



City and County of San Francisco
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San Francisco Department of Public Health

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*Policy & Procedure Detail**

Policy & Procedure Title: Release of Protected Health Information in a Major Emergency or Multi-Casualty Incident	
Category: Privacy	
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DPH Unit of Origin: Office of Compliance and Privacy Affairs	
Policy Contact - Employee Name and Title; and/or DPH Division: Office of Compliance and Privacy Affairs (OCPA)	
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**All sections in table required. Updated 3/2014*

1. Purpose of Policy

This policy is to provide guidance to San Francisco Department of Public Health (DPH) and affiliated staff regarding the disclosure of Protected Health Information (PHI) during a major emergency or multi-casualty incident.

2. Policy

It is the policy of the DPH to comply with the Health Insurance Portability and Accountability Act (HIPAA) and all other applicable state and federal confidentiality laws in a major emergency or multi-casualty incident. HIPAA's privacy protections remain in effect during most emergency situations and disasters, but HIPAA has PHI-sharing provisions which allow those with information to share it with the family members, friends, and others responsible for the patient's care. This policy will provide guidance to employees about what information can be shared with whom during certain situations.

3. Definitions

Affiliate: A subcontractor of a covered entity. Any information sharing between these two organizations and further disclosure must be governed by a business associate agreement or

The mission of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans.

We shall ~ Assess and research the health of the community ~ Develop and enforce health policy ~ Prevent disease and injury ~
~ Educate the public and train health care providers ~ Provide quality, comprehensive, culturally-proficient health services ~ Ensure equal access to all ~

memorandum of understanding. For example, University of California San Francisco staff at Zuckerberg San Francisco General Hospital are affiliated staff.

Authorization: Authorization is the written permission of a patient or patient's representative to share PHI, completed in accordance with state and federal law. Further information about authorizations may be found in DPH Office of Compliance and Privacy Affairs (OCPA) policy C.1.0 and C.1.1.

Condition: Condition refers to the patient's medical condition. When disclosing a patient's condition broadly, it must be described in general terms that do not communicate specific medical information about the patient.

Consent: Consent is the explicit permission of a patient. Unless otherwise noted, this consent may be given in either a written or verbal form. Providers may institute stricter standards, if desired.

Designated DPH Spokesperson: The only DPH staff member who can officially provide information to the press, law enforcement, and the public on behalf of the DPH. This staff member will be designated as such by the Director of the DPH. (See ZSFG Administrative Policy 13.01 Media/Press Guidelines for San Francisco General Hospital and Trauma Center).

Disaster: Any situation meeting the definition of "major emergency," or which has been declared a local emergency by the Mayor of San Francisco. See the San Francisco Emergency Response Plan and the California Emergency Plan.

Disaster relief agency: A public or private entity authorized by law or by its charter to assist in disaster relief efforts.

Emergency treatment circumstance or emergency circumstance: Treatment for a medical condition which is manifested by acute symptoms of sufficient severity such that, in the absence of treatment, would likely result in a serious risk to the health of the individual, a serious impairment to bodily function, or serious dysfunction of any bodily organ or part.

Incapacity: An inability to make rational decisions due to mental or physical disability, illness, or use of drugs.

Major emergency: A situation which has been declared an emergency or disaster by the President of the United States, and which has been declared a public health emergency by the Secretary of the US Department of Health and Human Services.

Minimum necessary: A standard for limiting the amount of PHI to be shared as defined in SFDPH Privacy Policy A.1.0.

Multi-casualty incident: An event involving five or more casualties, as defined in San Francisco Emergency Medical Services policy 8000.

Protected Health Information: Individually identifiable health information maintained or transmitted in any medium. For further information, see DPH OCPA policy C.1.0.

Provider: A licensed person who provides healthcare services.

Treatment: The provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

Use: The sharing, employment, application, utilization, examination, or analysis of protected health information within DPH, its affiliates, or its contract providers.

Reasonable inference: An inference, based on professional judgment and the circumstances of the situation, that the patient does not or would not object to a disclosure or use.

4. Procedures

Disclosures to Family, Friends, Close Personal Friends, and Other Patient-Identified Individuals (45 CFR §164.510(b)(i))

If a patient is present and capable of making health care decisions and has granted consent for the disclosure, a provider may share PHI that is directly relevant to a family member, close friend, or any other person that the patient has identified.

If a patient is not able to agree or object to the use or disclosure of PHI due to incapacity or an emergency circumstance, the provider may exercise his or her professional judgment to determine whether the disclosure to family or friends is in the best interests of the patient. If the provider decides to disclose, PHI may be disclosed that is directly relevant to the person's involvement with the individual's care or payment related to health care.

