

Q. Are we allowed to call a patient about a bill or insurance and speak with their spouse if the patient is not there or is that considered a violation of their privacy. Would we need to get them to sign the form indicating who we can talk to about their PHI. Does the form have to specify what the patient wants disclosed or not disclosed?

A. Reference Cindy's question about whether Covered Entities can speak with family members about a patient's bill. Our billing departments are asking the same questions. This question was also asked yesterday at the DHHS OCR Privacy Rule conference. Susan McAndrew, OCR attorney, responded that communications with family members about a patient's bill may continue in accordance with provisions at 45 CFR 164.510(b), Uses and Disclosures for involvement in the individual's care and notification purposes. Under this provision, disclosure is permitted to a family member, other relative, or close personal friend of the individual, or any other person identified by the individual, the PHI directly relevant to such person's involvement with the individual's care or payment related to the individual's care. Disclosure is subject to obtaining the individual's agreement if present; providing individual with opportunity to agree or object; or reasonably inferring from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure. Susan referenced the "reasonable inference" language as a basis for releasing billing information in response to a question about sharing information with a wife/mother of the individual who takes care of paying the bills for the family.

Since this provision provides some flexibility, I believe each of us will need to determine what type of documentation, if any, that we will require, when we share billing information with others who inquire on behalf of the patient. (Sheila Wrobel, Privacy Officer, Nebraska Health System)

A. A different OCR representative gave the same response at the HHS session in Atlanta that I attended. So at least they seem to have the party line straight. However, relying on professional judgment may not be simple or safeguard against disclosures that the patient would not want. This one is going to be sticky. (Sara Juster, Compliance Officer, Methodist Health System)