



Lutheran Services in America  
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# HIPAA and Pastoral Care: Practical Issues and Strategies

*Quality health care is a shared responsibility. As an individual deals with illness or injury, recovers from surgery or faces a difficult prognosis, medical professionals, health care facility chaplains and parish pastors all have an important role to play in God's work of healing.*

*Providing pastoral care within the walls of health care facilities and among medical professionals has become more challenging for parish pastors recently. The privacy regulations of the Health Insurance Portability and Accountability Act (HIPAA) required health care providers to institute new policies and practices to protect the health information of patients and residents. As health care providers began complying with the HIPAA privacy regulations in 2003, the ability of parish pastors (and their congregations) to obtain information from health care providers about parishioners was significantly limited.*

*This article will summarize the HIPAA privacy regulations and provide suggestions to parish pastors and congregation members about how to work within the constraints of those regulations to ensure that the important work of pastoral care continues to be carried out.*



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### Exploration of the Issues

Lutheran Services in America (LSA) received calls from pastors and other pastoral care providers across the country about obstacles they faced in providing spiritual support to parishioners in health care settings as a result of the institution of the HIPAA privacy regulations. To better understand the practical issues, LSA requested information through several ELCA Synods, the LCMS Reporter, and a seminary newsletter. LSA invited providers of pastoral care to share their positive and negative experiences regarding changes they observed under the new regulations. The responses were summarized and aggregated to identify themes and solutions. Health care providers and HIPAA privacy officers were consulted. This paper synthesizes that basic information and provides brief guidelines for consideration and use by pastors and congregation members.

### Background

Prior to HIPAA, some hospital and nursing home staff members and volunteers granted generous amounts of information to clergy about congregation members in their facilities. For example, in many places, clergy were permitted to view a complete list of all patients or residents in a health care facility to see if congregation members or other community members were admitted. Further, some staff would liberally share details of the individual's diagnosis and course of treatment. Such informal practices and communication made it easier for clergy to identify congregation members and stay connected to them so that meaningful pastoral care could be offered. However, this generous information-sharing often occurred without obtaining the permission of the individual and conditioned and/or reinforced congregation members' notion that the pastor "just knows" when members are hospitalized or admitted to health care facilities. However, with the implementation of more stringent privacy regulations under HIPAA, this kind of information-sharing is no longer permitted.

### What changed?

HIPAA stands for the Health Insurance Portability and Accountability Act of 1996, which was enacted on August 21, 1996. The original goal behind the HIPAA legislation was to ensure that insurance coverage could be maintained as a person moved from one employer to another employer. Other elements were added to the legislation as it moved through Congress. These additions included the standardization of electronic formats for the transmission of health care transactions; the security of electronic health information and electronic signatures; and the privacy of patients' identifiable information. Discussion in this article will be limited to the privacy standards.

The privacy standards of HIPAA went into effect on April 14, 2003. These privacy standards are designed to safeguard the health information of individuals who receive health care services and apply to a broad range of entities within the health care system, including hospitals, nursing homes, rehabilitation centers, mental health treatment centers, physicians' offices, pharmacies, dental care offices, health insurance companies and health care clearinghouses. The three purposes of the HIPAA privacy regulations included:

- protecting the rights of consumers of health care services by offering them access to their own health information and controlling the inappropriate use of their information;

- improving the quality of health care by restoring trust in the system; and
- improving efficiency and effectiveness by establishing a national set of standards for protecting personal health information.

In more practical language, the privacy regulations have established:

- when and under what circumstances health care providers can share information internally and externally,
- how the health care provider must inform the patient about its privacy policies, and
- how an individual can authorize or prohibit some specific uses of personal health information.

Under HIPAA, health care providers must protect individuals' health information and may only use health information for the purposes of treatment, payment, or health care operations. All other uses and disclosures of personal health information require the individual's authorization.

An exception in the regulations does permit certain limited health information to be shared with clergy so long as the individual has been informed about this sharing (typically through the facility's Notice of Privacy Practices) and has not objected. Specifically, a pastor may be told the name of the individual, the individual's location in the facility, his or her health condition expressed in general terms, and his or her religious affiliation.

### Implications

HIPAA has affected everyone. The implications for providers, pastors and consumers vary greatly.

