

REVISITING HIPAA

A guide to the Health Insurance Portability and Accountability
Act for hospital public relations professionals



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HIPAA was established to protect the privacy of individually identifiable health information.

Hospitals have complied with these privacy standards, and the restrictions they place on the way hospitals may use or disclose “protected health information” (PHI), since HIPAA went into effect in 2003. Greater New York Hospital Association (GNYHA) is updating this booklet, which was first published in 2003, to reflect the amendments to HIPAA under the Health Information Technology in Economic and Clinical Health (HITECH) Act, guidance issued by the US Department of Health and Human Services, and changes in hospital public relations practices. The revised booklet summarizes and clarifies the specific provisions of the HIPAA Privacy Rule that pertain to hospital communications activities. While HIPAA standards are the focus, state laws can and do set higher standards than HIPAA for the use and disclosure of PHI. Where relevant, New York State law is referenced in this booklet, but to the extent that the hospital operates in other states, those states’ laws should also be consulted. Hospital legal counsel should be consulted for guidance.

HIPAA’s Privacy Rule affects virtually every department within a hospital. While there is no single provision that addresses public relations, a number of Privacy Rule provisions directly impact the activities of the hospital public relations department, which fields numerous inquiries—from the press and the general public—that may implicate PHI, and therefore HIPAA.

ACCESSING INFORMATION WITHIN THE HOSPITAL

When a request for patient information is received, the Hospital Directory is the primary source of pertinent information. This section contains information on the Directory itself, what may be disclosed, the patient's ability to opt out of the Directory, and what to do when patients are unable to consent to the inclusion of their information in the Directory. It also defines standard patient conditions.

THE HOSPITAL DIRECTORY

Under the Privacy Rule, a hospital must provide every patient with a Notice of Privacy Practices and make a good faith effort to obtain from every patient an acknowledgment of receipt of the Notice. The Notice must describe, among other things, uses and disclosures that the hospital may make of the patients' PHI, including uses and disclosures in its Hospital Directory of patients. Specifically, the Notice of Privacy Practices must describe the following about the Hospital Directory:

Directory Information

The Notice of Privacy Practices must inform the patient of the specific PHI that the hospital includes in its Hospital Directory. Under the Privacy Rule, the Hospital Directory may include:

- The patient's name
- The patient's location in the hospital (e.g., room number)
- The patient's condition (described in general terms that do not communicate specific medical information about the individual)
- The patient's religious affiliation

Disclosure of Directory Information

The Notice of Privacy Practices must inform the patient of the persons to whom the hospital may disclose the PHI that is included in the Hospital Directory:

- The hospital may confirm the patient's presence in the hospital and may disclose the patient's location in the hospital, and his or her general condition to any person who asks about the individual by name. *GNYPHA strongly recommends that hospitals clarify in their Notice of Privacy Practices that "any person" includes family members, friends, and members of the press.*
- The hospital may disclose the patient's name, location, general condition, and religious affiliation to members of the clergy.

Option to Opt Out of the Directory

The hospital must give the patient the opportunity to restrict or prohibit some or all of the permitted disclosures of the PHI included in the Hospital Directory. This includes restricting the use or disclosure of one or more categories of PHI (e.g., a patient could opt to have his or her name and location, but not his or her condi-

tion, included in the Directory). This opt out process can be implemented orally or in writing through an opt out form. Hospitals should consider centralizing the opt out process if possible and documenting any oral opt outs they accept. These steps will reduce the chance that an opt out request will be agreed to but not appropriately honored. In any case, the opt out procedure should be clearly stated in the hospital's internal policies and procedures for maintenance and operation of the Hospital Directory, and as with all important policies and procedures, the hospital should train and educate relevant staff about the opt out procedure on a regular basis.

If the hospital has provided its Notice of Privacy Practices containing the elements described above and has given the patient an opportunity to opt out of the Hospital Directory, which the patient has not exercised, the hospital public relations department can, under the Privacy Rule, release Hospital Directory information except for religious affiliation, to the press and others in response to inquiries about the patient by name. Hospital public relations departments should always use their best judgment and may decide—in some or all cases—to use a stricter standard and reconfirm the patient's desire to have his or her Hospital Directory information disclosed to the press (by asking the patient or the patient's personal representative in person) before making such disclosure.

