

Good morning, Health Care Components –

There has been some confusion following the shootings in Orlando as to whether a HIPAA Waiver is required to enable medical professionals and their staff to release PHI to victims' families and others involved in the care of the victims during an emergency. A waiver is not required – HIPAA permits such disclosures when professional judgment deems them necessary and appropriate. (Note that other HIPAA regulations remain intact during an emergency, such as the prohibition on accessing medical records without an authorized purpose.)

Two University HIPAA Privacy policies address disclosures of PHI to family and others during emergencies (see Privacy policy 26 – Disclosures to Family and Others, and Privacy policy 25 – Required by Law, at <https://www.ouhsc.edu/hipaa/>). The article below includes a helpful summary as well as a link to the OCR guidance document on the topic of releasing PHI to family members and others.

Please post or share this email with individuals in your HCC who would benefit and, as always, please let me know if you have any questions.

No HIPAA Waiver Needed in Orlando Shooting Aftermath

Privacy Rule Provides Flexibility in Emergencies [Marianne Kolbasuk McGee](#) ([HealthInfoSec](#)) • June 14, 2016

In the aftermath of the June 12 mass shooting at an Orlando, Fla., nightclub, confusion emerged over whether the Obama administration had issued a special public health emergency [waiver](#) to suspend certain privacy provisions of HIPAA to help ease communication between healthcare providers caring for the injured and those patients' families.

It turned out, however, [the administration did not activate the rarely used waiver because HIPAA already allows for healthcare entities to exercise "professional judgment" in discussing the care - or payment for care - of a patient with family members or friends in certain circumstances. Those circumstances include certain emergencies or cases when "the patient's incapacity" prevents providers from asking the patient for approval to discuss care with others, according to guidance posted on the \[Department of Health and Human Services Office for Civil Rights'\]\(#\) website.](#)

"The reports about a HIPAA waiver were not accurate. In this situation, there was no waiver," an OCR spokeswoman tells Information Security Media Group.

The spokeswoman points out: "HIPAA allows healthcare professionals the flexibility to disclose limited health information to the public or media in appropriate circumstances. These disclosures, which are made when it is determined to be in the best interest of a patient, are permissible without a waiver to help identify incapacitated patients, or to locate family members of patients to share information about their condition. Disclosures are permissible to same sex, as well as opposite sex, partners."

HIPAA's flexibility makes the waiver unnecessary in most urgent circumstances, security experts say.

"The HIPAA Privacy Rule has never stood in the way of healthcare providers using their professional judgment of what is in the best interest of the patient to share information about their patients' condition with their family and friends when the patient cannot communicate for themselves," notes privacy attorney David Holtzman, vice president of compliance at security consultancy CynergisTek. "Decisions on what to share with family and friends is an integral part of the communications that take place in healthcare organizations every day."

Confusion After Massacre

In the hours after the Pulse nightclub massacre on June 12, it was initially unclear whether the Obama administration had, indeed, issued an official waiver of certain HIPAA provisions. The confusion started when Buddy Dyer, the mayor of Orlando, stated on CNN that he had asked for the White House to waive certain HIPAA regulations to encourage faster sharing of information with victims' family members and indicated that the White House had complied, the news site [Slate](#) reported.

However, in an updated version of *Slate's* story, the news site reported: "In fact, the White House did not waive any portion of HIPAA regulations on Sunday. HHS stated Monday that the necessary information sharing was already allowed under the HIPAA law as it is written, as the law states that medical professionals are allowed to share information without consent in an emergency circumstance as long as they exercise 'professional judgment.'"

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