



FOUNDED BY BRIGHAM AND WOMEN'S HOSPITAL
AND MASSACHUSETTS GENERAL HOSPITAL

Privacy Guidelines for Clinicians

Sharing Protected Health Information with the Patient's Family or Others Involved in their Care

This document offers guidelines for clinicians regarding sharing information with persons that may be involved in a patient's care.

Quick Reference of Roles & Legal Authority

	Health Care Agent	Guardian	Family or Others as Identified by the Patient	Caregiver	Emergency Contact
Definition	<p>An individual appointed by a competent adult patient, in a legally binding document, to make medical decisions if he or she becomes incapable of doing so.</p> <p>In Mass., the legally recognized document is called a Health Care Proxy (HCP).</p> <p>In some states, this document is called a Health Care Power of Attorney.</p> <p>A valid HCP document must be signed, dated, and witnessed by two adults who are not the Agent.</p>	<p>A court-appointed individual that makes medical decisions for a person.</p> <p>Conservator: Can make all legal and financial decisions for the patient.</p> <p>Limited Guardian: Can only make certain medical decisions for the patient, as delineated in the court order.</p>	<p>Any individual identified by the patient as being involved in their care.</p>	<p>An individual identified or designated by the patient to provide them aftercare assistance at home following discharge.</p>	<p>An individual the patient names to be contacted in the event of a medical emergency.</p>

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When Can I Share?	<p>The Health Care Agent (“Agent”) does not have any legal authority to receive information until the HCP is invoked.</p> <p>To invoke the HCP, the patient’s physician must document in his/her medical record that the patient lacks capacity, the cause, and likely duration.</p> <p>Once a patient regains capacity, the HCP is no longer invoked.</p> <p>The patient has the authority to revoke the Agent’s authority at any time, even after it has been invoked.</p> <p>When the HCP is not invoked, you need the patient’s consent to share information with the Agent, in the same manner you would before sharing information with patient’s spouse or other family members.</p>	<p>With evidence of a valid guardianship (e.g., court order).</p>	<p>With patient consent:</p> <ul style="list-style-type: none"> • verbal, • implicit, or • patient is given an opportunity but does not object. 	<p>As soon as practical upon the issuance of a discharge or transfer order.</p>	<p>In an emergency.</p>

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How much can I share?	<p>You may share relevant information about the patient’s condition to allow the Agent to make informed medical decisions, subject to any limitations set by the patient in the HCP.</p> <p>A patient may limit the Agent’s authority or information they may receive within the HCP.</p>	<p>The Guardian is entitled to the same information as the patient would be to make medical decisions, unless the guardianship is Limited.</p>	<p>Only share what the patient allows.</p> <p>If patient cannot consent, only share information, if in your professional judgement, you feel given the circumstances sharing is in the patient’s best interest.</p>	<p>If patient consents, you may:</p> <ul style="list-style-type: none"> • notify the Caregiver of the patient’s discharge or transfer, • discuss the patient’s aftercare needs, • give the Caregiver a copy of the patient’s discharge instructions if patient signs the section authorizing the release. 	<p>Only share minimal information to notify the person of the nature of the emergency, such as the patient’s location and general condition.</p>
Do they have legal authority to make medical decisions?	<p>Yes, the Agent has legal authority to make decisions for the duration that the HCP is invoked, unless the patient revokes the Agent’s authority through words or action (i.e., disagreement with Agent’s decisions.).</p> <p>For any questions, contact the Office of General Counsel (OGC) or attorney on call</p>	<p>Yes, the Guardian has legal authority to the extent authorized by the guardianship order. Many treatment decisions must be specifically authorized by the court (“Extraordinary Treatment”), including Nursing Facility placement, major surgery, amputation, provision of anti-psychotics, etc.</p> <p>A Guardian is NOT authorized to consent to a patient being placed in a locked mental health unit. Commitment</p>	No	No	No

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		process must be followed for such placement.			

