



BURR ARTICLE

HIPAA Disclosures During Mass Tragedies

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In light of the recent incident in Las Vegas, the Office of Civil Rights ("OCR"), the government entity responsible for HIPAA Compliance, issued clarification guidance on the ability of a health care provider to share patient information during such situations. While such incidents are taxing on health care providers in terms of treating capacity and ability, it is important that providers keep in mind the requirements of HIPAA regarding the disclosure of certain information to the public. A summary of OCR's recent clarification is provided below, as it serves as a good reminder regarding what information can be shared under HIPAA in these types of mass-casualty, disaster scenarios.

Disclosures to Family, Friends, and Others Involved in an Individual's Care and for Notification.

You may share health information with a patient's family members, relatives, friends, or other persons identified by the patient as involved in the patient's care. You may also share information about a patient as necessary to identify, locate, and notify family members, guardians, or anyone else responsible for the patient's care, of the patient's location, general condition, or death. This may include, where necessary to notify family members and others, the police, the press, or the public at large.

- You should get verbal permission from the patient when feasible or otherwise be able to reasonably infer that the patient does not object to the disclosure. If the individual is incapacitated or not available, you may share information for these purposes if, in your professional judgment, doing so is in the patient's best interest.
- In addition, you may share protected health information with disaster relief organizations that are authorized by law or by their charters to assist in disaster relief efforts (*e.g.*, American Red Cross), for the purpose of coordinating the notification of family members or other persons involved in the patient's care, of the patient's location, general condition, or death. It is unnecessary to obtain a patient's permission to share the information in this situation if doing so would interfere with the organization's ability to respond to the emergency.

Disclosures to the Media or Others Not Involved in the Care of the Patient/Notification.

Upon request for information about a particular patient by name, you may release limited facility directory information to acknowledge that an individual is a patient at the facility and provide basic information about the patient's condition in general terms (*e.g.*, critical or stable, deceased, or treated and released) if the patient has not objected to or restricted the release of such information or, if the patient is incapacitated, if the disclosure is believed to be in the best interest of the patient and is consistent with any prior expressed preferences of the patient. In general, affirmative reporting to the media or the public at large about an identifiable patient, or the disclosure to the public or media of specific information about the treatment of an identifiable patient, such as

specific tests, test results or details of a patient's illness, may not be done without the patient's written authorization (or that of his/her personal representative).

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