Note, however, that if your public relations department decides to take this extra step, it should adhere to an established policy and procedure that requires recording the patient's agreement or objection, both to document facts in case a dispute arises and to prevent future disclosures that may be contrary to the patient's expressed wishes.

PATIENTS WHO ARE UNABLE TO CONSENT TO INCLUSION IN THE DIRECTORY

If a patient is unconscious or otherwise incapacitated when he or she is brought to the hospital and cannot agree to inclusion in or opt out of the Hospital Directory, or if delaying care to obtain the patient's agreement or objection would jeopardize the patient's health, the hospital may disclose the Hospital Directory information to people who ask about the individual by name if such disclosure

is in the patient's "best interest," as determined in the professional judgment of the hospital, and would not be inconsistent with any known preference previously expressed by the patient. If the patient's preference is not known, the hospital must decide whether disclosure of the Hospital Directory information is in the patient's best interest.

While the Privacy Rule does not provide specific guidance on whether disclosure of an incapacitated patient's condition to the media is considered in the patient's best interest, it is likely that most hospitals will decide that a patient's best interest is served by disclosing less, not more, PHI. The Privacy Rule's preamble states that when a patient is incapacitated or in an emergency treatment situation, and a hospital must exercise its judgment as to the patient's best interest, the hospital should consider:

1. Whether disclosing that an individual is in the facility could cause harm or danger to that individual (e.g., could subject the person to domestic violence)
2. Whether disclosing information about a patient's location in the hospital could inadvertently reveal information about the patient's reason for being there (e.g., if giving a patient room number could reveal that the patient is in the psychiatric ward or an AIDS unit)
3. Whether it is necessary or appropriate to disclose such information to the patient's family and friends (e.g., so that such persons could assist in the patient's care by providing information to aid in the administration of proper medications)

A hospital may seek to have the media help identify or locate the family of an unidentified and incapacitated patient in its care. In that case, the hospital may disclose limited PHI about the incapacitated patient to the media if, in the hospital's professional judgment, doing so is in the patient's best interest.

The hospital must notify the patient of his/her right to agree or object to inclusion in the Hospital Directory as soon as the patient is conscious and able to make that decision.

CONDITION OF PATIENT

Under the Privacy Rule, the Hospital Directory should include a one-word general description of the patient's condition that does not communicate specific medical information about the individual. These one-word descriptions should only be disclosed if 1) the patient has not opted out of the Hospital Directory, and 2) the person inquiring about the patient asks about the patient by name. The American Hospital Association recommends the following terms:

Undetermined: Patient awaiting physician assessment.

Good: Vital signs are stable and within normal limits. Patient is conscious and comfortable. Indicators are excellent.

Fair: Vital signs are stable and within normal limits. Patient is conscious but may be uncomfortable. Indicators are favorable.

Serious: Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.

Critical: Vital signs are unstable and not within normal limits. Patient may be unconscious. Indicators are unfavorable.

Treated and Released: Received treatment but not admitted.

Treated and Transferred: Received treatment. Transferred to another facility.

Note: It is arguable that death is a "condition" that may be disclosed under the auspices of the Hospital Directory (as long as the patient's body is still at the facility, the patient did not opt out of being listed in the Directory, and is being asked about by name). However, hospitals are advised first to notify the next of kin or make a reasonable attempt to do so.

Information about the cause of death should come from the patient's physician, but only pursuant to an authorization signed by the personal representative of the deceased. If the deceased patient has been removed from the hospital, then the hospital must obtain a signed authorization from the patient's personal representative to release information about the patient's death. When a death is investigated by the medical examiner or coroner, questions about the cause of death should be addressed to their office. They may also have information about which funeral home is handling arrangements for the deceased.

HIPAA GUIDANCE

This section contains guidance on the policies and procedures that hospitals should maintain and penalties for violating patient privacy.

MINIMUM NECESSARY RULE

The Privacy Rule requires that whenever a hospital uses or discloses PHI, it “must make reasonable efforts to limit the [PHI used or disclosed] to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.” This rule does not apply in certain limited circumstances, the most notable being uses and disclosures of PHI for treatment purposes. Thus, although most uses for public relations purposes are circumscribed by the specific requirements outlined in the Privacy Rule, hospital public relations departments must nevertheless keep in mind the “minimum necessary” rule in making use or disclosure of PHI. Most important, the minimum necessary rule should be factored into all policies and procedures developed to address the Privacy Rule’s provisions that impact public relations.

