



**POLICY TITLE:** 304.00 Family and Friends – Disclosures of Patient Information to Family Members and Friends

**Responsible Department:** Corporate Privacy Office

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## **SUMMARY & PURPOSE:**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a Baptist Health or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule sets out how and with whom PHI may be shared.

Although the HIPAA Privacy Rule requires health care providers to protect patient privacy, providers are permitted, in most circumstances, to communicate with the patient's family, friends, or others involved in their care or payment for care. This policy is intended to clarify these HIPAA requirements so that Baptist Health care providers do not unnecessarily withhold a patient's health information from these persons.

## **POLICY:**

It is the policy of Baptist Health South Florida, Inc. ("BHSF" or "Baptist Health") to comply with applicable state and federal laws, including those protecting the confidentiality of patient health information and establishing certain individual privacy rights. It is our policy to implement these laws in a way that supports our primary mission to the community regarding the delivery of quality health care in an efficient manner. This policy governs how Baptist Health is allowed to share a patient's health information with the patient's family members, friends, or others identified by the patient as involved in the patient's care under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule.

## **SCOPE/APPLICABILITY:**

This policy applies to Baptist Health, its affiliates, all workforce members, and others as described below that may be responsible for notifying patients' family or friends regarding the patient's condition or location or that may receive requests from, or otherwise disclose to, family and friends of patients health information.<sup>1</sup>

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<sup>1</sup> This policy does not apply to patients receiving care or services from the addiction treatment & recovery center.

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- **Workforce members.** Workforce members means employees, volunteers, trainees, temporary staff, and contractors/consultants who are not independent contractors under *Human Resources Policy 1150 - Independent Contractors*.
- **Medical staff members.** Medical staff members are treated as members of an organized health care arrangement with Baptist Health South Florida and must comply with this policy as if they are workforce members pursuant to their applicable medical staff bylaws.
- **Students.** Employed students are treated as workforce members. Non-employed students (fellows, residents, students) must comply with this policy as if they are workforce members pursuant to the terms of their applicable academic agreements.
- **Independent Contractors and Others.** Independent Contractors and others who have agreed to comply with Baptist Health's policies and procedures as a condition of receiving access to Protected Health Information (PHI) must comply with this policy as if they are workforce members.

**DEFINITIONS:**

1. **Family:** triggers images of different "support groups" for each of us. Over time, the "social or support group" most important to us changes, shifts or expands throughout our lives. At Baptist Health, each patient defines those individuals who are most important to them — who they view as "family". We recognize and value the importance of these individuals in the healing process. These people may include, but are not limited to, family, friends, and/or other support persons, such as, a spouse, a domestic partner (including same-sex domestic partner), other relatives, neighbors, co-workers or clergy. In other words, each patient has the right to define who can be present and participate in their care and visitation.

**PROCEDURES TO ENSURE COMPLIANCE:**

Baptist Health recognizes the importance of the patient experience and embraces a culture that incorporates the insights and perspectives of patients and families into facility design, program development, policy development, health education, and care delivery. This type of philosophy is an established national movement called Patient and Family-Centered Care. Patient and Family-Centered Care involves truly partnering with patients and families. It not only involves them in decisions about their care, but also adds the benefit of their help and insight as a way to better plan, deliver and evaluate their care.

1. Uses and disclosures of patient information to a patient's family members and friends for involvement in the individual's care:
  - a. Baptist Health may, in accordance with the Privacy Rule, disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person's involvement with the individual's health care or payment related to the individual's health care.
  - b. Any individual covered by this policy may disclose health information directly relevant to persons (e.g., family members, friends) involved in the patient's care or payment for the patient's care unless the patient has requested that such disclosures not be made.
  - c. Incapacitated Patients or Emergency Situations:
    - i. With regard disclosures to an incapacitated patient's family members and friends or in emergency circumstances in which the patient is unable to express a preference regarding disclosure of information to the patient's family members or friends, licensed health care professionals and medical staff members shall use their best judgment to determine whether the disclosure is in the best interest of the patient.
    - ii. All others may not disclose information to family members and friends of such patients without the approval of the attending physician or supervising nurse responsible for the treatment of the patient.

