



Chapter 13: Confidentiality

Contents

Introduction.....	13.2
Purpose.....	13.2
Policy.....	13.2
State Laws and Regulations.....	13. Error! Bookmark not defined.
Health Insurance Portability and Accountability Act (HIPAA)	13.2
Centers for Disease Control and Prevention guidance on HIPAA	13.3
Wisconsin HIPAA policies.....	13.3
National guidelines.....	13.4
Resources and references.....	13.6
Resources	13.6
References	13.6

Introduction

Purpose

Use this section to do the following:

- Determine what information and which records should be treated with confidentiality
- Identify state policy for maintaining patient confidentiality
- Take measures to ensure TB patients' confidentiality
- Determine when it is permissible to share information for public health reasons

The protection of private patient information is commonly referred to as confidentiality. Confidentiality involves the protection of information revealed during patient–health care worker encounters, including all written or electronic records of these encounters. Confidentiality is an essential issue in many different aspects of tuberculosis (TB) control. Health care workers need to be aware of confidentiality issues that are relevant to patient–health care worker encounters, as well as to the collection, management, and sharing of information gathered on TB patients.¹

Policy

Health care workers should keep patient information in confidence and divulge it only with the permission of the patient, except as otherwise allowed by law.²



For roles and responsibilities, refer to the “Roles, Responsibilities, and Contact Information” topic in the Introduction.

Applicable Wisconsin State Statutes:

- [Wisconsin Stat. ch. 92: Confidentiality of Treatment Records](#)
- [Wisconsin Stat. ch. 94: Patient Rights and Resolution of Patient Grievances](#)

Health Insurance Portability and Accountability Act (HIPAA)

Confidentiality of patient information has long been a requirement in the health care field and now has its own set of regulations, the Health Insurance Portability and Accountability Act

(HIPAA) Privacy Rule. The new regulations protect the privacy of certain individually identifiable health data, referred to as protected health information (PHI). PHI is individually identifiable health information that is transmitted or maintained in any form or medium (for example, electronic, paper, or oral), but excludes certain educational and employment records.

Centers for Disease Control and Prevention guidance on HIPAA

The Centers for Disease Control and Prevention (CDC) published the report “[HIPAA Privacy Rule and Public Health: Guidance from CDC and the US Department of Health and Human Services](#)” (*MMWR* 2003;52 [S-2]:1–12) , to provide guidance in implementing the HIPAA requirements. In this report, the U.S. Department of Health and Human Services (DHHS) recognized the importance of sharing PHI to accomplish essential public health objectives and to meet certain other societal needs (for example, administration of justice and law enforcement).

Covered entities—which are health plans, health care clearinghouses, and health care providers who transmit health information in electronic form in connection with certain transactions—are permitted by the Privacy Rule to do the following:

- Share PHI for specified public health purposes. For example, covered entities may disclose PHI, without individual authorization, to a public health authority legally authorized to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability.
- Make disclosures that are required by other laws, including laws that require disclosures for public health purposes.³

Wisconsin HIPAA policies

Patients have rights under the Privacy Rule that providers must honor for those who are considered a covered entity under HIPAA. These rights are also described in the Notice of Privacy Practices and should be provided to patients.

1. **Right to amend protected health information.** Patients have a right to amend any element of protected health information in the designated record set as long as it is maintained by the covered entity (45 CFR §164.526)
2. **Right to access to protected health information.** A patient has a right of access to inspect and obtain a copy of protected health information about the patient in a designated record set at your facility (45 CFR §164.524).
3. **Right to request alternative (confidential) communications.** Patients can ask providers to contact them in a certain way, for example, on their cell phone as opposed to home. The provider must accommodate such requests if they are reasonable [45 CFR §164.522(b)(1)].