OTHER APPLICABLE FEDERAL AND STATE LAWS

Other Federal and state statutes and regulations may prohibit, or otherwise restrict to a greater extent than the Privacy Rule, disclosures of certain highly sensitive PHI, such as PHI relating to mental health, alcohol or substance abuse treatment, and diseases such as HIV/AIDS. These laws include the New York State Mental Hygiene Law; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1972 and the implementing regulations at 42 CFR Part 2; and the New York State HIV/AIDS Confidentiality Law (Article 27-F of the Public Health Law). Hospital public relations staff should abide by hospital policies and procedures for such highly sensitive PHI, and consult with hospital legal counsel before disclosing any such PHI.

WRITTEN POLICIES AND PROCEDURES

The Privacy Rule specifically requires that each hospital adopt and implement written policies and procedures to ensure Privacy Rule compliance. Hospital public relations departments must maintain written policies and procedures that address the uses and disclosures of PHI for certain purposes and circumstances. Also, as with all hospital policies and procedures, staff must be trained at appropriate intervals to ensure compliance.

HOSPITAL POLICIES AND PROCEDURES

Hospitals and their public relations departments should maintain:

- Policies and procedures on what constitutes Hospital Directory information and how to handle related inquiries
- Policies and procedures on how to deal with disclosures of Hospital Directory information for incapacitated patients and in emergency treatment circumstances
- Reliable procedures to give patients an opportunity to opt out—to agree or object to uses and disclosures—of PHI for Hospital Directory purposes, including making sure that patients who have objected to being listed in the Hospital Directory are not listed, both now and in the future
- Policies and procedures on uses and disclosure of PHI to notify or assist in notifying (including locating or identifying) persons responsible for a patient's care
- Policies and procedures on the use and disclosure of PHI for disaster relief purposes
- Policies and procedures on the use and disclosure of PHI for marketing activities, public awareness campaigns, and entertainment purposes
- Policies and procedures on the use of social media

The Privacy Rule requires that hospital staff are trained in all applicable HIPAA policies and procedures.

PUBLIC OFFICIALS AND PUBLIC FIGURES

The Privacy Rule makes no distinction between private citizens and public figures concerning permitted uses and disclosures of their PHI. Hospitals should not treat a public figure's PHI differently from any other patient's PHI. There have been high-profile examples of hospitals being investigated and sanctioned by the US Department of Health and Human Services (HHS) Office for Civil Rights (OCR) in connection with their staff members' unauthorized access and/or disclosure of the PHI of celebrities and other public figures. Hospitals often maintain "zero tolerance" policies for such improper conduct.

PATIENT AUTHORIZATION REQUIREMENTS

The Privacy Rule requires a hospital to have a patient sign an authorization form for the hospital to use or disclose the patient's PHI for purposes other than treatment, payment, or health care operations, or as otherwise required or permitted by the Privacy Rule. An authorization must:

- Describe in detail what PHI will be used or disclosed
- Describe in detail the purpose(s) for which PHI will be used or disclosed
- Describe in detail to whom PHI will be disclosed
- Establish a specific point of expiration (a date or an event)

Examples of uses or disclosures of PHI that require authorization include photographs, video and audio tapes, movies, and histories that may be used in connection with media interviews, marketing and advertising campaigns, or hospital projects or publications such as annual reports and newsletters. Authorization is not required for the use and disclosure of PHI in a Hospital Directory, provided that such uses and disclosures are following the Privacy Rule's specific requirements applicable to facility directories.

PENALTIES FOR HIPAA VIOLATIONS

The OCR monitors compliance with, and enforces civil penalties for violations of, Privacy Rule standards. In recent years, OCR has increased the number and severity of fines and penalties in response to HIPAA violations. In 2009, HIPAA was amended to provide for increased penalties in a tiered penalty structure. Unintentional violations are subject to a minimum fine of \$100 per violation and

a maximum fine of \$50,000 per violation. Fines are higher for violations caused by willful neglect or intentional wrongdoing, but there is a general cap of \$1.5 million for all violations of an identical HIPAA provision in a given calendar year. Also, state attorneys general are now permitted to bring a civil action in US District Court in connection with alleged HIPAA violations.

