written authorization

One way to adhere to the standards is to document disclosure of protected health information on the authorization form. In addition to the items required by HIPAA, the name of the individual processing the disclosure is also advised.

Some organizations may choose to maintain some type of automated log in place of or in addition to making a notation on the authorization form. Because HIPAA requires providers to track disclosures of patient information, an automated log may be an asset.



## **Dealing with Difficult People**

How many times has your department been the recipient of an uninvited visitor who has asked you to comply with a request immediately? These people can be forceful and intimidating. A good practice is to ask the requester to please take a seat while you check on the availability of the records. This gives you time to review the authorization and the chart and make a decision about whether or not you can accommodate the requester.

Have you ever had a requester who quotes state law when asking you to fill a request? To handle these requests, first make sure the law being quoted is for your state-state laws do not cross state lines. Next, make sure the authorization is valid, that it is signed by an individual authorized by law, and that it meets the elements required by federal and state law. When a request is not covered by facility policy and procedure, consult your supervisor and, if necessary, legal counsel.

Most requesters will respect and appreciate your diligence when you ask that the authorization be completely filled in to comply with your policy or state guidelines. Of course, there will always be the requester who states, "You are the only facility who is demanding this of me." Know that this same requester is making that statement everywhere he conducts business. Calmly listen, but don't back down.

## **Special Situations**

In this day of informed consumers, requests for information are multiplying. Here are some other situations that may occur:

### **Releasing records of deceased patients**

When asked to release the record of a deceased person, check your state laws. Usually the personal representative of a deceased person (for example, the executor of an estate) may exercise all of the deceased patient's rights relative to the disclosure of health information. If there is no executor, the patient's next of kin can be consulted, usually in the following order:

- spouse
- adult child
- parent
- adult brothers or sisters

Orders of consents may vary between states, so be familiar with the laws in your state. Also, determine if a durable power of attorney exists and know whether it expires upon the death of the patient.<sup>1</sup> Be aware that when a patient is divorced at the time of death, the former spouse does not have the right to the patient's records, nor do stepchildren.

### **Adoption**

Many adopted persons are searching for their roots and biological parents. As part of their search, they will ask for their birth record. Again, familiarizing yourself with state law is key, because regulations vary from state to state. Although birth records are sealed, most states allow adoptees to receive information about their birth parents but prohibit access to data that identifies the parents. Some states allow access through a court order or through an adoption registry.

In general, requests from biological parents should be referred to the agency that handled the adoption. Likewise, adopted children trying to trace their biological parents should be referred to the agency that handled the adoption. In states without adoption history programs, children seeking medical history information should consult an attorney to obtain a court order for disclosure of this information. An adopted child should not be permitted to review a parent's record without the parent's written authorization.<sup>2</sup>

### **Multimedia elements of the record**

Multimedia elements of the record, such as photographs, videotapes, audio tapes, and diagnostic tracings, are becoming more and more common. Unless otherwise required by state law, photographs, videos, scans, and other images should not be released to outside requestors without specific written authorization from the patient or his or her legal representative. The authorization should state that the patient agrees to have the photographs released to the requestor and the purpose for which they will be used. This may be incorporated into the facility's standard authorization for release of information form.<sup>3</sup>

### **Prison inmates**

Not everyone lives near a federal prison. However, we should all be aware that federal laws apply to release of health information concerning federal prison inmates.

For instance, the HIPAA privacy rule states that covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate protected health information about the individual, if such information is necessary for the provision of healthcare. And inmates do not have a right to the usual notice of uses and disclosures that the rule mandates for other patients.

### **Faxing health information**

Everyone wants their information immediately, and the most commonly asked question by a requester is: "Will you fax it to me?" Faxing has become commonplace in healthcare organizations, but HIM professionals should take the necessary steps to ensure the security of the information. It's recommended that organizations obtain a written authorization for any use or disclosure of individually identifiable health information made via fax machine when it is not otherwise authorized by the individual's consent to treatment or federal law or regulation.

When transmitting identifiable health information, a confidentiality statement should be included in the cover page stating that the documents "contain health information that is legally privileged and intended only for the use of the individual or entity named above." Should the sender become aware that a fax was misdirected, he or she should contact the receiver and ask that the material be returned or destroyed.<sup>4</sup> (For the complete text of the confidentiality statement, see AHIMA's practice brief "Facsimile Transmission of Health Information". An updated version is scheduled to be published in the June 2001 *Journal of AHIMA*.)

