Disclosures to Family and Friends
45 C.F.R. § 164.510(b)

The Privacy Rule does not require a health care provider or health plan to share information with a patient’s family or friends, unless they are the patient’s personal representatives. The law does permit providers and plans to share information with a patient’s family or friends in certain circumstance. A health care provider or health plan may share relevant information with family members or friends involved in the patient’s health care or payment for the patient’s health care, if the patient tells the provider or plan that it can do so, or if the patient does not object to sharing of the information. For example, if the patient does not object, the patient’s doctor could talk with the friend who goes with the patient to the hospital or a family member who pays the patient’s medical bill.

A provider or plan may also share relevant information with these persons if, using its professional judgment, it believes that the patient does not object. For example, if a patient sends a friend to pick up your prescription for the patient, the pharmacist can assume that the patient does not object to their being given the medication. When the patient is not there or is injured and cannot give their permission, a provider may share information with these persons when it decides that doing so would be in the patient’s best interest.

Frequently Asked Questions

Q: Does the HIPAA Privacy Rule permit a doctor to discuss a patient’s health status, treatment, or payment arrangements with the patient’s family and friends?

A: Yes. The HIPAA Privacy Rule at 45 CFR 164.510(b) specifically permits covered entities to share information that is directly relevant to the involvement of a spouse, family members, friends, or other persons identified by a patient, in the patient’s care or payment for health care. If the patient is present, or is otherwise available prior to the disclosure, and has the capacity to make health care decisions, the covered entity may discuss this information with the family and these other persons if the patient agrees or, when given the opportunity, does not object. The covered entity may also share relevant information with the family and these other persons if it can reasonably infer, based on their professional judgment that the patient does not object. Under these circumstances, for example:

- A doctor may give information about a patient’s mobility limitations to a friend driving the patient home from the hospital.

- A hospital may discuss a patient’s payment options with her adult daughter.

- A doctor may instruct a patient’s roommate about proper medicine dosage when she comes to pick up her friend from the hospital.
• A physician may discuss a patient’s treatment with the patient in the presence of a friend when the patient brings the friend to a medical appointment and asks if the friend can come into the treatment room.

Even when the patient is not present or it is impracticable because of emergency circumstances or the patient’s incapacity for the covered entity to ask the patient about discussing her care or payment with a family member or other person, a covered entity may share this information with the person when, in exercising professional judgment, it determines that doing so would be in the best interest of the patient. See 45 CFR 164.510(b). Thus, for example:

• A surgeon may, if consistent with such professional judgment, inform a patient’s spouse, who accompanied her husband to the emergency room, that the patient has suffered a heart attack and provide periodic updates on the patient’s progress and prognosis.

• A doctor may, if consistent with such professional judgment, discuss an incapacitated patient’s condition with a family member over the phone.

In addition, the Privacy Rule expressly permits a covered entity to use professional judgment and experience with common practice to make reasonable inferences about the patient’s best interests in allowing another person to act on behalf of the patient to pick up a filled prescription, medical supplies, X-rays, or other similar forms of protected health information. For example, when a person comes to a pharmacy requesting to pick up a prescription on behalf of an individual he identifies by name, a pharmacist, based on professional judgment and experience with common practice, may allow the person to do so.

Q: If the patient is not present or is incapacitated, may a health care provider still share the patient’s health information with family, friends, or others involved in the patient’s care or payment for care?

A: Yes. If the patient is not present or is incapacitated, a health care provider may share the patient’s information with family, friends, or others as long as the health care provider determines, based on professional judgment that it is in the best interest of the patient. When someone other than a friend or family member is involved, the health care provider must be reasonably sure that the patient asked the person to be involved in his or her care or payment for care. The health care provider may discuss only the information that the person involved needs to know about the patient’s care or payment. Here are some examples:

• A surgeon who did emergency surgery on a patient may tell the patient’s spouse about the patient’s condition while the patient is unconscious.
- A pharmacist may give a prescription to a patient’s friend who the patient has sent to pick up the prescription.

- A hospital may discuss a patient’s bill with her adult son who calls the hospital with questions about charges to his mother’s account.

- A health care provider may give information regarding a patient’s drug dosage to the patient’s health aide who calls the provider with questions about the particular prescription.

**BUT:**

- A nurse may *not* tell a patient’s friend about a past medical problem that is unrelated to the patient’s current condition.

- A health care provider is *not* required by HIPAA to share a patient’s information when the patient is not present or is incapacitated, and can choose to wait until the patient has an opportunity to agree to the disclosure.

**HIPAA Privacy Rule Disclosures to a Patient’s Family, Friends, or Others Involved in the Patient’s Care or Payment for Care**

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<th>Patient is present and has the capacity to make health care decisions</th>
<th>Family Member or Friend</th>
<th>Other Persons</th>
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<td>Provider may disclose relevant information if the provider does one of the following: (1) Obtain the patient’s agreement; (2) Gives the patient an opportunity to object and the patient does not object; (3) Decides from the circumstances, based on professional judgment, that the patient does not object</td>
<td>Disclosure may be made in person, over the phone, or in writing</td>
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<td>Provider may disclose relevant information if, based on</td>
<td>Provider may disclose relevant information if the provider is</td>
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<td>Patient is not present or is incapacitated</td>
<td>professional judgment, the disclosure is in the patient’s best interest.</td>
<td>reasonably sure that the patient has involved the person in the patient’s care and in his or her professional judgment, the provider believes the disclosure to be in the patient’s best interest.</td>
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<td>Provider may use professional judgment and experience to decide if it is in the patient’s best interest to allow someone to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of health information for the patient.</td>
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Reasonable Safeguards
45 C.F.R. § 164.530 (c)

A covered entity must have in place appropriate administrative, technical, and physical safeguards that protect against uses and disclosures not permitted by the Privacy Rule, as well as that limit incidental uses or disclosures. See 45 C.F.R. §164.530 (c). It is not expected that a covered entity’s safeguards guarantee the privacy of protected health information from any and all potential risks. Reasonable safeguards will vary from covered entity to covered entity depending on factors, such as the size of the covered entity and the nature of its business. In implementing reasonable safeguards, covered entities should analyze their own needs and circumstances, such as the nature of the protected health information it holds, and assess the potential risks to patients’ privacy. Covered entities should also take into account the potential effects on patient care and may consider other issues, such as the financial and administrative burden of implementing particular safeguards.

Many health care providers and professionals have long made it a practice to ensure reasonable safeguards for individuals’ health information – for instance:

- By speaking quietly when discussing a patient’s condition with family members in a waiting room or other public area;
- By avoiding using patients’ names in public hallways and elevators, and posting signs to remind employees to protect patient confidentiality;
- By isolating or locking file cabinets or records rooms; or
- By providing additional security, such as passwords, on computers maintaining personal information.

Protection of patient confidentiality is an important practice for many health care and health information management professionals; covered entities can build upon those codes of conduct to develop the reasonable safeguards required by the Privacy Rule.