HIPAA also provides for criminal penalties (enforced by the US Department of Justice, usually on referral from OCR). A person who obtains PHI under false pretenses may be subject to five years in prison, and the unauthorized disclosure of PHI for commercial gain or malicious purposes is subject to a 10-year prison sentence. Monetary fines also apply.

HIPAA does not provide for a private civil right of action, meaning that an affected individual may not commence a lawsuit against a hospital for a HIPAA violation. However, state law often provides for a right of action for breach of confidentiality of medical information or breach of privacy, in addition to regulatory sanctions.

Although not directly covered by HIPAA, members of the press, filmmakers, and television producers may be subject to civil liability for breach of privacy by writing, producing, and publishing a story that uses PHI disclosed to them in violation of the Privacy Rule.

USE OF SOCIAL MEDIA

Social media is an important communication tool used by most hospitals to promote their brand and share information. Similarly, many employees have personal social media accounts used to connect with friends, family, and colleagues. It is important to be aware of what is being posted to social media accounts and that it does not intentionally or inadvertently violate patient privacy.

Below are some tips for avoiding HIPAA violations on social media. Hospitals should adopt best practices and educate staff about appropriate use of social media.

- Hospital employees should be prohibited from posting any information about a patient unless specifically authorized by the hospital to do so. Some employees may think that it is acceptable to post patient information as long as it is "de-identified." The process of de-identifying PHI is complicated; HIPAA lists 18 personal identifiers that constitute identifiable PHI. Just removing a patient's name is not enough to render PHI de-identified. It is better to prohibit all posting, except for those employees specifically authorized to post for the hospital's official marketing purposes, pursuant to patient authorization.
- Staff should be cautioned about taking photos in the workplace, to ensure that no patients or PHI is visible. Staff should be trained and sensitized to the possibility of inadvertent disclosures of PHI in this manner.
- Staff should be advised that they should not assume that because their social media accounts are private that posts will not be seen by those outside of their network.
- Hospitals should ensure that their policies for social media or human resources address disciplinary actions for employees' breaches of patient privacy.

DISCLOSURES

This section contains guidance on when it is appropriate to disclose PHI and how to do so in compliance with applicable law, rules, and regulations.

MATTER OF PUBLIC RECORD

In certain situations, existing state or local law requires hospitals to disclose certain PHI to governmental authorities, such as law enforcement agencies, medical examiners, or public health officials. The PHI received by such entities may be considered a matter of public record that may be accessed by and disclosed to the general public, including members of the press. However, the fact that the hospital is required by law to disclose PHI to a governmental authority does not alter the hospital's obligation under the Privacy Rule to protect the confidentiality of that PHI and to otherwise comply with the Privacy Rule. For example, just because the hospital has filed a death certificate listing a patient's cause of death, the hospital cannot then disclose that patient's cause of death (or other PHI that is not part of the facility directory) to members of the press or other parties outside the hospital. Media inquiries on matters of the public record should be directed to the appropriate governmental authority (e.g., the police or fire department, the medical examiner's office, the state or local health department) that receives such reports.

Similarly, the fact that a plaintiff in a medical malpractice action has put their condition at issue and made their PHI part of a public record does not allow the hospital to use or disclose that individual's PHI in the media or other public forums without following Privacy Rule requirements (and any other applicable laws). Accordingly, without a HIPAA-compliant authorization from the plaintiff, the hospital may not attempt to defend itself in the media by making a specific statement about the plaintiff, if derived from PHI held by the hospital. In these situations, public relations staff should consult closely with hospital legal counsel.

DISCLOSURES TO NOTIFY, LOCATE, OR IDENTIFY PEOPLE RESPONSIBLE FOR AN INDIVIDUAL'S CARE

A hospital may use or disclose a patient's PHI to notify or assist in notifying (including identifying or locating) a health care agent, family member, or other personal representatives about the patient's location, general condition, or death. For example, a hospital may provide a photo of an unidentified patient to the news media to help locate the patient's next of kin. Before making any such use or disclosure, the hospital must determine whether the patient is "present or otherwise available" and whether the patient can make health care decisions. In

other words, the patient must be awake and alert and have the mental capacity to make decisions. If the patient meets this standard, the hospital may make such use or disclosure only if the patient agrees or is provided a reasonable opportunity to object and does not do so. If the patient does not meet this standard or otherwise cannot be provided an opportunity to agree or object because of emergency circumstances, the hospital may use or disclose PHI only if it determines that doing so is in the best interests of the patient. Any such disclosure must be limited to PHI that is directly relevant to the goal of identifying and locating next of kin and to such person's involvement in the patient's health care.