Each day, HIM professionals are asked to release information that could potentially change the lives of many people. It's an important responsibility, but we are well equipped to design the right policies and procedures to ensure that it is carried out correctly.

## Notes

1. Hughes, Gwen. "Last Rites: ROI and the Deceased." In Confidence 8, no. 2 (March/April 2000): 7-11.
2. Hughes, Gwen. "The Ins and Outs of Adoption Information Provision." In Confidence 8, no. 1 (Jan/Feb 2000): 6-7.
3. Carpenter, Jennifer. "Patient Photography, Videotaping, and Other Imaging (Updated)." Journal of AHIMA 70, no 1 (1999): insert.
4. Hughes, Gwen. "Facsimile Transmission of Health Information." Journal of AHIMA, forthcoming.

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### *Frequently Asked ROI Questions*

by **Gwen Hughes, RHIA**

**Q: Who can authorize the disclosure of patient health information for a normally competent adult when that individual is unable to make informed decisions for himself?**

**A:** The individual authorized to consent to the release of patient health information on behalf of a critically ill, comatose, or incapacitated adult patient who is unable to make informed decisions would be the same individual authorized to consent to treatment. The order varies by state, but it is often as follows:

1. the appointed guardian of the patient
2. the individual to whom the patient gave a durable power of attorney that encompassed the authority to make healthcare decisions
3. the patient's spouse from a marriage recognized by law
4. adult children of the patient
5. parents of the patient
6. adult brothers and sisters of the patient

No person may authorize release of health information on behalf of the patient when a person of higher priority refused to give such authorization. The order of consent may differ between states. Some states make provisions for domestic partners.

**Q: Who can consent when the patient is incapacitated and a patient representative is not available?**

**A:** In the case of urgent or continuing care, disclosure of health information to another healthcare provider can be made without consent. Often, such a provision is part of a state's health information disclosure law. Where no state disclosure law exists, HIM professionals must refer to professional standards of practice. AHIMA's practice brief on disclosure states, "Information may be disclosed without patient authorization as required for continued care."<sup>1</sup> Additionally, in the case of an emergency, an exception to consent is well recognized in case law.

The standards for privacy of individually identifiable health information also allow for the disclosure of an individual's health information without authorization for treatment, payment, and healthcare operations.<sup>2</sup>

**Q: When can a minor authorize the disclosure of his or her own records?**

**A:** A minor is an individual who has not attained the age of majority specified in applicable state law, or, when no age of majority is specified in state law, the age of 18. A minor may authorize the disclosure of his or her records when the minor is emancipated. Some states declare minors "emancipated" when they are:

- married
- living away from home and self-supporting
- declared legally emancipated by a court of law
- pregnant and unmarried
- on active duty with the United States Armed Forces
- at least 16 years old and living independently from parents or guardians<sup>3</sup>

A minor may also authorize the disclosure of his or her records when the minor patient, acting alone, has the legal capacity under state law to apply for and obtain alcohol or drug abuse treatment. In this case, any written consent for disclosure may be given only by the minor patient. This restriction includes any disclosure of patient identifying information to the parent or guardian of the minor for the purpose of obtaining financial reimbursement.

Where state law requires consent of a parent, guardian, or other person for a minor to obtain alcohol or drug abuse treatment, any written consent for disclosure must be given by both the minor and his or her parent, guardian, or other person authorized under state law to act in the minor's behalf.<sup>4</sup>

A minor may also consent when the minor, acting alone, has the legal capacity under state law to apply for and obtain specific types of medical care and treatment. For example, in some states, a minor might be able to consent independently to family planning and treatment, or outpatient mental health or substance abuse treatment. If state law allows a minor to consent independently to such treatment, disclosure may be given only by the minor patient.

As state laws vary, it is important to check consent and disclosure law relative to family planning and mental health treatment.

**Q: Where can I obtain copies of my state laws relative to who may consent?**

**A:**

1. Your state hospital association may publish a book on informed consent that addresses who may consent and may include copies of your state's laws. To inquire, phone your state hospital association.
2. See the Web site [www.alllaw.com/state\\_resources](http://www.alllaw.com/state_resources) to search for state law relative to consent.
3. Ask your facility's legal counsel to provide you with copies of applicable state consent

law.

4. Some facilities have strong working relationships with their malpractice insurer, who may be able to provide copies of applicable state law.
5. Depending upon the size of your facility or community library, it may contain a copy of your state's statutes and administrative code. If it does, you can research these books yourself, or ask the librarian for assistance.
6. In communities with a law school, the reference desk at the law school library may research and provide copies of applicable state law for a minimal fee.

