

## HIPAA Privacy FAQs for Covid 19 Emergency Response\*

### **Does the COVID emergency waive all of HIPAA's privacy rule requirements?**

While HIPAA allows the Cleveland Clinic to disclose certain patient information to public health authorities in order to control the spread of disease or to notify a person whose health or safety may be threatened, our patients still have the right to privacy. Staff and caregivers should only be accessing patient records if they are doing so for a legitimate reason that relates to patient treatment, Cleveland Clinic's operations, or Cleveland Clinic's payment functions. See Cleveland Clinic's privacy and security policies for more information on when and how to permissibly access patient information. We are all responsible for earning and preserving the trust our patients have when they come to receive care. This trust extends to ensuring that their privacy is protected - even in the midst of this pandemic.

### **Can we release the names of patients positive for COVID 19 to the EMS personnel?**

Requests or forms from EMS or other first responders should be sent to the respective site's [Infectious Disease Coordinator/Nurse](#) or ID department for further handling.

### **May a provider go in and access the record of a patient for the sole purpose of determining whether the patient was positive, even if they are no longer caring for the patient?**

Positive results are to be disclosed to the infection control team. This team has procedures set up to ensure that the appropriate people are tracked, reported, and notified. If you believe you have been exposed to COVID-19, call Occupational Health. Occupational Health will collect information and determine if quarantine is needed.

### **Due to a tremendous uptick and demand put on our Express Care Online (ECO) platform, where there have been technical difficulties, are caregivers permitted to expand virtual visits to include not only Express Care Online, but also private video chat applications for a virtual visit?**

A covered health care provider, such as Cleveland Clinic, that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public facing remote communication product that is available to communicate with patients. Approved Video Applications are those popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, What's App, Google Hangouts video, or Skype. Please note for the Skype option, it can be the publicly available version, not just Skype for Business.

Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks.

Public facing apps such as: (i.e. Facebook Live, Tik Tok and Twitch) are not authorized for use.

**Can we have patients FaceTime their families on their own and are there any HIPAA considerations?**

HIPAA applies to covered entities, such as Cleveland Clinic and its providers and caregivers, not patients or their family members or friends. Patients can use FaceTime; however, please put measures in place to minimize the risk of inappropriate disclosures by using appropriate safeguards, such as:

- asking patients to restrict their use of FaceTime to when they are in their room.
- asking patients to end their calls with others when their provider or caregivers is providing treatment - unless the person on the phone is involved in the patient's care
- reminding patients to be respectful of other patient's privacy when using FaceTime
- keeping desks and workspaces clean and free of unnecessary documentation and restrict the view of any PHI that could be seen by an unauthorized individual.

**Can I disclose COVID-19 test results to a patient's friends or family?**

The HIPAA privacy rule permits disclosures of PHI to individuals involved in the care of patient such as friends, family members, caregivers, and other individuals that have been identified by the patient. In such cases, verbal permission should be obtained from the patient where possible prior to the disclosure. A health professional must otherwise be able to reasonably infer, using professional judgment that the patient doesn't object to a disclosure that is determined to be in the best interest of the patient.

**Can I disclose patient information to the Department of Health?**

Positive results are to be disclosed to the infection control team. This team has procedures set up to ensure that the appropriate people are tracked, reported, and notified.

**I'm working remotely from home. Can I assume that my home Wi-Fi is secure?**

Once VPN is established it acts like any device on the network and has the same security features as if you were logged in at work. However Cybersecurity has put out guidance on ensuring you change your Wi-Fi password so it is not the default password provided by the company: "Use a secure Wi-Fi network: Securing your home wireless network is very important to protecting your home and your personal information. Make sure you change the default network password, create a strong and unique password that is different from any others you use, and only allow people you trust to use your home network."

See: [How to stay cyber safe while working from home](#)

**When we are discussing COVID 19 patients in tiered huddles, what can be disclosed during these huddles as far as patient identifiers?**

Names should be avoided. However, you may need to take into consideration patient safety issues. If names must be used, reinforce the need to keep the patient information confidential.

### **Is there guidance on dealing with the Media?**

With limited exceptions, 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. See: [OCR Guidance](#).

Our Corporate Communications department is responsible for handling all media requests on behalf of Cleveland Clinic. A representative from the department is available 24/7 to facilitate all requests.

This includes requests from any media outlet (TV, radio, newspaper, web) to:

- Inquire about media interviews on COVID-1
- Inquire about a patient's condition or status
- Film or photograph inside/outside any Cleveland Clinic location
- Interview any physician, caregiver, volunteer or patient
- Obtain miscellaneous information for corporate, independent or student video/photographers

Per Cleveland Clinic policy, any media calls received by a caregiver within the organization must be sent to the Corporate Communications department. Call Corporate Communications at 216.444.0141

### **Can we share information on social media?**

General guidelines for social media use include:

- When in doubt, don't post or repost social media content. If you have questions about whether or not something is appropriate, please call Corporate Communications at 216.444.0141.
- Make sure your social media profile says "posts/opinions are my own."
- All posts or reposts must comply with Cleveland Clinic policies, including HIPAA and our Social Media Use policy.
- Follow Cleveland Clinic's Code of Conduct and political activism (part of the Code of Conduct) when posting or reposting on social media.
- Follow Cleveland Clinic's Conflict of Interest policies when posting or reposting. Do not post or repost endorsements or anything that can be perceived to be an endorsement of a third-party company, product or service.

