

HIPAA, Patient Spouses, Family Members and COVID-19 Status

Consider this scenario: A patient with a confirmed case of COVID-19 claims the practice violated HIPAA Privacy Rights by contacting a spouse, partner or other family member to request that an upcoming appointment be rescheduled since the patient lives in a household with someone who has the disease. The COVID-19 (+) patient threatens to file a complaint with the federal Office for Civil Rights. Is the complaint valid? Did the practice violate HIPAA? They thought they were doing the right thing to protect other patients and staff.

Unless the patient has previously objected to you communicating with the spouse or another family member, the answer is no, the patient does not likely have a valid complaint.

Under HIPAA, health care providers are permitted, in many circumstances, to communicate with the patient's family, friends, or others involved in their care or payment for care without the patient's authorization. Even when the patient is not present or able to object, health care providers are generally permitted to determine, using their professional judgment, if communicating with a family member is in the patient's best interest. When possible, a covered dental practice should get verbal permission from the patient or otherwise be able to reasonably infer that the patient does not object.

The ability to use professional judgment extends to making decisions about communicating with family members when the health and safety of other patients, the dental practice team, and those who come in contact with a patient are at stake. The dental practice may also disclose information about a patient if the dental practice has a good faith belief that the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others, as long as the disclosure is to a personal reasonably able to prevent or lessen the threat, per [45 CFR 164.512\(j\)](#). This includes disclosures to family, friends, caregivers, and law enforcement, or anyone who is in a position to prevent or lessen the serious or imminent threat. HIPAA defers to the professional judgment of the healthcare professional in making such determinations. However, certain disclosures, such as disclosures to the media, should not be done without the patient's written authorization.

The HIPAA "minimum necessary rule" requires the dental practice to make reasonable efforts to restrict disclosures to the minimum amount of patient information reasonably necessary for the purpose of the disclosure. Keep in mind that there are certain exceptions to the minimum necessary rule, such as disclosures to a healthcare provider for treatment purposes.

Be aware that, if yours is a [covered dental practice](#), you will need to document the complaint, and any other complaints about your HIPAA policies and procedures, and include details regarding how each complaint was resolved, per [45 CFR 164.530\(d\)](#).

Consult these resources from the U.S. Department of Health and Human Services for more information:

- [A Health Care Provider's Guide to the HIPAA Privacy Rule: Communicating with a Patient's Family, Friends, or Others Involved in the Patient's Care](#)
- From the HHS FAQ for Professionals, 520 - [Does HIPAA permit a provider to disclose PHI about a patient if the patient presents a serious danger to self or others?](#)
- HHS' [Minimum Necessary Requirement](#)
- COVID-19 & HIPAA Bulletin: [Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency](#), March 2020

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