DISASTER RELIEF AND DISEASE OUTBREAKS

While HIPAA and other privacy laws are not suspended during declared emergencies, the HHS Secretary and the New York State Department of Health can waive certain provisions of the law under such circumstances. For HHS to waive certain HIPAA provisions, the President must declare an emergency, and the HHS Secretary must declare a public health emergency. Hospital counsel and regulatory staff, along with GNYHA, generally will monitor such declarations and legal waivers. Hospital public relations staff should confirm whether such waivers are in place, and their scope, before making disclosures of PHI in emergency circumstances.

Even without such waivers, in the event of a disaster (e.g., airplane accident, weather-related emergency, infectious disease outbreak), a hospital may use or disclose PHI to a public health oversight agency or a private entity authorized by law or by its charter to assist in disaster relief efforts (e.g., the American Red Cross) in order to notify or assist in the notification of a health care agent, family member, or other personal representative of the patient's location, condition, or death. Such uses and disclosures may also be for the purpose of identifying or locating such individuals. The requirements outlined above relating to whether a patient is "present" and not incapacitated also apply to disaster relief disclosures to the extent the hospital determines that such requirements do not interfere with its ability to respond to the emergency.

In the event of a disaster, registries may be set up to assist in the location and notification of family members and other persons about patient location, condi-

tion, or death. These registries could be established by Federal, state, or local authorities, or by private groups working under the auspices of the government/health oversight agency, and, as was the case on September 11, 2001, may involve coordination with organizations such as GNYHA. In such circumstances, a hospital should feel comfortable in determining that providing individuals with an opportunity to agree or object to inclusion in the registry would, in fact, interfere with the hospital's ability to provide such notifications in a timely and appropriate manner. *GNYHA recommends that hospitals document this judgment in their disaster preparedness/response plans and in their HIPAA policies and procedures.* In making disclosures to registries in connection with disaster relief efforts, hospitals also must keep in mind HIPAA's "minimum necessary" rule. *GNYHA also recommends that hospitals make a determination about what PHI is the minimum necessary to accomplish the purpose of notifying—or assisting in notifying, including locating or identifying—a health care agent, family member, or other personal representatives of the individual's location, general condition, or death, and document that judgment in their disaster preparedness/response plans and in their HIPAA policies and procedures.*

During a disease outbreak, hospitals may disclose, if authorized by state law, PHI to persons at risk of contracting or spreading the disease. Hospitals also may disclose PHI to anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public—consistent with applicable law (such as state statutes, regulations, or case law) and applicable standards of professional conduct.

As discussed above, hospitals must make reasonable efforts to limit the information disclosed to the "minimum necessary" to accomplish the purpose. Hospitals may rely on representations from a public health authority or other public official that the requested information is the minimum necessary for the purpose.

Affirmative reporting to the media or the public about an identifiable patient, or disclosure to the public or media of specific information about the treatment of an identifiable patient, such as specific tests, test results, or details of a patient's illness, may not be done without the written authorization of the patient or pa-

tient’s personal representative. During disasters and disease outbreaks, hospital administration should take steps to remind staff that they should not publish information about patients on social media, even if news outlets have already published the names of patients receiving treatment. As discussed above in the “Public Figures” section, just because a patient identifies himself or herself or is identified by the media as receiving treatment in a disease outbreak, it does not mean that hospital staff, including public relations staff, may disclose information about the patient without specific, express authorization to do so.

MARKETING

Hospitals may not use or disclose PHI for marketing purposes without first obtaining the written authorization of the patient or patient’s personal representative (e.g., health care agent, court-appointed guardian, certain next of kin). HIPAA defines marketing as making “a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.” It does not matter if the communication is made by the hospital or an entity on behalf of the hospital. If a communication meets this definition, then it can only occur if authorization is obtained. However, this definition contains certain exceptions:

- Communications to describe a health-related product or service that is provided by, or included in a plan of benefits of, the covered entity making the communication. In other words, a hospital does not have to obtain authorization before communicating with its patients about its products or services.
- Communications made for treatment of the patient.
- Communications for care management or coordination of the patient, or to direct the patient to alternative treatments, therapies, providers, or settings of care.