- d. Family Payment Issues
  - i. When information is requested by a family member (or friend) for payment purposes, anyone covered by this procedure must verify that the requesting individual is responsible for paying Baptist Health for the patient's care.
    - 1) These efforts should be documented in the patient's record.
    - 2) Where the relationship to the patient previously has been established through the individual's presence with the patient, and the individual affirms that he/she is responsible for payment, the verification may be oral with a notation in the record of your conversation.
    - 3) Where you are uncertain regarding the relationship or payment responsibility, refer the requester to patient financial services for information on patients that have been discharged.
  - e. Prior Agreement
    - i. A patient's agreement to disclose health information to a family member or friend at one time does not necessarily imply agreement to disclose health information indefinitely to such person thereafter.
  - f. Disclosing Information.
    - i. When disclosing patient information to a patient's family member or friend in accordance with this procedure, only the minimum amount of information necessary and directly relevant to the person's involvement in the patient's care or payment for the patient's care may be disclosed.
- 2. Uses and disclosures of patient information to a patient's family members and friends for notification purposes of patient regarding patient's location or condition
  - a. Baptist Health may use or disclose protected health information to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death, unless the patient has or had requested that such notification not be made.
  - b. Any such use or disclosure of protected health information for such notification purposes must be in accordance with the following:
    - i. Uses and disclosures with the individual present
      - 1) If the individual is present for, or otherwise available prior to, a use or disclosure permitted and has the capacity to make health care decisions, anyone covered by this policy may use or disclose the protected health information if it:
        - a) Obtains the individual's agreement;
        - b) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or
        - c) Reasonably infers from the circumstances, based on the exercise of professional judgment that the individual does not object to the disclosure.
    - ii. Limited uses and disclosures when the individual is not present
      - 1) If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's care or payment related to the individual's health care or needed for notification purposes.
      - 2) Anyone covered by this policy may use professional judgment and experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.
    - iii. Uses and disclosures for disaster relief purposes
      - 1) Baptist Health may use or disclose protected health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities
    - iv. Uses and disclosures when the individual is deceased
      - 1) If the individual is deceased, Baptist Health may disclose to a family member, or other persons who were involved in the individual's care or payment for health care prior to the individual's death, protected health information of the individual that is relevant to such person's involvement,

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unless doing so is inconsistent with any prior expressed preference of the individual that is known to the covered entity.

- c. Incapacitated Patients or Emergencies – Notification Purposes
  - i. When a patient is incapacitated or in an emergency situation in which the patient is unable to express a preference regarding such notification, licensed health care professionals and medical staff members shall use their best judgment regarding whether such notification is in the best interests of the patient.
  - ii. Anyone covered by this policy may not notify family members, friends or others regarding such patient without the approval of the attending physician or another medical staff member responsible for the patient's care.
- 3. Patient and Family-Centered Care & HIPAA
  - a. Baptist Health is committed to providing our patients the best possible care. One of the ways we do this is to include patients and families in the care and treatment of the individual.
  - b. Care providers are encouraged to discuss important information about individual's care and condition with family and friends involved in the patients care.
  - c. Both HIPAA and Patient and Family-Centered Care revolve around the same guiding principle:
    - i. Sharing information about the patient's care with those who need know is in the best interests of our patients.
  - d. Anyone covered by this policy can disclose information directly to family and friends as outlined in this policy, provided that it in the best interest of the patient.
- 4. Deceased individuals
  - a. Baptist Health must comply with the requirements of this policy with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual.
- 5. The below examples are intended to help Baptist Health care providers in making decisions related to disclosures to family and friends:
  - a. If the patient is present and has the capacity to make health care decisions, when does HIPAA allow a health care provider to discuss the patient's health information with the patient's family, friends, or others involved in the patient's care or payment for care?
    - i. If the patient is present and has the capacity to make health care decisions, a health care provider may discuss the patient's health information with a family member, friend, or other person if the patient agrees or, when given the opportunity, does not object.
    - ii. A health care provider also may share information with these persons if, using professional judgment, he or she decides that the patient does not object.
    - iii. In either case, the health care provider may share or discuss only the information that the person involved needs to know about the patient's care or payment for care, examples include:
      - 1) An emergency room doctor may discuss a patient's treatment in front of the patient's friend if the patient asks that her friend come into the treatment room.
      - 2) A doctor's office may discuss a patient's bill with the patient's adult daughter who is with the patient at the patient's medical appointment and has questions about the charges.
      - 3) A doctor may discuss the drugs a patient needs to take with the patient's health aide who has accompanied the patient to a medical appointment.
      - 4) A doctor may give information about a patient's mobility limitations to the patient's sister who is driving the patient home from the hospital.
      - 5) A nurse may discuss a patient's health status with the patient's brother if she informs the patient she is going to do so and the patient does not object. **However**, a nurse may not discuss a patient's condition with the patient's brother after the patient has stated she does not want her family to know about her condition.
  - b. If the patient is not present or is incapacitated, may a health care provider still share the patient's health information with family, friends, or others involved in the patient's care or payment for care?
    - i. Yes. If the patient is not present or is incapacitated, a health care provider may share the patient's information with family, friends, or others as long as the health care provider determines, based on professional judgment that it is in the best interest of the patient.
    - ii. When someone other than a friend or family member is involved, the health care provider must be reasonably sure that the patient asked the person to be involved in his or her care or payment for care.