It is important that HIM professionals are familiar with state and federal law, and that healthcare organizations consult these regulations when formulating their policy on consent.

## Notes

1. Brandt, Mary. "Practice Brief: Disclosure of Health Information." *Journal of AHIMA* 67, no. 9: (1996).
2. CFR, Parts 160-164, Standards for Privacy of Individually Identifiable Health Information; proposed rule.
3. Brandt, Mary. *Release and Disclosure: Guidelines Regarding Maintenance and Disclosure of Health Information*. Chicago: American Health Information Management Association. 1997.
4. Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Chapter 2, Part 2, Subpart B, Section 2.14

(Excerpted from *In Confidence*, AHIMA's newsletter on healthcare privacy. For subscription information, go to <http://www.ahima.org/>.)

## *Authorization Requirements*

- HIM professionals should be aware of the requirements of the HIPAA privacy rule regarding valid authorizations. It's not too early to move toward implementing these requirements. According to the rule, an authorization includes:
- "A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion
- The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure
- The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure
- An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure
- A statement of the individual's right to revoke the authorization in writing and the exception to the right to revoke, together with a description of how the individual may revoke the authorization
- A statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and can no longer be protected by this rule
- Signature of the individual and date
- If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual."

Read the text of the final privacy rule online at <http://aspe.os.dhhs.gov/admnsimp>.

### ***Release of Information in Brief***

Check out these AHIMA resources on release of information:

This issue includes a number of updated and new practice briefs on this topic:

- Consent for the Use or Disclosure of Individually Identifiable Health Information
- Laws and Regulations Governing the Disclosure of Health Information
- Notice of Information Practices
- Patient Anonymity (Updated)
- Release of Information for Marketing or Fund-raising Purposes (Updated)

Other AHIMA practice briefs are available at <http://www.ahima.org/>:

- Destruction of Patient Health Information (Updated)
- Information Security: A Checklist for Healthcare Professionals (Updated)
- Managing Health Information Relating to Infection with the Human Immunodeficiency Virus (HIV) (Updated) (scheduled to be updated in June 2001)
- Release of Information Laws and Regulations
- Patient Photography, Videotaping, and Other Imaging (Updated) (scheduled to be updated in June 2001)

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**ABC MEDICAL CENTER  
RETURN OF INVALID AUTHORIZATION  
FOR RELEASE OF INFORMATION**

Patient Name	Date

ABC Medical Center has received your request for release of medical information on the above-named patient. Federal regulations [Health Insurance Portability and Accountability Act of 1996, 45 CFR Subtitle A, Subchapter C, Part 164.508], require that authorizations for release of medical information contain specific elements. We are unable to process your request at this time because one or more of the following elements are missing on the authorization form you provided:

- Patient's full name, address, and date of birth
- Name of the institution/individual authorized to release the information
- Name of the institution/individual authorized to receive the information
- A description of the information to be disclosed that identifies the information in a specific and meaningful fashion, including dates of treatment
- An expiration date or an expiration event that relates to the patient or the purpose of the request
- A statement of the patient's right to revoke the authorization in writing and the exceptions of the right to revoke, together with a description of how the patient may revoke the authorization
- A statement that the information disclosed may be subject to redisclosure by the recipient and no longer be protected by state or federal law or regulations
- Signature of the patient or his personal representative and the date signed
- If the authorization is signed by a personal representative of the patient, the authorization must include a description of the representative's authority to act for the patient
- Wording that authorizes the release of information concerning HIV testing or treatment of AIDS, AIDS-related conditions, drug or alcohol abuse, drug-related conditions, alcoholism, and/or psychiatric or psychological conditions

For your convenience, we have enclosed a copy of the ABC Medical Center form that includes all the necessary elements. Please complete this authorization form, have it signed, and return it to the address below. We will process your request when we receive the completed authorization.

- Upon search of our patient database, we find no records for the dates of service requested. If the dates listed on your request are incorrect, please return your request with the new dates of service.

Please return the completed authorization form and any supporting documentation to:

Correspondence Coordinator  
 ABC Medical Center  
 Health Information Management Department  
 Street Address  
 City, State Zip Code  
 Telephone: 999.999.9999



### Sample Health Record Correction/Amendment Form

#### Request for Correction/Amendment of Health Information

Patient Name: \_\_\_\_\_ Birth date: \_\_\_\_\_

Patient Number: \_\_\_\_\_

Patient Address: \_\_\_\_\_

Date of Entry to be amended: \_\_\_\_\_

Type of entry to be amended: \_\_\_\_\_

Please explain how the entry is incorrect or incomplete. What should the entry say to be more accurate or complete?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Would you like this amendment sent to anyone to whom we may have disclosed the information in the past? If so, please specify the name and address of the organization or individual.