Each of the above types of communications can be made without patient authorization by the hospital or an entity on its behalf (a “business associate” with whom the hospital has a “business associate agreement” that is HIPAA-compliant.) Additionally, even if the communication does not fall within one of the three exceptions, no authorization is needed if it is in the form of a face-to-face communication between the hospital and the patient, or if it involves a promotional gift of nominal value provided by the hospital.

All other marketing activities require authorization. For marketing activities that involve direct or indirect remuneration to the hospital from a third party, the authorization must state that such remuneration is involved.

REQUESTS FOR EXTENSIVE PATIENT INFORMATION

If the press is seeking information about a patient's condition and/or treatment at the hospital that goes beyond the basic information provided in the Hospital Directory (e.g., a detailed statement about the patient's condition, a photograph of the patient, or an interview with the patient), the hospital must obtain written authorization from the patient to use and disclose that PHI. This authorization must describe in detail what information will be used and to whom this information will be disclosed, and must establish a specific point in time (a date or an event related to the patient or purpose of the use or disclosure) at which the authorization will terminate and the use and/or disclosure of PHI will no longer be permitted.

MEDIA ACCESS TO PROTECTED HEALTH INFORMATION

Sometimes hospital public relations staff contact the media to do a story or vice versa. This is usually for compelling reasons, such as to tell an uplifting story or to educate in the interest of public health. Hospitals also may participate in television shows, films, or documentaries that depict medical care to increase public awareness of certain conditions and treatments. Reality television shows portraying busy emergency departments have become increasingly popular. However, hospitals must balance these interests with patient privacy. In recent years, OCR has focused on media access to PHI, leading to high-profile enforcement cases that resulted in significant monetary settlements. HIPAA does not permit media, including film crews, to access areas of a hospital where PHI may be accessible without first obtaining a written HIPAA authorization from each patient whose PHI would be accessible. *Simply masking (such as by blurring or pixelating) patients' faces, voices, or other PHI during publication is not sufficient.* This is because the PHI is initially disclosed to the media crew itself, not the public. Written authorization is required even if hospital staff do the filming or capturing of information in another format, and then provide it to the media or public.

PHI could be inadvertently disclosed to the media in more nuanced ways, such as via the display of medical record numbers on doors, notes on bulletin boards, and data on clinical monitors. A patient's presence in an area of a hospital dedicated to the treatment of a specific disease or condition could reveal the patient's diagnosis, which may adversely impact other areas of life related to their social determinants of health, such as housing or employment.

GNHYHA strongly advises its members to involve legal counsel in every stage of their discussions with media companies to minimize legal and regulatory exposure. Before the hospital can allow media access, it must get every patient who is or will be in the area or whose PHI would be accessible to the media to sign a valid HIPAA authorization. This includes patients whose PHI is displayed in notes on a board or on clinical monitors located in the area. Staff should be mindful of who obtains the authorization and how. A practical approach would be to notify the patient's physician of the requested media disclosure. The physician should then ask the patient in a noncoercive fashion whether they are interested in participat-

ing in the media story. A technical interpretation of the Privacy Rule requires the physician to obtain at least oral permission from the patient to allow the physician to disclose the patient's identity to the public relations department. From there, the public relations department may use the patient's PHI to contact the patient about the story and request written authorization. Hospitals also could ask the media to enter into a business associate agreement (BAA) to obtain authorization from the patient or the patient's personal representative on the hospital's behalf before filming.

Even if valid authorizations are obtained and BAAs are properly executed, hospitals should ensure that reasonable safeguards are in place, such as computer monitor privacy screens, opaque barriers, and chaperoning the media crew or otherwise subjecting them to reasonable oversight while they are on the premises. During discussions with the media crew before filming, public relations staff should ask about film or other media obtained that is not part of the initial publication, but that may be used later (sometimes referred to as "B-roll" footage).

There are also times when a hospital hires a media company to create training videos. In this case, the media company is working on behalf of the hospital. If PHI is involved, a BAA should be signed, and authorizations obtained where necessary.

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