

## **SOUTH DAKOTA CODE OF COOPERATION**

### **A Public Relations Handbook for Hospitals, Long Term Care, Physicians, and Media**

The fields of communications and health care have changed dramatically over the past several years. The most recent and most dramatic change is the implementation of the Federal Health Insurance Portability and Accountability Act (HIPAA), which mandates new standards of privacy and confidentiality for patients, residents and their information.

HIPAA regulations specify the purposes for which information may and may not be released without authorization from the patient or resident of a long term care facility. This updated Code of Cooperation is consistent with HIPAA medical privacy regulations as well as guidance documentation from the U.S. Department of Health and Human Services.

The Code of Cooperation explains how and when information about patients and residents may be released to the media. It also follows federal mandates for releasing information to family members, other health care facilities, relief agencies and the media in everyday and disaster situations. This document is a guideline and local legal counsel may recommend slightly different policies for the release of patient information.

New technologies have also affected both how we care for individuals in our society and how we report that care to others. These advances are accompanied by an increased sensitivity to the patient's right to privacy.

Healthcare professionals, whether medical staff, hospital or nursing facility employees, are bound by both ethics and regulations to respect and protect patients' privacy.

It is the constitutional right of the news media to responsibly research and publish medical information. The medical professionals and healthcare facilities realize their responsibility to provide the public with accurate information on matters of medical interest. **However, it is neither the right nor the obligation of the medical professionals and health care facilities to furnish information to the news media, except as it serves the best interest of the patient or resident, and when/if the patient or resident has approved of such release of information.** The right to privacy must be afforded to all patients and residents regardless of their social or economic status, or lifestyle choices.

This document is a code of cooperation, not of censorship. It is a guide for hospital information officers, nursing facility spokespersons, physicians, and for the news media for the release of patient information. By agreeing with its tenets, the medical profession and health care providers acknowledge a mutual responsibility to provide the public with accurate information on matters of medical interest and assure health care personnel and physicians that the gathering and reporting of this information does not infringe upon patient and resident privacy, professional and medical ethics, or uninterrupted health care.

## **SPOKESPERSON(S)**

In order to assure smooth, accurate, and timely access to medical information:

- South Dakota hospitals and nursing facilities will have a spokesperson available to respond quickly and accurately to media inquiries.
- South Dakota physicians should be accessible to the news media either directly or through a spokesperson to the extent that it does not affect the quality of patient care.

South Dakota news media professionals are **expected to seek** information through designated spokespersons and to respect health care facility regulations regarding entry into all areas of the facility. In most cases, information can be found through the specified public affairs/public relations or administration offices.

- All parties agree that information will be disseminated accurately, frankly, and without sensationalism. The South Dakota Code of Cooperation among hospitals long term care facilities, physicians, and the news media has been approved by the South Dakota Association of Healthcare Organizations (SDAHO) and the South Dakota State Medical Association (SDSMA).

## **GUIDELINES FOR HOSPITALS**

Each hospital is expected to designate an authorized spokesperson(s) who will be accessible to the media. A hospital spokesperson serves as the primary resource for the media and he or she assumes the responsibility of collecting and disseminating requested data or locating other appropriate resources for direct contact.

All media in the community served by the hospital should be informed of the identity and phone number of the designated hospital spokesperson(s). Since each hospital may have a different system for the release of information, it is the hospital's responsibility to keep the media informed of this system.

When a Physician's approval and input is necessary for the release of information, the hospital spokesperson is responsible for obtaining that approval, even if he or she refers the media representative directly to the physician.

The hospital spokesperson must have the physician's approval before releasing his or her name as the attending physician, although the hospital may acknowledge, subject to patient approval, that the patient is under the care of the hospital staff.

The hospital spokesperson is responsible for obtaining information as rapidly as possible without interfering with the health and welfare of patients. **No information which violates the confidentiality or legal rights of the patient can be given.**

When information on hospital procedures, equipment, facilities for treatment, or other features of hospital services is provided, hospital spokespersons are expected to refrain from giving the impression that such facilities are unique to the hospital unless that is known to be fact.