If the patient is deceased, the provider may disclose PHI relevant to the individual's role to those individuals identified in this section who were involved in the patient's care or payment for health care prior to the individual's death, (unless the patient had previously not authorized this disclosure).

Disclosures for Notification (45 CFR §164.510(b)(ii))

As at all other times, a provider may make minimal necessary disclosures of PHI in order to notify family members, personal representatives, or others responsible for the care of the patient, or in order to identify or locate family members, personal representative, or others responsible for the patient's care. Thus, the Designated DPH Spokesperson may notify the

police, the press, or the public at large of the person's name, location, general condition, or death.

If the patient is available, the provider must obtain the patient's consent for the disclosure, give the patient an opportunity to object, or make a reasonable inference that the patient would not object. If the patient is not present, or if it is impractical to get consent because of incapacity or an emergency circumstance, the provider may make a disclosure if, in his or her professional judgment, it is in the patient's best interest. If the patient is deceased, the disclosure may be made unless the patient did not grant prior authorization.

Imminent Danger (45 CFR §164.512(j))

Providers can disclose PHI when they have a good faith belief that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public. These disclosures by the provider are governed by the minimum necessary standard, applicable law, and the provider's standards of ethical conduct. This good faith belief may be based on either actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

Use for and Disclosures Related to a Facility Directory (45 CFR §164.510(a))

As at any other time, a provider may include a patient's name, location in the facility, condition, and religious affiliation in its facility directory. This directory information, except for religious affiliation, may be disclosed to anyone who asks for the patient by name.

Under normal circumstances, the patient will be informed of this directory in the Notice of Privacy Practices, and has an opportunity to restrict or prohibit some or all of the directory disclosures. If a patient objects to these disclosures, the provider must comply with their wishes. However, if a patient's incapacity or an emergency treatment circumstance makes providing an opportunity to object impractical, then PHI may be used for the purposes of the facility directory if the patient has not made an objection to this use known previously, and if, in the provider's professional judgment, this use is in the patient's best interest. Once the emergency treatment circumstance or incapacity has passed, the patient must receive the Notice of Privacy Practices and have an opportunity to object to further use in the facility directory.

Aggregating Information

In a disaster or multi-casualty incident, the Designated DPH Spokesperson can release aggregate information about the victims in order to inform the public about the scope of the situation. This information can include: number of patients, gender breakdown, whether they are adults or minors, age ranges, conditions, and nationalities or areas of residence (e.g. San Franciscans). Not all of this information would be released in every case, and must be judged in context in order to protect patient privacy.

Disclosures for Disaster Relief Purposes (45 CFR §164.510(b)(4))

Minimal necessary disclosures of PHI may be made in order to notify family members, personal representatives, or others responsible for the patient's care of the patient's location, general condition, or death. These disclosures may be made to public or private entities authorized by law or the entity's charter to assist in disaster relief effort. If the provider, using his or her professional judgement, determines that seeking consent as laid out in the "Disclosures for Notification" section would interfere with the ability to respond to the emergency circumstances, then consent, a professional judgment of the patient's interests, or a check on the patient's prior wishes are not necessary. These disclosures will be made by the Designated DPH Spokesperson, unless other arrangements have been made by the Spokesperson or Director of Public Health.

Groups that may receive information for disaster relief purposes during a disaster or mass casualty incident include:

- The American Red Cross, during disasters. Sharing between the DPH and the Red Cross will be coordinated through the Red Cross representative Emergency Operations Center.

Public Health Authorities

A provider may disclose PHI to a public health authority that is authorized by law to collect information of this type for the purpose of preventing or controlling disease, injury, or disability. This includes the reporting of disease, injury, births, deaths, and the conduct of public health surveillance, public health investigations, and public health interventions. These disclosures will be made by the Designated DPH Spokesperson. Depending upon the situation, "public health authorities" may include:

- San Francisco Department of Public Health in cases involving public health.
- California Department of Public Health in cases involving public health.
- California Division of Occupational Safety and Health in the case of workplace hazards.
- United States National Institute of Health.
- United States Food and Drug Administration in cases involving FDA-regulated products.
- United States Center for Disease Control in the case of infectious disease.
- United States National Transportation Safety Board in the case of airline and rail carriers, or pipeline incidents.
- United States Occupational Safety and Health Administration in the case of workplace hazards.
- An official of a foreign government agency that is acting in collaboration with a public health authority.

These disclosures are governed by the minimum necessary standard, and do not require patient authorization, consent, or the opportunity to object.

