
HEALTH CARE RECORDS AND INFORMATION UNDER WYOMING LAW

WYOMING HOSPITAL RECORDS AND INFORMATION ACT

- Hospital: establishments with organized medical staffs, permanent facilities with inpatient beds, and medical services including physician services and continuous nursing services to provide diagnosis, treatment and continuity of care for patients
- Health care information: any information, whether oral or recorded, that identifies or can be readily associated with a patient, and relates to patient health care
- Health care facility: hospital, clinic or nursing home where a HCP provides health care to patients
- **General Rule: A hospital “shall not disclose” any hospital health care information without patient’s written authorization except as provided by the act**

... WITH PATIENT AUTHORIZATION

- Written only
- Dated and signed by patient
- Describe nature of information to be disclosed
- Identify recipients
- Valid for no more than 48 months if expiration date specifically stated; 12 months if no stated expiration date
- Valid for release of information regarding future health care occurring no more than 12 months after it is signed
- Revokable at any time by patient, except for payment purposes

WYOMING CAREGIVER ACT

- Patient or representative can designate a caregiver to receive protected health information to provide aftercare for patient
- Hospital must seek written consent of patient or representative
- Identity, contact information and relationship of caregiver should be recorded in chart
- Hospital authorized to notify caregiver of discharge of patient
- Caregiver role does not conflict with agent, guardian or surrogate roles with respect to health care decisions; those roles are legally superior

... WITHOUT PATIENT AUTHORIZATION, TO THE EXTENT RECIPIENT NEEDS TO KNOW:

- Other health care providers
- Hospital uses - quality, peer review, or to provide legal, financial or other services to hospital, under specified circumstances
- Research, under specified circumstances
- External audits, under specified circumstances
- Medical staff purposes
- Directory information
- Immediate family members or others who have close personal relationship if consistent with good practice and patient's instructions
- To any person, if reasonably believe disclosure will avoid or minimize an imminent danger to health or safety of any person
- Law enforcement, "to the extent required by law"
- Public health as "required by law"
- Prison officials, if patient detained

"TO LAW ENFORCEMENT, TO THE EXTENT REQUIRED BY LAW"

- HIPAA's permissive law enforcement exceptions are much broader:
 - Investigative demands
 - Request for identifying or locating a suspect, witness or missing person
 - Victim information
 - Crime information in emergencies
 - Crime on the hospital premises

"TO LAW ENFORCEMENT, TO THE EXTENT REQUIRED BY LAW"

- Compare Wyoming law – six* situations where disclosure to law enforcement "required by law"
 - Suspected child abuse or neglect
 - Suspected abuse, neglect, abandonment, etc. of vulnerable adult
 - Compulsory legal process such as subpoena, court order, warrant under certain circumstances
 - Coroner's cases – death from violence, suicide, accident, drug or chemical toxicity, child abuse, prisoner, public health hazard
 - *Results of drug/alcohol testing performed with patient's consent and incident to DUI arrest
 - *Title 25 involuntary commitment

“TO LAW ENFORCEMENT, TO THE EXTENT REQUIRED BY LAW”

- Disclosures of health care information not "required by law" in Wyoming:
 - Gunshot, stabbing or self-inflicted wounds
 - Possession of illegal substances
 - Identity of patient
 - Health concerns regarding a driver's license or CDL
 - Discharge of patient or complying with “notify when discharged” demand
- Disclosure of this information, without one of the other exclusions, may violate Wyoming law

IMMINENT DANGER – SIX ELEMENTS

1. Disclose health care information . . .
2. To any person if . . .
3. Hospital reasonably believes . . .
4. Disclosure will avoid or minimize
5. An imminent danger . . .
6. To health or safety of patient or others

IMMINENT DANGER – ELEMENTS

- "Any person"
 - Must be in position to avoid or minimize imminent danger
- Hospital "reasonably believes"
 - Based on all the circumstances
 - Best evidence is thorough documentation
- Disclosure will avoid or minimize
 - Minimize is a broad term – any reduction in danger

IMMINENT DANGER – WHAT IS IMMINENT?

- Imminent Danger
 - About to happen; liable to happen soon; an immediate or substantial risk of occurrence;
 - Trust your gut and document your reasons
- Health or safety of patient or "any other individual"
 - Don't get creative with health or safety – danger must be imminent, which excludes danger to long-term mental health or emotional well-being, etc.

CHILD NEGLECT OR ABUSE

- Immediate report required if you “know or have reasonable cause to believe or suspect . . .”
- Required to notify “person in charge” of hospital, and then the hospital has independent obligation to report
- No format of data to report, but expect questions regarding the following:
 - The name, age, and address of the child;
 - The name and address of any person responsible for the child’s care;
 - The nature and extent of the child’s condition;
 - The basis of the reporter’s knowledge;
 - The names and conditions of any other children relevant to the report;
 - Any evidence of previous injuries to the child;
 - Photographs, videos, and x-rays with the identification of the person who created the evidence and the date the evidence was created; and
 - Any other relevant information.

VULNERABLE ADULTS

- Vulnerable adult: any person 18 years of age or older who is unable to manage and take care of himself or his money, assets or property without assistance as a result of advanced age (60 or older) or physical or mental disability
- Applies to vulnerable adult who is, “abused, neglected, exploited, intimidated or abandoned or is committing self neglect”
- Requires immediate verbal or written report if you “know or have reasonable case to believe . . .”