Hospitals are expected to establish special emergency procedures to enable their institutions to provide fast and accurate data to the media in the event of a disaster.

## **GUIDELINES FOR PHYSICIANS**

The executive office of the South Dakota State Medical Association will be available to the media to assist in obtaining accurate information on health and medical subjects as promptly as possible. If the information desired is not immediately available, the SDSMA will so inform the media out of respect for their deadlines. Depending on the nature of the media requested, the SDSMA will either continue to gather the information for a later deadline, or refer the reporter to another competent authority as a resource. Spokespersons for the SDSMA are the executive secretary and the president or their designee.

The designated spokesperson of the SDSMA generally will agree to be quoted by name in matters of public interest. An up-to-date list of Association spokespersons is available through the SDSMA executive office. Physicians should be introduced only by the titles and credentials that relate to the particular news gathering situation.

In matters relating to the private practice of medicine, physicians are encouraged to give information to the news media, as long as it does not jeopardize the physician-patient relationship or violate the confidentiality of the patient's medical records or legal rights. The physician may request, however, that his or her name not be used in direct quotation. With the consent of the patient, the physician is encouraged to provide information concerning the nature of the injury or illness, the degree of seriousness, a brief description of what is being done for the patient, and any other detail which might lead to a better public understanding of the case. When the patient does not consent to disclose information to the media, the media should recognize that the physician is obligated to protect the legal right to privacy of the patient.

Notifying the news media of an event implies that coverage will be welcome. Therefore, speakers at medical meetings where such notification occurs should expect to make themselves available to the news media on request providing their schedule and commitment to the sponsoring organization is not unduly compromised.

When granting interviews to representatives of the media, physicians should be aware that they will not be permitted to edit the material before publication or broadcast. Therefore, a physician should grant an interview without such a condition, or decline to be interviewed.

In requests for general medial information where no patient is involved, the physician is likewise urged to work with the reporter. When the inquiries concern experimental or preliminary scientific information, extreme caution should be exercised so as not to raise false hopes or unfounded expectations. In releasing information about new treatments, procedures, or medicines, the physician has the responsibility to be sure that the scientific information has been disseminated to the profession before announcing the same to the general public.

Nothing in this code shall be considered to amend in any way the medical code of ethics of SDSMA.

## **GUIDELINES FOR LONG TERM CARE FACILITIES**

Each LTC provider is expected to designate an authorized spokesperson(s) that will be accessible to the media. A facility spokesperson serves as the primary resource for the media and they assume the responsibility of collecting and disseminating requested data or locating other appropriate resources for direct contact.

All media in the community served by the provider should be informed of the designated spokesperson(s). Since each provider may have a different system for the release of information, it is the provider's responsibility to keep the media informed of this system.

When a physician's approval and input is necessary for the release of information, the provider spokesperson is responsible for obtaining that approval, even if he or she refers the media representative directly to the physician.

The provider spokesperson must have the **physician's approval before releasing** his or her name as the attending physician, although the provider may acknowledge that the resident is under the care of the facility staff, subject to resident approval.

The provider spokesperson is responsible for obtaining information as rapidly as possible without interfering with the health and welfare of residents. No information which violates the confidentiality or legal rights of the resident can be given.

When information on facility procedures, equipment, facilities for treatment, or other features of provider services is provided, the facility spokespersons are expected to refrain from giving the impression that such facilities are unique to the facility unless that is known to be fact.

Providers are expected to establish special emergency procedures to enable their institutions to provide fast and accurate data to the media in the event of a disaster.

## **GUIDELINES FOR NEWS MEDIA**

Recognizing that the first obligation of the physician and the health care facility is to safeguard each patient's and resident's life and health, representatives of the news media are expected to cooperate by refraining from any action or demand that might jeopardize the patient or interfere with the orderly business of the health care facility.