### **Can we use iPads or Google home type devices to allow patients to communicate with their families?**

At this time, iPads are the preferable mode of communication to use for patients wishing to communicate to their families and friends. However, there may be patient situations where due to the patient's incapacity they are unable to use an iPad. In these cases, it would be acceptable, from a compliance standpoint, to use a Google home type device or similar type of device. If using such a device in a patient room it will be necessary to train staff to be aware of the device being in the room and if it is activated, they need to know who is listening into the conversation and that the patient is in

agreement with sharing PHI. In addition, please contact infectious disease to determine the best way to handle disinfecting the devices.

### **Can we share a patient's location in the hospital with Clergy?**

The HIPAA Privacy Rule allows this communication to occur, as long as the patient has been informed of this use and disclosure, and does not object. The Privacy Rule provides that a hospital or other covered health care provider may maintain in a directory the following information about that individual: the individual's name; location in the facility; health condition expressed in general terms; and religious affiliation.

The facility may disclose this directory information to members of the clergy. Thus, for example, a hospital may disclose the names of Methodist patients to a Methodist minister unless a patient has restricted such disclosure. Directory information, except for religious affiliation, may be disclosed only to other persons who ask for the individual by name. When, due to emergency circumstances or incapacity, the patient has not been provided an opportunity to agree or object to being included in the facility's directory, these disclosures may still occur, if such disclosure is consistent with any known prior expressed preference of the individual and the disclosure is in the individual's best interest as determined in the professional judgment of the provider. See: [OCR Guidance](#)

### **Does the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule allow a covered entity to share the name or other identifying information of an individual who has been infected with, or exposed to, the virus SARS-CoV-2, or the disease caused by the virus, Coronavirus Disease 2019 (COVID-19), with law enforcement, paramedics, other first responders, and public health authorities without an individual's authorization?**

A covered entity, such as a hospital, may provide a list of the names and addresses of all individuals it knows to have tested positive, or received treatment, for COVID-19 to an EMS dispatch on a per-call basis. The EMS dispatch (even if it is a covered entity) would be allowed to use information on the list to inform EMS personnel who are responding to any particular emergency call so that they can take extra precautions or use personal protective equipment (PPE). Requests should be directed to the Infection Control Department.

Under this example, a covered entity should not post the contents of such a list publicly, such as on a website or through distribution to the media. A covered entity under this example also should not distribute aggregate lists of individuals to EMS personnel, and instead should disclose only an individual's information on a per-call basis. Sharing the aggregate list or disclosing the contents publicly would not ordinarily constitute the minimum necessary to accomplish the purpose of the disclosure (i.e., protecting the health and safety of the first responders from infectious disease for each particular call). Ohio Law: A physician may make disclosures without patient authorization where disclosure is necessary to protect or further countervailing interests, such as public health. *Biddle v. Biddle v. Warren Gen. Hosp.*, 715 N.E.2d 518, 524 (Ohio 1999).

### **Can our department send out mass communication and phone calls to alert patients about Covid-19?**

The federal Telephone Consumer Protection Act (TCPA) generally requires prior consent from the called person in order to make automated calls (rob calls) and send automated text messages. In light of the current COVID-19 emergency, the federal government has temporarily relaxed these consent requirements in certain circumstances related to COVID-19. The Federal Communications Commission issued a ruling on March 20 stating that COVID-19 constitutes an emergency under the TCPA and therefore triggers the TCPA provision that states that automated calls or texts made for emergency purposes do not require prior express consent from the called party, and this includes calls/texts from hospitals and health care providers. In order to fall under this emergency exception, the call/text must be solely informational, made necessary because of the COVID-19 outbreak, and be directly related to the imminent health or safety risk arising out of the outbreak. The calls/texts utilizing this emergency exception cannot include content for other purposes, such as marketing or debt collection. Messages should be reviewed through the standard internal processes for reviewing public communications regarding COVID-19 and be mindful to limit content that may indicate a recipient's diagnosis/treatment to what is necessary for the message. If you have concerns that a proposed message may fall outside of these emergency exception requirements or have questions, please feel free to contact Legal (Taylor Pierce) or Compliance (Mary Legerski).

### **As a manager, what can I communicate to my team about the results of a team member's COVID-19 test results?**

Occupational Health notifies Managers/Department/Institute Chairs of a caregiver's COVID-19 test results. If there is a need for other caregivers to be tested because of symptoms and exposure, Managers/Department/Institute Chairs will advise those caregivers to contact Occupational Health.

Managers will share information as necessary for the care and safety of fellow caregivers and will follow the recommended guidelines for communicating with the team regarding a caregiver's positive test results. It is essential for managers to protect the confidentiality of the caregiver and not share the caregiver's identity with their team, whether test results are positive or negative. Refer to COVID-19 Toolkit ["Manager/Team Conversation Guide"](#)

### **Are there any regulations applicable to the UK?**

See: [Data protection and coronavirus: what you need to know](#)

**\* In most instances where privacy questions come up related to COVID, there is not necessarily a right or wrong answer. Each situation must be evaluated on the circumstances specific to the case at hand. If unclear on the course of action to take, please contact the Corporate Compliance Office or the Law Department for further direction.**