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The health care provider may discuss only the information that the person involved needs to know about the patient's care or payment, examples include:

- 1) A surgeon who did emergency surgery on a patient may tell the patient's spouse about the patient's condition while the patient is unconscious.
  - 2) A pharmacist may give a prescription to a patient's friend who the patient has sent to pick up the prescription.
  - 3) A hospital may discuss a patient's bill with her adult son who calls the hospital with questions about charges to his mother's account.
  - 4) A health care provider may give information regarding a patient's drug dosage to the patient's health aide who calls the provider with questions about the particular prescription.
  - 5) **However**, a nurse may not tell a patient's friend about a past medical problem that is unrelated to the patient's current condition.
  - 6) **However**, a health care provider is not required by HIPAA to share a patient's information when the patient is not present or is incapacitated, and can choose to wait until the patient has an opportunity to agree to the disclosure.
- c. Does HIPAA require that a health care provider document a patient's decision to allow the provider to share his or her health information with a family member, friend, or other person involved in the patient's care or payment for care?
- i. No. HIPAA does not require that a health care provider document the patient's agreement or lack of objection.
  - ii. However, a health care provider is free to obtain or document the patient's agreement, or lack of objection, in writing, if he or she prefers.
  - iii. For example, a provider may choose to document a patient's agreement to share information with a family member with a note in the patient's medical file.
- d. May a health care provider discuss a patient's health information over the phone with the patient's family, friends, or others involved in the patient's care or payment for care?
- i. Yes. Where a health care provider is allowed to share a patient's health information with a person, information may be shared face-to-face, over the phone, or in writing.
- e. If a patient's family member, friend, or other person involved in the patient's care or payment for care calls a health care provider to ask about the patient's condition, does HIPAA require the health care provider to obtain proof of who the person is before speaking with them?
- i. No. If the caller states that he or she is a family member or friend of the patient, or is involved in the patient's care or payment for care, then HIPAA doesn't require proof of identity in this case.
  - ii. However, a health care provider may establish his or her own rules for verifying who is on the phone. In addition, when someone other than a friend or family member is involved, the health care provider must be reasonably sure that the patient asked the person to be involved in his or her care or payment for care.
- f. Can a patient have a family member, friend, or other person pick up a filled prescription, medical supplies, X-rays, or other similar forms of patient information, for the patient?
- i. Yes. HIPAA allows health care providers to use professional judgment and experience to decide if it is in the patient's best interest to allow another person to pick up a prescription, medical supplies, X-rays, or other similar forms of information for the patient.
  - ii. For example, the fact that a relative or friend arrives at a pharmacy and asks to pick up a specific prescription for a patient effectively verifies that he or she is involved in the patient's care. HIPAA allows the pharmacist to give the filled prescription to the relative or friend. The patient does not need to provide the pharmacist with their names in advance.
- g. May a health care provider share a patient's health information with an interpreter to communicate with the patient or with the patient's family, friends, or others involved in the patient's care or payment for care?
- i. Yes. HIPAA allows covered health care providers to share a patient's health information with an interpreter without the patient's written authorization under the following circumstances:
    - 1) A health care provider may share information with an interpreter who works for the provider (e.g., a bilingual employee, a contract interpreter on staff, or a volunteer).