On all matters of health or medical news, representatives of the news media are expected to make all qualified, designated contacts before proceeding to publication or broadcast. News media should not use the name of the attending physician without his or her expressed consent. This is done so that knowledge of a physician specialty will not lead to possible reckless speculation and/or unsubstantiated prognosis.

In the case of charges against a physician or health care facility, the reporters are expected to make every effort to verify the charges and offer the accused an opportunity to reply before publication or broadcast.

When using tape recorders, especially over the telephone, the health care spokesperson, patient, resident or physician, should be so advised prior to any questions.

Reporters and photographers must obtain the health care facilities permission before entering any areas of the facility. Access to patient and care areas will be arranged if the patient or resident is willing and as soon as his or her condition permits. The health care facility will assist by requesting written consent from the patient, resident or a responsible family member before any type of photography or interviewing is permitted.

## **ACCESS RESTRICTIONS**

Hospitals and nursing facilities are bound by State and Federal laws as well as facility policies and regulations that restrict public access to certain service areas and departments in the buildings. These sensitive areas in hospitals include, but are not limited to, the Maternity Department, Delivery and Labor Rooms, Nursery, Operating Rooms, Intensive Care Unit, Cardiac Care Unit, Emergency Treatment Rooms, Infection Control Areas, and Psychiatric Facilities, as well as private rooms of patients or residents and specialized service areas such as dialysis. This is done so patient and resident care goes on uninterrupted and their privacy is protected. In emergencies, access to other health care facility areas that are normally available to the medial also will be temporarily restricted.

Advance notice of visits to health care facilities by television stations will enable the health care staff and designated spokespersons to secure space clearance and make arrangements necessary to ensure that the electronic equipment used by camera crews will not impede patient care. In some areas, news people may be required to wear special clothing and have their equipment disinfected or protected.

## **RELEASE OF INFORMATION TO NEWS MEDIA**

All media inquiries regarding patient and resident conditions should be directed to the designated health care facility spokesperson(s). **When making an inquiry about a particular patient or resident, news media must have the name of the patient or resident before the designated spokesperson can make an attempt to obtain information regarding that person's condition.** Unless the patient or resident has requested that information be withheld, their one-word condition and location may be released without obtaining additional authorization.

In some cases, patients or residents will not have had the opportunity to state a preference related to the release of their information. For example, a hospital patient's medical condition may prevent staff from asking about information preferences upon admission. In those circumstances, condition and location information should be released only if, in the hospital's professional judgment, releasing such information would be in the patient's best interest. As soon as the patient recovers sufficiently, the hospital must ask for information preferences. Each hospital or nursing facility should develop policies and procedures to guide staff in making these judgments.

**In Case of Public Record (including police and accident cases):** Matters of public record refer to situations that are reportable by law to public authorities, such as law enforcement agencies, the coroner or public health officer. Condition reports on patients or residents can be given by the health care facility when names are provided by the media, if the patient or resident has agreed to be listed in the health care facilities directory, or, if permission has been granted by the patient or resident's legal representative. All other inquiries regarding the circumstances of

injury or illness or the causes of said injury or illness will be referred to the appropriate public authorities. All inquiries regarding general description of injuries or statement of prognosis will be released by the attending physician or by the attending physician through the designated spokesperson.

While laws and/or regulations require health care facilities to report a variety of information to public authorities, it is not the responsibility of facilities to provide that information in response to calls or other inquiries from the media or other parties, including law enforcement officials. Instead, such calls should be directed to the appropriate public authority.

**In Cases of VIP Patients:** Under HIPAA, public officials and public figures are not subject to different standards than other patients or residents when it comes to health care facility policies for releasing information to the media.

When a prominent person is hospitalized or admitted to a nursing facility, they may have their own spokesperson to whom all requests for information should be directed. If this is the case, the health care facility spokesperson should comply and cooperate.

## **PATIENT/RESIDENT CONDITIONS**

HIPAA standards have established five one-word conditions reports which are meant to describe a patient or resident's current condition.