#### Implication for Providers

To achieve compliance with the HIPAA privacy standards, health care providers needed to review and revise their policies and procedures regarding the use, storage, and release of protected health information. Further, these regulations required health care providers to analyze and determine which staff members should have access to specific patient information in order to perform their duties. Consider the following example:

*Clearly, everyone who works at a hospital should not have the same level of access to patient information. For example, a nurse who works in the operating room has the need for a patient's full medical history and ongoing treatment. However, the housekeeping or maintenance staff members who support the functioning of the operating room should have significantly less access to a patient's health history and treatment.*

For many health care providers, the changes required additional, new, or re-written policies and procedures. Providers were required to identify a staff person to create, implement, oversee and monitor these policies and procedures, typically called the "privacy officer." Once the revised policies and procedures were completed, health care providers were required to train all staff and volunteers.

In addition to the policies and procedures, many providers needed to evaluate and make changes to their physical plant including waiting

areas, offices and work areas. Providers needed to minimize the opportunity for the casual viewing or overhearing of the exchange of protected health information. The changes provoked by HIPAA regulations challenged health care providers. For many, achieving compliance required extensive human and financial resources and substantial changes in practice.

#### *Implications for Pastors*

In the past, many pastors were privy to abundant information about individuals in hospitals or in other health care settings. With more stringent privacy standards, many visiting pastors have experienced considerable changes in how and what information is shared with them. Pastors whose local health facilities had freely shared information through a more informal communication process reported the greatest frustration, likely due to experiencing a higher degree of change. Some pastors who visited congregation members in multiple health care facilities reported increased frustration because each facility had implemented different policies and procedures to meet the same regulations.

The HIPAA privacy regulations distinguish between two clergy groups, the clergy employed by health care facilities and visiting clergy who are not employed by a health care facility, but rather visit their parishioners during stays in health care facilities. For chaplains or directors of pastoral care who are employed by a health care facility, the policies and procedures of the institution may designate their role as “health care professionals” at the facility with approved access to particular protected health information in order to perform their work responsibilities. Visiting pastoral care providers are not considered to be health care professionals of the health care facility and thus do not share the same level of information access.

This is not to suggest that visiting clergy are not a vital part of a patient’s or resident’s life and care. However, the regulations clearly mandate the protection of health information in these instances. The health care facility must distinguish between the health care professionals for whom they must monitor and enforce the regulations and those individuals for whom training, compliance and monitoring cannot be required.

That said, recognizing the importance of pastoral care, the HIPAA regulations do treat visiting clergy differently from other “outsiders”. As noted earlier, visiting clergy may have access to limited information as long as the patient has not objected. In some settings they are offered a list of all individuals of their denomination within the facility. In general, visiting pastors may be provided with a patient’s name, location in the facility, condition in general terms, and religious affiliation.

#### *Implications for Consumers of Health Care Services*

For consumers of health care services, the most noticeable change has been the steep increase in paperwork that must be reviewed and signed at the first visit or admission to a health care facility. Consumers now are receiving, and are being asked to acknowledge, a detailed “Notice of Privacy Practices” which describes how the health care provider can use and disclose protected health information (PHI) and how consumers can access their PHI.

Consumers also may have noticed changes to the physical design of waiting rooms and offices. Sign-in sheets, readily visible computer screens, and name displays may have been eliminated. Consumers of

health care services may have been surprised by their pastors not visiting them or doing so much later than previously experienced.

#### **Strategies for Consideration**

##### *Strategies for Pastors and Others Who Provide Pastoral Care in Health Care Facilities*

Although patients or residents and their family members are the best and most reliable means through which clergy can learn of the admission of a congregation member to a hospital, in-patient hospice or nursing home, the following are offered as other suggestions for working successfully with the health care facility to optimize the opportunity to offer pastoral care while supporting the health care facility in maintaining compliance with the HIPAA regulations.

##### **Remind the members of the congregation to provide notification.**

The single most effective way to connect pastors to their parishioners in health care settings is to make sure that someone – the individual him or herself, a family member, or a friend -- notifies the pastor or church staff when a congregation member is admitted to a health care setting. This eliminates the biggest hurdle, simply knowing who is in the hospital or other facility and where they are. Congregations should run articles in their newsletters to remind people that it is better for the pastor or pastoral care visitor to hear from three people that someone is in the hospital than not at all.

**Know where to direct questions about a health care facility’s privacy procedures.** The HIPAA regulations require that each health care facility appoint a person to serve as the privacy officer to implement and monitor the organization’s compliance with HIPAA regulations. This person is well informed about the regulations and the facility’s policies and procedures. The chaplain of the health care facility may be a good source of information on the protocols of the facility. Specific questions may be directed to either the privacy officer or the chaplain.

**Be prepared to properly identify yourself.** Many health care facilities require pastors to “sign in” upon arrival and to provide identification. These guidelines are not to prohibit access but rather to protect the privacy of vulnerable individuals who may not be able to speak up or to say that they do not want visitors.

