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Can health care providers invite or arrange for members of the media, including film crews, to enter treatment areas of their facilities without prior written authorization?

Answer:

Health care providers cannot invite or allow media personnel, including film crews, into treatment or other areas of their facilities where patients' PHI will be accessible in written, electronic, oral, or other visual or audio form, or otherwise make PHI accessible to the media, without prior written authorization from each individual who is or will be in the area or whose PHI otherwise will be accessible to the media. Only in very limited circumstances, as set forth below, does the HIPAA Privacy Rule permit health care providers to disclose protected health information to members of the media without a prior authorization signed by the individual.

A covered entity, including a health care provider, may not use or disclose protected health information (PHI), except either: (1) as the HIPAA Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing. Generally, the HIPAA Privacy Rule does not permit health care providers to disclose PHI to media personnel, including film crews, without having previously obtained a HIPAA-compliant authorization signed by the patient or his or her personal representative. In other words, health care providers may not allow members of the media, including film crews, into treatment areas of their facilities or other areas where PHI will be accessible in written, electronic, oral or other visual or audio form, without prior authorization from the patients who are or will be in the area or whose PHI will be accessible to the media. It is not sufficient for a health care provider to request or require media personnel to mask the identities of patients (using techniques such as blurring, pixelation, or voice alteration software) for whom an authorization was not obtained, because the HIPAA Privacy Rule does not allow media access to the patients' PHI, absent an authorization, in the first place.

In addition, the health care provider must ensure that reasonable safeguards are in place to protect against impermissible disclosures or to limit incidental disclosures of other PHI that may be in the area but for which an authorization has not been obtained.

There are very limited situations in which the HIPAA Privacy Rule permits a covered entity to disclose limited PHI to the media without obtaining a HIPAA authorization. For example, a covered entity may seek to have the media help identify or locate the family of an unidentified and incapacitated patient in its care. In that case, the covered entity may disclose limited PHI about the incapacitated patient to the media if, in the hospital's professional judgment, doing so is in the patient's best interest. See 45 C.F.R. 164.510(b)(1)(ii). In addition, a covered entity may disclose a patient's location in the facility and condition in general terms that do not communicate specific medical information about the individual to any person, including the media, without obtaining a HIPAA authorization where the individual has not objected to his information being included in the facility directory, and the media representative or other person asks for the individual by name. See 45 C.F.R. 164.510(a).

The HIPAA Privacy Rule does not require health care providers to prevent members of the media from entering areas of their facilities that are otherwise generally accessible to the public, which may include public waiting areas or areas where the public enters or exits the facility.

A health care provider may utilize the services of a contract film crew to produce training videos or public relations materials on the provider's behalf if certain protections are in place. If patients are to be identified by the provider and interviewed by a film crew, or if PHI might be accessible during filming or otherwise disclosed, the provider must enter into a HIPAA business associate agreement with the film crew acting as a business associate. Among other requirements, the business associate agreement must ensure that the film crew will safeguard the PHI it obtains, only use or disclose the PHI for the purposes provided in the agreement, and return or destroy any PHI after the work for the health care provider has been completed. See 45 C.F.R. 164.504(e)(2). As a business associate, the film crew must comply with the HIPAA Security Rule and a number of provisions in the Privacy Rule, including the Rule's restrictions on the use and disclosure of PHI. In addition, authorizations from patients whose PHI is included in any materials would be required before such materials are posted online, printed in brochures for the public, or otherwise publicly disseminated.

Finally, covered entities can continue to inform the media of their treatment services and programs so that the media can better inform the public, provided that, in doing so, the covered entity does not share PHI with the media without the prior authorization of the individuals who are the subject of the PHI.