**Undetermined.** Patient or resident is awaiting physician and/or assessment.

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

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

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

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

Clinicians find the "critical, but stable" term useful when discussing cases among themselves because it helps them differentiate patients or residents who are expected to recover from those whose prognosis is worse. But a critical condition means that at least some vital signs are unstable, so this is inherently contradictory. The term "stable" should not be used as a condition. Furthermore, this term should not be used in combination with other conditions, which by definition, often indicate a patient or resident is unstable.

**Note: A prognosis will not be given to the media or the public, except by the patient or resident's physician with their consent.**

**Death:** The death of a patient or resident may be reported to the authorities by the health care facility, as required by law. Any release of information to the public by the facility about a death will only be made following the notification of next-of-kin and upon receipt of a request about the specific patient or resident. Information about the cause of death must come from the patient's or resident's physician, and a legal representative of the deceased must approve its release.

## **PATIENT/RESIDENT LOCATION**

If approved by the patient or resident, their location in the facility may be included in the facility directory to facilitate visits by friends and family, as well as the delivery of flowers, cards and gifts. However, as a matter of policy, the patient's or resident's location should not routinely be given to the media.

HIPAA does not expressly prohibit disclosure of patient's or resident's room location to the media or the public if the patient has agreed to be listed in the directory. However, individual facilities have adopted policies prohibiting disclosure of patient or resident location to the media without the patient's or resident's permission.

## **PSYCHIATRIC AND CHEMICALLY DEPENDENT PATIENTS**

State and Federal laws prohibit the disclosure of any information about psychiatric patients, residents or chemical dependents. This includes confirmation of the patient's or resident's admission to or discharge from the facility.

## **MATERNITY**

Policies on the publication of births vary in different communities and are a matter for the hospital, the media, and the individual patient to decide. Hospitals should obtain consent from the parents before permitting photographs or release of any information. Hospitals usually are able to obtain approval from parents for release in newsworthy situation, such as those involving famous parents or multiple births.

The hospital will not release information relating to births, except as required by law or court process, unless the mother gives her written permission.

## **UNUSUAL ILLNESSES**

Health care providers will confirm any unusual illnesses or potentially epidemic conditions after they have been reported to local health authorities or reported as required by law, and only to the extent such information can be released without any danger of identifying the specific patient or resident involved or with their consent.

## **DEATH**

It is the responsibility of the family or law enforcement agencies to announce a death in most instances. HIPAA has been interpreted to indicate that death is a "general condition." Under HIPAA, health care facilities are expressly forbidden to disclose a patient or resident's death and

date or time of death to the media. However, if the patient or resident has agreed to be listed in the facility directory, the fact that they died may be disclosed.

Information on the cause of death can be given only by the family or by the physician, with approval by members of the patient's or resident's family.

If the death becomes the object of the coroner's examination, media inquiries as to the cause and circumstances of death should be directed to the medical examiner's office.

The determination of whether or not a death is a suicide is not within the province of the health care facility to determine or release. A coroner is usually the qualified authority for rendering such a judgment. The health care spokespersons should never release statements asserting suicide or attempted suicide as a reason for hospitalization or death.

## **INTERVIEWS AND PHOTOGRAPHS**

Photographs or interviews requested by the media can be granted only with the patient's or resident's prior written consent. When the patient or resident is a minor, permission from the parent or guardian must be obtained.

For each specific photograph request, the facility will require a completed, dated, and signed consent form for its records prior to photographing. This consent form will become a permanent part of the patient or resident's medical record in accordance with individual facility policy.

Requests to interview or photograph a patient or resident under arrest or custody will be referred to the police department or governmental agency holding jurisdiction.

The health care spokesperson and physician may grant or decline permission to interview or photograph a patient if such actions interfere with the patient's or resident's well-being or the delivery of care. Often these circumstances are temporary, and frequently approval is given when conditions change.

The official spokesperson should accompany the news media and the patient or resident throughout the entire session to provide assistance and protect the patient's or resident's rights.

Only in rare circumstances and with the permission of the patient's or resident's family will media coverage of unconscious patients, residents or patients suffering from severe illnesses or injury be permitted.