Questions & Answers Reference

Question	Answer
<p>1. My patient’s family member says they are the “Health Care Proxy.” What information may I share with them?</p>	<p>Remember, a Health Care Proxy (HCP) has no effect until a physician documents in the patient’s medical record that the patient lacks capacity. Further, until a HCP document is seen, it cannot be assumed that such a self-report is accurate.</p> <p>When your patient has capacity, the Health Care Proxy (HCP) has no effect. You can only share information with this person if the patient consents or does not object.</p> <p>If the patient is unavailable or cannot give permission, you may share information with this person if, in your professional judgment, it is in the patient’s best interest or, based on the circumstances, you reasonably infer that the patient would not object.</p> <p>If the physician does invoke the HCP, the Health Care Proxy Agent (“Agent”) can make health care decisions on behalf of the patient. Once invoked, you may discuss relevant information for making health care decisions and the Agent may request copies of pertinent medical records through Release of Information. When invoked, you must treat the Agent as the patient. You must ask the Agent for his/her consent to share information with others.</p>
<p>2. The patient, who is incapacitated, has both a Health Care Proxy (HCP) and Guardianship Order in the record. The Agent and the Guardian are different people. Both claim to have legal authority. Who should I speak with about the patient’s condition and who has authority to make health care decisions?</p>	<p>Usually a guardianship order will revoke the HCP (make it legally ineffective), but that is not always the case, and, if the guardianship order does not explicitly revoke a previously-executed HCP, the HCP remains in effect and trumps the guardianship. Once a guardianship is in place, the patient can no longer execute a HCP document.</p> <p>Further, the most recently executed HCP document is the effective one (if there is more than one duly executed HCP document). Contact the Office of General Counsel, attorney on call, to determine who has legal authority to receive information and make decisions.</p> <p>The person with legal authority may exercise the patient’s rights to access the medical record and to release information to others. This person can give verbal consent for you to discuss the patient’s care with others as s/he deems appropriate.</p>

Question	Answer
<p>3. If there is no HCP on record, may I notify my patient's family member or other person that the patient is in the hospital?</p>	<p>Yes, if the patient consents to you calling. If the patient is unconscious or unable to consent due to emergency circumstances, you may still notify the emergency contact or other family member if, in your professional judgment, it is in the patient's best interest or, based on the circumstances, you reasonably infer that the patient would not object.</p> <p>Examples:</p> <ul style="list-style-type: none"> • A doctor may, using such professional judgment, call the adult daughter of an incapacitated patient to inform her that her father suffered a stroke and is in the intensive care unit of a hospital. • A nurse may call a patient's wife to tell her that her husband was in a car accident and is being treated in the emergency room. • A nurse may contact the patient's roommate who is listed as the emergency contact to tell him the patient broke his leg falling down the stairs, has had surgery, and is in recovery.
<p>4. My patient has visitors in their room. May I discuss the patient's care with the visitors present?</p>	<p>Yes, you may if the patient verbally consents or, if after given the opportunity to object, does not object. You can ask the patient if they are comfortable with you discussing their care in front of visitors or if s/he would like the visitors to leave or wait in the lounge.</p> <p>If a patient's HIV test results or status will be discussed, ask visitors to leave the room. The patient should provide a signed Partners Authorization to Release Protected Health Information before you share HIV status or test results with family or others.</p>
<p>5. May I discuss information with a Caregiver who calls with questions after discharge?</p>	<p>Yes, if the patient identified a Caregiver during admission, you may discuss health information that is relevant to the Caregiver's involvement with patient's care.</p> <p>For instance, if they call with questions, you can discuss the aftercare instructions. However, you should not discuss unrelated medical conditions or information that is irrelevant to the person's involvement in patient's care.</p>
<p>6. Patient has lost capacity to make health care decisions but does not have a Health Care Proxy or a Guardian. Who can I share information with about patient's condition?</p>	<p>When there is no HCP or Guardian, the care team will need to assess and identify, based on the circumstances, who the appropriate surrogate is to act, speak, receive information, and make decisions on the patient's behalf.</p>

Questions? Contact the Privacy Office: <https://pulse.partners.org/privacy>