“CORONER’S CASES”

- Unanticipated deaths that involve any of the following circumstances should be reported to law enforcement:
- Circumstances:
 - Violent or criminal actions
 - Apparent suicide
 - Accident
 - Apparent drug or chemical overdose or toxicity
 - Apparent child abuse
 - Unknown cause
 - Public health hazard
 - Identity unknown or body unclaimed

PUBLIC HEALTH REPORTING REQUIREMENTS

- WDOH publishes a list of diseases and conditions which must be reported
 - Timing and media for report varies by disease
 - Communicable diseases and STDs
- Newborn screening for metabolic/genetic/hearing defects
- Tumor registry
- Abortions
- Fetal deaths
- Dog bites

DIRECTORY INFORMATION

- May disclose directory information without authorization unless patient directs otherwise
- Directory information: presence and general health condition of patient who is inpatient or receiving emergency health care
- General health condition: critical, poor, fair, good, excellent or similar terms

FAMILY AND FRIENDS

- Disclosure to
 - “Immediate family members” but that phrase is not defined
 - “Any other individual with whom the patient is known to have a close personal relationship”
- “If made in accordance with good medical or other professional practice”
- “Unless patient has instructed hospital not to make the disclosure”

COMPULSORY LEGAL PROCESS

- Health information “shall not be disclosed” in any judicial, legislative or administrative proceeding unless:
 - Patient has consented in writing or waived confidentiality for information sought
 - Patient is a party to proceeding and has put health condition in issue
 - Patient’s condition relevant to execution or witnessing of a will
 - Deceased patient’s condition relevant to claims of beneficiary
 - Information is for use in law enforcement proceeding or investigation in which the hospital is the subject or a party
 - To pursue remedies for violation of the Hospital Records and Info. Act
 - When court determines party seeking the information has interests that outweigh patient’s privacy interests

COMPULSORY LEGAL PROCESS

- For some purposes, person issuing process or request must give ten (10) days notice to patient or patient's attorney
- Service of process on hospital shall be accompanied by a certification, signed by person seeking the information:
 - Stating each ground under the statute that supports the demand
 - Certifying compliance with notice to the patient or patient's attorney for those grounds which require notice
- Subpoenas and court orders should be scrutinized for compliance with reasons for release and compliance with content requirements

DISCLOSURE LOGS

- Hospital must maintain a record of each person who has received or examined any health care information, except for HCPs, use for hospital purposes and third party payors
 - Log must be maintained for three preceding years
 - Must include name, address, institutional affiliation of recipient, date of receipt, and, to the extent practicable, a description of information disclosed
- Patient authorizations or revocations must be retained
- Compulsory process (subpoena, court order, warrant) must be retained

PATIENT ACCESS AND ADMINISTRATIVE REQUIREMENTS

- Notice of information practices must be posted and provided to patients
- Patient access:
 - Request must be in writing
 - As promptly as required under the circumstances, but no later than 10 days, must:
 - Make information available for examination or provide a copy if requested to the patient
 - Inform patient if record does not exist, or of other HCP where record does exist
 - If delayed, inform patient of reason in writing, and when records will be available, but records must be produced no more than 21 days from request
 - Deny the request for limited reasons

PATIENT ACCESS AND ADMINISTRATIVE REQUIREMENTS

- Patient request may be denied when information:
 - Would pose imminent threat to life or safety of the patient or another individual
 - Could be reasonably expected to lead to identification of an individual who provided information in confidence under circumstances where confidentiality was justified
 - Information is used solely for litigation, quality assurance, peer review or administrative purposes
 - Access otherwise prohibited by law
- Must produce what can be produced and notify patient of reasons for denial of access to remainder
- Patient has right to designate HCP to review and copy

PATIENT ACCESS AND ADMINISTRATIVE REQUIREMENTS

- Patient's access rights can be exercised by:
 - Patient
 - Minor patient only, with respect to records of health care for which the minor can lawfully consent
 - Any person authorized to consent to health care for the patient, provided the person represents the best interests of the patient
 - Personal representative of a deceased patient, or if no personal representative appointed, other persons authorized by law to act for the deceased patient
 - Restrictions of the Act continue to apply after death

ENFORCEMENT

- Patient or representative can bring civil action for violation of the act
- Recovery can include “pecuniary losses” resulting from violation and reasonable attorneys’ fees and court costs
- Hospital has burden to prove that request for information was properly denied in an action by the patient
- Two year statute of limitation

RECORDS RETENTION

- Retain existing health care information for at least one (1) year after receipt of authorization to disclose the HCI, and during the pendency of any request for HCI
- WY Medicaid Provider Participation regulations:
 - Medical and financial records, including information regarding dates of service, diagnosis, services and claims, shall be retained for longer of:
 - “at least six years” after end of state fiscal year in which payment made
 - Until litigation, claim, audit or other administrative or legal action regarding the services is resolved
 - Medical and financial records must be maintained “for three years in hard-copy” and on “micro-film or micro-fiche” thereafter

RECORDS RETENTION

- Mental health and substance abuse: 7 years from date of “closure”
- Public hospitals: Office of State Archives retention schedule adopted by WYDOH regulations
 - wyoarchives.state.wy.us/index.php/record-retention-schedules
 - Click on Local Government Crosswalks
 - Pages 159-184

QUESTIONS?