4. **Right to restrict protected health information.** Patients have the right to request restrictions on how patient information is used and disclosed. Providers are not required to agree to such requests, **except** for restrictions to health plans, if the patient has paid in full for the related product or service. Failure to observe an agreed-upon request will lead to a violation of HIPAA [45 CFR § 164.522(a)(1)].
5. **Right to receive an accounting of disclosures.** Patients have a right to receive a listing of all disclosures of their personal information to third parties by a covered entity if the disclosures to health oversight agencies or law enforcement activities, and that are not authorized by the patient. Examples of some of the disclosures that must be tracked are public health activities (reporting immunizations, birth and death certifications, cancer/tumor registries); reports about victims of abuse, neglect or domestic violation; information used for organ or tissue donation and transplantation; and other disclosures required by law (45 CFR §164.528).
6. **Right to Notice of Privacy Practices.** Every new patient must be given a copy of a Notice of Privacy Practices, and the provider must make reasonable efforts to obtain from the patient acknowledgement of receipt of such notice. This notice describes how medical information about a patient may be used and disclosed by the provider and patients' rights under the Privacy Rule. In addition, the notice includes a statement about the provider's requirement to notify affected individuals following a breach of unsecured protected health information (45 CFR § 164.520).
7. **Right to file a complaint.** The provider must have a contact person as well as a process for patients to make complaints concerning the covered entity's policies and procedures required by the Privacy Rule or its compliance with such policies and procedures [45 CFR § 164.530(d)(1)].
8. **Other rights.** The provider or staff may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against a patient for the exercise by the patient of any rights established or for participation in any process provided [45 CFR §164.530(g)].



Remember to send securely or encrypt all emails that contain PHI, according to local policy and procedures. This includes emailing medication orders and other requests to the state TB program.

National guidelines

The following guidelines for protecting TB patients' confidentiality are adapted from the National Tuberculosis Controllers Association's (NTCA's) and Centers for Disease Control and Prevention's (CDC's) "Guidelines for the Investigation of Contacts of Persons with Infectious Tuberculosis: Recommendations from the National Tuberculosis Controllers Association and CDC" (*MMWR* 2005;54[No. RR-15]).



When necessary, use the consent form that your agency's corporation counsel has approved. The Wisconsin Department of Health Services offers a [basic consent form template](#).

Table 13.1: How to protect confidentiality

Conducting all Activities	<ul style="list-style-type: none">• Make every attempt to ensure patient confidentiality.• Physical copies of patient records or charts should be kept in locked storage when not in use. Only individuals who have a need to access the client's information should have access to the locked location.• Information, records, or notes that do not need to be retained should be shredded promptly.
Training	<ul style="list-style-type: none">• Participate in training on maintaining confidentiality and obtaining informed consent in accordance with local and state laws.
Interviewing patients	<ul style="list-style-type: none">• Interview the TB patient in a private setting.• Inform the patient about confidentiality rights.• Explain to a patient that is living with human immunodeficiency virus (HIV) that HIV status will be kept confidential.• Consult with the patient to identify boundaries for confidentiality and obtain oral consent for any breaches in confidentiality.• If written consent is required, present the consent form to the patient in an appropriate manner and retain a copy in the patient's medical record. If consent is refused, the TB program should develop a plan of action.
Conducting site investigations	<ul style="list-style-type: none">• Plan site investigation procedures in advance of any visit, in consultation with and with the consent of the index patient, if possible.• Obtain agreement to maintain confidentiality from any site personnel who receive information about the identity of the index patient.
Communicating with the press	<ul style="list-style-type: none">• Maintain confidentiality in communications with the press.
Breaching confidentiality	<ul style="list-style-type: none">• Breach confidentiality only with approval of TB program administrators and with the consent of the TB patient, when possible.

Resources and references

Resources

CDC. “[HIPAA Privacy Rule and Public Health: Guidance from CDC and the US Department of Health and Human Services](#)” (*MMWR* 2003;52[S-2]).

CDC. Module 7: “Confidentiality in Tuberculosis Control” (*Self-Study Modules on Tuberculosis*. Division of Tuberculosis Elimination Web site; 1999). Available at: [Self-Study Modules on Tuberculosis | Tuberculosis \(TB\) | CDC](#) .

United States Department of Health and Human Services. “[Health Insurance Portability and Accountability Act of 1996](#).” (Public Law 104-191 Web site).

United States Department of Health and Human Services. “Office for Civil Rights—HIPAA” [Office for Civil Rights Web site]. Available at: [HIPAA Home | HHS.gov](#)

References

- ¹ CDC. Module 7: confidentiality in tuberculosis control. *Self-Study Modules on Tuberculosis* [Division of Tuberculosis Elimination Web site]. 1999:4. Available at: [Self-Study Modules on Tuberculosis | Tuberculosis \(TB\) | CDC](#)
- ² CDC. Module 7: confidentiality in tuberculosis control. *Self-Study Modules on Tuberculosis* [Division of Tuberculosis Elimination Web site]. 1999:4. Available at: [Self-Study Modules on Tuberculosis | Tuberculosis \(TB\) | CDC](#)
- ³ CDC. HIPAA privacy rule and public health: guidance from CDC and the US Department of Health and Human Services. *MMWR* 2003;52(S-2):1. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/su5201a1.htm>