HIPAA Waiver during a Major Disaster

If the President of the United States has declared an emergency or disaster and the Secretary of the United States Department of Health and Human Services (HHS) has declared a public health

emergency, the HHS Secretary may choose to waive HIPAA sanctions, penalties requirements, and patient rights. These are:

- The requirement to obtain a patient's agreement to speak to a patient's family members and friends that are involved in the patient's care (45 CFR §164.510(b))
- The requirement to honor a patient's request to opt out of the facility directory (45 CFR §164.510(a))
- The requirement to distribute a notice to patients about the provisions of HIPAA (45 CFR §164.520)
- The patient's right to request privacy restrictions (45 CFR §164.522(a))
- The patient's right to request confidential communications (45 CFR §164.522(b))

If a waiver of these rights and responsibilities is issued, applies only to those hospitals that have a disaster protocol, and it only lasts for 72 hours after the hospital has instituted its disaster protocol, or the end of the declared emergency, whichever occurs first. This waiver may be issued before the major disaster, if the event is one that is anticipated.

If a waiver has been issued, it will be announced to DPH and affiliate staff. The waiver can be found at www.phe.gov, and will indicate which waivers are being issued.

5. References/Attachments

"State of California Emergency Plan." Office of Emergency Services Planning Section, Governor's Office of Emergency Services,
[https://w3.calema.ca.gov/Operational/OESHome.nsf/PDF/California%20Emergency%20Plan/\\$file/CEP-05.pdf](https://w3.calema.ca.gov/Operational/OESHome.nsf/PDF/California%20Emergency%20Plan/$file/CEP-05.pdf)

"City and County of San Francisco Emergency Response Plan." Department of Emergency Management, City and County of San Francisco,
https://sfdem.org/sites/default/files/CCSF%20Emergency%20Response%20Plan_April%202008%20-%20updated%20May%202017_V2.pdf

"Can Health Care Information Be Shared in a Severe Disaster?" Office of Civil Rights, U.S. Department of Health and Human Services, <https://www.hhs.gov/hipaa/for-professionals/faq/960/can-health-care-information-be-shared-in-a-severe-disaster/index.html>

ZSFG Administrative Policy 13.01 Media/Press Guidelines for San Francisco General Hospital and Trauma Center
<https://in-dphsp01.in.sfdph.net/CHNPolicies/Administrative/13-01.pdf>

"Does the HIPAA Privacy Rule Permit Hospitals and Other Health Care Facilities to Inform Visitors or Callers about a Patient's Location in the Facility and General Condition?" Office of Civil Rights, U.S. Department of Health and Human Services, <https://www.hhs.gov/hipaa/for->

[professionals/faq/483/does-hipaa-permit-hospitals-to-inform-visitors-about-a-patients-location/index.html](https://www.hhs.gov/hipaa/for-professionals/faq/483/does-hipaa-permit-hospitals-to-inform-visitors-about-a-patients-location/index.html)

“Is the HIPAA Privacy Rule Suspended During a National or Public Health Emergency?” Office of Civil Rights, U.S. Department of Health and Human Services, <https://www.hhs.gov/hipaa/for-professionals/faq/1068/is-hipaa-suspended-during-a-national-or-public-health-emergency/index.html>

“Public Health – 45 CFR 164.512(b).” Office of Civil Rights, U.S. Department of Health and Human Services, <https://www.hhs.gov/hipaa/for-professionals/special-topics/public-health/index.html>

“Where the HIPAA Privacy Rule Applies, Does it Permit a Health Care Provider to Disclose Protected Health Information (PHI_ About a Patient to Law Enforcement, Family Members, or Others If the Provider Believes the Patient Presents a Serious Danger to Self or Others?” Office of Civil Rights, U.S. Department of Health and Human Services, <https://www.hhs.gov/hipaa/for-professionals/faq/520/does-hipaa-permit-a-health-care-provider-to-disclose-information-if-the-patient-is-a-danger/index.html>

“BULLETIN: HIPAA Privacy in Emergency Situations.” Office of Civil Rights, U.S. Department of Health and Human Services, <https://www.hhs.gov/sites/default/files/emergencysituations.pdf>

[Attachment A](#)

[Process Flow Chart: HHS Disclosure for Emergency Preparedness](#) – A Decision Tool

Federal Code 164.512(b)(1)(i)

Approval

Date Approved

4/26/19

Committee

Information Security & Privacy Committee

Attachment A
Process Flow Chart: HHS Disclosure for Emergency Preparedness – A Decision Tool