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Assistance. Advocacy. Answers on Aging.

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### CAREGIVER ASSISTANCE NEWS

“CARING FOR YOU ... CARING FOR OTHERS”

## Confidentiality - HIPAA or Hippopotamus?

### What You Don't Know Can Hurt You

Most likely, you have been exposed to some of the concepts of HIPAA (Health Insurance Portability and Accountability Act) at some point in recent years. Perhaps you have been asked to sign a HIPAA form when you arrived at a doctor's office or emergency room, or signed into a hospital as a patient. What is HIPAA all about?

For many health care organizations, HIPAA was a “hippopotamus” to implement. Although ethical health care facilities and providers have always practiced confidentiality when it comes to patient matters, HIPAA mandates by law *how* this must be done. Creating extra paperwork, policies, and the need to establish a “privacy officer” within the organization led many to call this law the “HIPAA Hippo”! The Health Insurance Portability and Accountability Act of 1996, like many laws, contains many items. Our concern here is the “privacy rule.”

Implemented in 2003, HIPAA is both federal law and a national standard for the health care industry. It spells out certain *rights* for individual patients of all ages. **It also penalizes and fines health care providers and facilities that do not follow the rules outlined by HIPAA.** Under HIPAA, patients can find out *how* their information is being used and *who* it is being shared with. Patients can establish a time limit on the release of this information. In addition, the law specifies a patient's right to examine and

obtain his records in a timely fashion. This applies whether the patient record is paper or electronic (on a computer). Additionally, the law provides for individuals to dispute errors in their health care records, and to file complaints if they believe their privacy has been violated.

### The Privacy Rule

There are limits to the information that can be shared under the HIPAA privacy law. If the health care provider “deems” it in the patient's best interest or believes the release of certain information would endanger or harm the patient, it may be withheld in some cases. Health care providers and organizations are allowed to require that patients make requests in writing. Psychiatric care notes, information gathered for use in legal proceedings, and certain laboratory information (such as HIV status) can be withheld. Certain information collected in research studies can also be withheld. Information and records can also be withheld if the health care provider cannot verify the identity of the person requesting the information or their *legal right* to that information.



Or, does he prefer that his health care visits remain private, just between him and his health care provider or between the provider and another person or family member?

- √ If the person in your care is confused or unable to make decisions for himself, who is considered “next of kin?” Do they have legal authority to act for the patient? If so, speak with them about any concerns you have.
- √ Know who holds the state-recognized authority, such as *health care power of attorney*, for the one in your care. This can be very important, especially in emergencies.

The HIPAA law includes provisions for many things other than the privacy rules discussed here.

Visit [www.hhs.gov/ocr/hipaa/](http://www.hhs.gov/ocr/hipaa/) and [www.nextstepincare.org/search?q=Hipaa](http://www.nextstepincare.org/search?q=Hipaa).

These websites can help you through the maze of rights concerning caregivers.

### Note

Professional caregivers must follow the guidelines of their agency when reporting in the *Plan of Care*.

NEXT ISSUE . . . LIVER DISEASE

The Ombudsman program can handle your concerns about areas such as elder abuse, client care, consumer rights, etc. For more information, call 1-800-582-7277.

For information about Ohio Medicaid programs or to report suspected Medicaid fraud, you may call the Ohio Medicaid Fraud Hotline at 1-800-324-8680.

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Most physician offices have developed a style that works for their patients and follows the HIPAA privacy rules. Many have a HIPAA form that asks a few questions of the

patient regarding his *privacy wishes*. These often include key questions such as:

- Are the physician and office staff allowed to speak with someone else on the patient's behalf? If so, to whom?
- Does the patient want to grant permission for messages to be left on a telephone voice machine?
- Does the patient want to be contacted at any other number (such as a work or cell phone number)?

Privacy rules apply to the relationship between a health care provider/ facility/ organization and the patient. But what if you are caring for someone who is confused, incapacitated, or mentally unable to take care of his affairs? This is where HIPAA can become very tricky for caregivers.

Privacy rules also generally require that **persons who are legally authorized to act on behalf of an individual regarding health care matters be granted the same rights to access of information**. However, the rule defers to state law to determine *when* a person has the *legal authority* to act on behalf of another in matters related to health care. Parental rights in the case of children or health care powers of attorney are two examples of state-recognized authority.

### How can a caregiver best navigate through the health care system and HIPAA?

What if you are a paid caregiver? Sometimes you are the one who spends the most time with the patient, but you most likely do **not** have legally recognized authority to act on behalf of the one in your care.

Whether you are a paid caregiver or a family member caring for a loved one, some points to discuss about the privacy laws with the person in your care:

- √ What does he want your role to be? Does he want you to be involved directly in his health care visits or have you listed as someone the provider can speak to on his behalf?



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### *Taking Care of Yourself* - Change Your Perspective

Do long waits in doctors' offices frustrate you? Consider that waiting room time can actually be a break from the usual routine. One way to make the time more enjoyable is to bring along new hobby such as knitting or an absorbing novel. Once you get interested in a book or a hobby, you'll look to the brief mental break while waiting.

### HIPAA Dictionary

**PHI – Protected health information** – Information contained within a health record, such as personal identifiers; health care provider's medical notes and billing records, health plan enrollment, payment or claims; other information that can or is used to make decisions about the individual.

**EMR/EHR – Electronic medical/health record** – Generally, those medical/ health care records held by a physician, facility, or health care organization on a computer.

**Durable power of attorney** – A written, legal document designating another person to make legal and financial decisions on one's behalf.

**Health care power of attorney** – A written, legal document assigning another person as your health care agent/surrogate to make decisions regarding your health care matters if you are no longer able to speak on your own behalf.

### Live Life Laughing!

If they try to rush me, I always say, "I've only got one other speed-and it's slower."



### *Inspiration*

*Only a relationship bonded by understanding and respect can deepen into a true healing partnership.*

-- *The Lost Art of Healing*

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