##### **Talk with the health care facility about privacy procedures.**

Some pastors shared success stories of how they spent time talking with the health care facility’s staff about the HIPAA regulations and the facility’s policies and procedures. Productive conversation took place as they shared their mutual concerns for the patient’s needs and developed an understanding of how to work together while ensuring compliance with these regulations.

**Use the patient or resident directory.** Pastors may find it helpful to learn if the health care facility uses a patient or resident directory and how individuals are included on or excluded from the list.

**Know the information that can and cannot be shared with visiting pastors.** Know what general information the facility will and will not

share with visiting pastors. For example, the regulations permit clergy to be informed of some general information so long as an individual has not prohibited the disclosure. The information that may be shared includes the name of the patient or resident, his or her location in the facility, religious affiliation and general condition.

It is helpful to learn the preferred ways to ask for information from staff.

For example, ask "In which room is Mrs. Olson?" instead of, "Is Mrs. Olson here" or "Was Mrs. Olson admitted?"

**Know if the health care facility you are working with uses an identification system to assist family in communicating with facility staff about patients.** Some health care facilities use an identification system or code for family members or friends to be able to get more specific information. This code is given to the patient or their family member. The family member provides this code to the health care staff when asking questions about the patient's condition or treatment. There is an assumption that if someone has the proper code, the patient has provided the code to the person and has therefore given permission for protected health information to be shared. Consider the following example:

*Mrs. Swanson is admitted to a local hospital to have knee replacement surgery. She is accompanied to the hospital by her son and husband and has two daughters who live and work out of town. The daughters want to keep informed about the procedure and how their mother is doing. Mrs. Swanson is given a code at the time of her admission. The hospital staff explains that she must give this code to the family and friends whom she wants to be able to speak with the nursing staff. Mrs. Swanson gives this code to her son who calls his sisters and gives them the information. At their convenience, the family members are able to call their mother's nurse, provide the code and receive updates on their mother. Without the code, the nurse would not have been able to provide specific information.*

**Offering prayers of intercession that comply with HIPAA is possible.** A common misperception is that it is always a HIPAA violation to offer prayers of intercession for a hospital patient or nursing home resident. Whether naming someone in intercessory prayers is a violation depends on who is doing the praying and how the protected health information was obtained. For example, if an employee of the hospital learns of a hospitalization during work and shares this information with a pastor or other congregation members, the hospital employee (and thus the hospital) has violated HIPAA. However, if a parish pastor visits a congregation member in a nursing home and adds that individual to the prayers

the following Sunday, there has been no HIPAA violation (although, of course, other professional and confidentiality concerns require clergy to use good judgment when sharing information publicly about parishioners). Consider the following example.

*A patient in a nursing home sees another patient being wheeled out of the facility on an ambulance gurney. During a worship service, the resident offers a public prayer for the person. This is not a violation of HIPAA. However, if a nurse on the staff of the facility offers an intercessory prayer indicating the newly diagnosed cancer, this would be a violation of the individual's privacy and a violation of the HIPAA regulations.*

#### Strategies for Parishioners

Parishioners have a critical role in assisting their pastor in performing ministry. With respect to pastoral care, parishioners need to keep their pastor informed about their personal and congregational needs. Some practical suggestions for parishioners include:

- inform the pastor when admission to a health care facility occurs and where the patient/resident can be located
- ask a family member or friend to notify the pastor that an admission has occurred and where the patient/resident is located

#### Conclusion

At the intersection of the HIPAA privacy regulations and pastoral care, tensions may exist, but so do opportunities. Having an awareness of the regulations and strategies for working within the regulations will help to improve the timeliness of pastoral care while also reducing the frustrations of pastors, patients, residents and health care provider staff. HIPAA was not put in place to be a barrier, but was designed to protect the highly personal, confidential information consumers share with their health care providers. Understanding the positive purpose of the regulations, knowing the resources and expectations of health care facilities, and using constructive strategies to promote communication between congregation members and pastors, and pastors and health care provider staff will afford greater opportunity for timely pastoral care during the difficult periods of life when health care services are needed.

SEE THE FOLLOW WEBSITES FOR ADDITIONAL INFORMATION.

<http://www.cms.hhs.gov/hipaa>

[http://www.churchexecutives.com/2004/01/Legal\\_Advice.asp](http://www.churchexecutives.com/2004/01/Legal_Advice.asp)

<http://www.professionalchaplains.org/resources/readingroom>

<http://www.professionalchaplains.org/professional-chaplain-services-resources-reading-room-hippa.htm>

<http://www.nacc.org/resources/hipaa.asp>