Name	Address
_____	_____

Signature of Patient or Legal Representative \_\_\_\_\_ Date \_\_\_\_\_

#### For Healthcare Organization Use Only:

Date Received \_\_\_\_\_ Amendment has been:  Accepted  Denied

If denied, check reason for denial:

- PHI was not created by this organization
- PHI is not part of patient's designated record set
- PHI is not available to the patient for
- PHI is accurate and complete



inspection as required by federal law  
(e.g., psychotherapy notes)

Comments of Healthcare Practitioner:

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Name of Staff Member	Title
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Signature of Healthcare Practitioner	Date
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*Note: This sample form was developed by AHIMA for discussion purposes only. It should not be used without review by your organization's legal counsel to ensure compliance with local and state laws.*

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Source: AHIMA Practice Brief, "Patient Access and Amendment to Health Records" (updated May 2001)
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## Assessment Quiz – Disclosures and Release of Information

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To earn continuing education credit of one (1) AHIMA CEU, Fast Facts Audio Seminar listeners must also complete this 10-question quiz. This CE credit is for attending the audio seminar AND completing this quiz. Please **keep a copy** of the completed quiz with your certificate of attendance. **Do not send a copy to AHIMA.**

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1. Barbara is 17 years old and claims to be an emancipated minor. Justification to support her claim would include all of the following except:
  - a. she is at least 16 and living independently
  - b. she has a driver's license
  - c. she is married
  - d. she is pregnant
2. Todd sent Macon Hospital an authorization to release his records to his attorney last week. This morning Todd fired his attorney and called the hospital to stop them from releasing records to him. Which of the following statement(s) is/are true?
  - a. Todd does not have the right to revoke an authorization
  - b. The request to revoke must be in writing
  - c. Todd can only revoke the authorization if the records have not already been sent
  - d. Both B and C
3. Part of my job is to review authorizations to determine if they are valid. Which of the following content is not part of my audit?
  - a. description of information to be released
  - b. signature of patient
  - c. name of organization authorized to release information
  - d. date information is needed by organization receiving information
4. Patient authorization is required for which of the following:
  - a. physician for patient care
  - b. nurse conducting quality audit
  - c. insurance company
  - d. risk manager reviewing chart to determine risk of liability
5. John Brown has asked to review his paper-based medical record. If the records are stored onsite, how many days does the facility have to comply?
  - a. 30      b. 60
  - c. 90      d. 120
6. Sabrina received an accounting of disclosures six months ago and is now requesting a second one. Which of the following statements is true?
  - a. Sabrina can only receive one a year
  - b. The facility must provide Sabrina with a free copy. [ continued → ]
  - c. The facility may charge Sabrina a reasonable charge for the second request
  - d. The facility may or may not provide the request based on their policy
7. I am copying a record in response to a valid request. Which of the following statements is true?
  - a. I should include copies of records from other healthcare providers assuming state law does not prohibit
  - b. I should not include copies of records from other healthcare providers
  - c. I should only include copies of records from other healthcare providers if the other facility agrees
  - d. I should only include copies of records from other healthcare providers if the request specifically mentions them
8. Tammy and Sarah are arguing over whether faxing records is disallowed under HIPAA. Which of the following is the BEST answer?
  - a. It is not disallowed
  - b. It is not disallowed but steps should be taken to maintain privacy and security
  - c. It is disallowed
  - d. It is not disallowed but the facility must submit their policy and procedures or the Office of the Inspector General for approval
9. Rachel requested an amendment to her medical record and it was denied. Which of the following statements is true?
  - a. Rachel has had her HIPAA rights violated
  - b. Rachel has the right to add a note to her medical record stating her objection to the disputed information
  - c. The facility did not have the right to deny her request
  - d. Rachel did not have the right to request the amendment
10. Minimum necessary applies to all of the following except:
  - a. patient care
  - b. law enforcement
  - c. patient request
  - d. Office of Inspector General investigation

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must complete the online evaluation and sign-in information,  
in order to view and print the CE certificate.*

## Quiz Answer Key

### Fast Facts Audio Seminar: *Disclosures and Release of Information*

1: b; 2: d; 3: d; 4: c; 5: a; 6: c; 7: a; 8: b; 9: b; 10: b

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