



## Lack of Transparency? HIPAA is Not the Reason Why.

Volume 7 2016

A fundamental tenet of patient safety is talking with and listening to patients. Once healthcare professionals engage patients and families in dialogue and share information, it is simpler to understand patient values and preferences, then arrive at decisions jointly. These shared discussions result in consensus that can be thought of as a “shared mind” between patients and providers, with subsequent engagement improving patient outcomes and quality of life (Epstein et al., Why the nation needs a policy push on patient-centered health care).

When something does go wrong, health care professionals should have honest conversations with patients and families. However, organizations may not know all the contributing and causative factors immediately after the adverse event occurs. Organizations should pledge to keep patients and families updated regularly as more information becomes available and facts become known. Many professional associations view disclosure as fundamental to ethical care.

The Joint Commission necessitates disclosure of sentinel events as part of accreditation requirements. The Rights and Responsibilities of the Individual (RI) Standard RI.01.02.01, element of performance (EP) 21, requires an accredited organization inform patients or surrogate decision-makers about unanticipated outcomes of care, treatment, and services that relate to sentinel events (as defined by The Joint Commission). EP 22 of that standard specifies that the licensed independent practitioner responsible for managing the patient’s care, treatment and services (or his or her designee) must inform the patient about unanticipated outcomes of care, treatment, and services that relate to sentinel events when the patient is not already aware of the occurrence, or when further discussion is needed.

Was there open dialogue with your client? Did the facility disclose, investigate, and resolving instances when errors occurred in your client’s care? Do you think something is missing? Do you suspect tampering? Our legal nurse consultants will review all pertinent information and help you discover the truth.

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Consulting  
was founded  
by Sandra  
Krug, RRT,  
CRNA  
Legal Nurse  
Consultant.

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[info@LNCKRUG.com](mailto:info@LNCKRUG.com)

5910 Post Blvd  
#110296, Bradenton,  
FL



## Let's look at HIPAA and communication

HIPAA is a federal law intended to safeguard sensitive health information. The HIPAA Privacy and Security rules are often a source of confusion when it comes to communication. While HIPAA requires health care organizations to provide certain protections for patient information, it is quite flexible (Health & Human Services, Office of Civil Rights, Safeguards). The bottom line is that HIPAA provides privacy protections, while also allowing for releasing information that is necessary to deliver care. Rather than thinking of HIPAA in terms of what cannot be shared, consider what is allowed under HIPAA regulations:

- Communication with a patient's family members or friends – Health care workers can discuss health information with family, friends or other individuals who are directly involved in a patient's care (HHS, Office of Civil Rights, Sharing health information with family members and friends). The law permits sharing information when the patient either agrees or if present in the room with the patient, the patient does not object. For example, providers can speak to a patient about his or her condition when a family member or friend is present at the patient's request. Information related to a patient's needs also can be shared with a health aide, interpreter, or person driving a patient. In some circumstances, HIPAA also allows health care professionals to use their own judgment about whether the patient wants health information discussed in front of family members, friends, or other individuals involved in a patient's care (HHS, Office of Civil Rights, Sharing health information with family members and friends). If a patient specifically asks a provider not to share information with an individual, then that decision must be respected. (HHS, Office of Civil Rights, Sharing health information with family members and friends).
- Sharing information when a patient is not present or cannot give permission – In an emergency, providers can use their own judgment in determining whether to communicate with family, friends or others when the patient is incapacitated or not present (HHS, Office of Civil Rights, Sharing health information with family members and friends). When a health care professional believes sharing health information is in the best interest of the patient, then he or she may do so. The key is sharing only the information that the person involved in the patient's care or payment requires. Providers also may select to wait until the patient can agree to share information.
- Medical records – A patient, or his or her representative, can acquire a copy of the medical record or other health information (HHS, Office of Civil Rights, Your health information privacy rights). [Note: There is a cost for copying and mailing the record.]
- Emails and phone calls – With patient consent, HIPAA allows providers to communicate with patients by email as long as appropriate safeguards are employed (HHS, Office of Civil Rights, Health information privacy). And, as discussed above, providers can discuss information about a patient with a patient's family members, friends or other individuals involved in their care by phone (face to face, as well as in writing) (HHS, Office of Civil Rights, Sharing health information with family members and friends).

Please contact Krug Consulting to help answer your HIPAA concerns.

Krug Consulting  
5910 Post Blvd unit 110296  
Bradenton, FL 34211  
1 (844) LNC-KRUG  
info@LNCKRUG  
www.LNCKRUG.com