

HIPAA HIGHLIGHTS

August 2022



"Can You Hear Me Now?"

While we certainly want to be sure that our patients can hear and understand what we are trying to communicate, there are areas where caution should be used due to the possibility that others may overhear. Some of these areas include a semi-private room, waiting rooms, recovery areas and in the emergency department. In these areas we need to pay particular attention to patient privacy. If we have done our best and someone other than the patient overhears the protected health information (PHI), this may be a permitted incidental disclosure under the HIPAA Privacy regulations. We need take precautions to protect patient privacy.

What are incidental disclosures under HIPAA? Incidental disclosures occur when people see or hear protected information (PHI) that they do not "need to know". The Privacy Rule permits certain incidental disclosures that occur as a by-product of another permissible or required use of the information. Health care providers must apply reasonable safeguards and disclose only the minimum amount of PHI necessary to accomplish the purpose of the communication.

Ways you can minimize incidental disclosures include:

- Don't leave medical records or screens open in patient care areas where visitors or other patients can read them.
- Avoid using patients' names in public hallways and elevators.
- Speak quietly when discussing a patient's condition in a waiting room or other public area.
- Pull curtains in semi-private rooms and treatment areas.

Here are some situations that have come up:

A physician and midlevel provider enter an inpatient's semiprivate room to discuss PHI with their patient, Mr. Rivera. The patient's roommate, Mr. Adams, is present in the other bed. Are the providers permitted to speak with Mr. Rivera?

Yes, the HIPAA Privacy regulations recognize that overhearing communications in these settings may be unavoidable and allows for these incidental disclosures, as long as reasonable safeguards are taken to protect PHI. HIPAA is not intended to stifle quick, effective, quality patient care. However, the providers should make sure that the curtain is pulled between the two patients and speak in lowered voices.

Mr. Jones has been admitted to the hospital from the ED for an elevated heart rate, and is in a double room. Provider stands at the end of Mr. Jones' bed with a couple of residents and says in a loud voice, "So I understand you have HIV. Let's talk about that, because it may be related".

Providers should use particular caution in communicating sensitive subject matters (such as HIV, mental illness and substance abuse) in non-private settings. For sensitive conditions, it might be prudent to acknowledge the sensitivity before launching the discussion. Best practice would be to go to the bedside where only the patient can hear, use a low voice, and say "I'm going to need to talk about your medical history, some of which may be sensitive, but I'm going to keep my voice down for your privacy".

Mrs. Schultz enters the waiting room of an ambulatory clinic to check in for her appointment. The registration representative asks Mrs. Schultz for her information (address, phone, insurance information, etc.) in front of others in the waiting room. This makes her uncomfortable. Is this an incidental disclosure?

Again, reasonable safeguards must be in place. It is recommended to obtain information at a desk with only one patient present. Patients waiting in line to register should stand behind a posted sign or line on the floor wherever possible, to afford privacy to the patient who is providing information. If safeguards have been used and others are still able to overhear the information, this is considered an incidental disclosure.

For further information on any HIPAA related topics, please refer to the URM/Strong Health intranet site at: <http://sites.mc.rochester.edu/departments/hipaa/> or contact your [Privacy Officer](#) or [HIPAA Security Official](#).