- 2) For example, an emergency room doctor may share information about an incapacitated patient's condition with an interpreter on staff who relays the information to the patient's family.
  - 3) A health care provider may share information with an interpreter who is acting on its behalf (but is not a member of the provider's workforce) if the health care provider has a written contract or other agreement with the interpreter that meets HIPAA's business associate contract requirements.
  - 4) A health care provider may share information with an interpreter who is the patient's family member, friend, or other person identified by the patient as his or her interpreter, if the patient agrees, or does not object, or the health care provider determines, using his or her professional judgment, that the patient does not object.
  - 5) For example, health care providers sometimes see patients who speak a certain language and the provider has no employee, volunteer, or contractor who can competently interpret that language. If the provider is aware of a telephone interpreter service that can help, the provider may have that interpreter tell the patient that the service is available. If the provider decides, based on professional judgment, that the patient has chosen to continue using the interpreter, the provider may talk to the patient using the interpreter.
6. Decision Grid of HIPAA Privacy Rule Disclosures to a Patient's Family, Friends, or Others Involved in the Patient's Care or Payment for Care

	<b>HIPAA Privacy Rule Disclosures to a Patient's Family, Friends, or Others Involved in the Patient's Care or Payment for Care Family Member or Friend</b>	<b>Other Persons</b>
<b>Patient is present and has the capacity to make health care decisions</b>	<p>Provider may disclose relevant information if the provider does one of the following:</p> <ul style="list-style-type: none"> <li>(1) obtains the patient's agreement</li> <li>(2) gives the patient an opportunity to object and the patient does not object</li> <li>(3) decides from the circumstances, based on professional judgment, that the patient does not object</li> </ul> <p>Disclosure may be made in person, over the phone, or in writing.</p>	<p>Provider may disclose relevant information if the provider does one of the following:</p> <ul style="list-style-type: none"> <li>(1) obtains the patient's agreement</li> <li>(2) gives the patient the opportunity to object and the patient does not object</li> <li>(3) decides from the circumstances, based on professional judgment, that the patient does not object</li> </ul> <p>Disclosure may be made in person, over the phone, or in writing.</p>
<b>Patient is not present or is incapacitated</b>	<p>Provider may disclose relevant information if, based on professional judgment, the disclosure is in the patient's best interest.</p> <p>Disclosure may be made in person, over the phone, or in writing.</p> <p>Provider may use professional judgment and experience to decide if it is in the patient's best interest to allow someone to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of health information for the patient</p>	<p>Provider may disclose relevant information if the provider is reasonably sure that the patient has involved the person in the patient's care and in his or her professional judgment, the provider believes the disclosure to be in the patient's best interest.</p> <p>Disclosure may be made in person, over the phone, or in writing.</p> <p>Provider may use professional judgment and experience to decide if it is in the patient's best interest to allow someone to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of health information for the patient.</p>

**SUPPORTING/REFERENCE DOCUMENTATION:**

- Health Insurance Portability and Accountability Act of 1996 as amended from time to time and including any regulations promulgated thereunder (collectively, "HIPAA")
- Applicable Florida State Laws

**RELATED POLICIES, PROCEDURES AND ASSOCIATED FORMS:**

- Corporate HIPAA Privacy Policies
- BHSF-74220-001.00 Unified Corporate Privacy Policy on HIPAA Compliance

**ENFORCEMENT & SANCTIONS:**

1. Reference: Corporate HIPAA Privacy Policy BHSF-74220-605.20 Sanctions for Privacy Violations
2. Violations of this policy will be determined by the Chief Privacy Officer in consultation with the appropriate levels of department leadership and appropriate Human Resources management level. Reference: HR policies 5250 Employee Conduct and 5300 Corrective Action.
3. Violations of this policy may lead to disciplinary action up to and including termination.
4. Enforcement of this policy will be performed by Baptist Health South Florida's Privacy Office in conjunction with Human Resources, as circumstances may dictate.