



## Frequently Asked HIPAA Questions for Pediatric Dentists

*(last updated March 2003)*

**This Q and A is intended as general information only. It does not constitute legal advice and should not be used as a substitute for seeking legal counsel.**

- *Should I purchase the ADA's HIPAA Privacy Kit?*

This is your decision, but it is a useful and well-done tool. The forms can be used for a pediatric dental office with only minor modification, such as changing the references from "the patient" and "your records" to "parent/guardian" and "child's records."

- *Where can I find the federal government's official information about the regulations and guidelines?*

The U. S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) is responsible for providing assistance to help covered entities with compliance. OCR maintains the following Web site to provide information on significant reference documents and other technical assistance information for consumers and providers:

<http://www.hhs.gov/ocr/hipaa/privacy.html>

- *What does the HIPAA Privacy Rule require the average provider to do?*

HIPAA requires the average provider to:

- Notify patients about their privacy rights and how their information can be used.
- Adopt and implement privacy procedures for its practice, hospital or plan.

- Train employees so that they understand the privacy procedure.
  - Designated an individual to oversee privacy operations.
  - Secure patient records containing individually identifiable health information.
- *Is my small pediatric dental practice held to the same requirements as a hospital?*

An integral part of the HIPAA Privacy Rule is its “scalability.” The privacy rule provides flexibility for small group practices to tailor their own privacy procedures that fit with their business needs. For example:

- The privacy officer at a small group practice may be the office manager, who will balance managerial duties with privacy compliance duties. At a large hospital, the privacy officer may be a full-time position with a small staff or board.
  - Depending on the specific facts and circumstances involved, a small group practice may satisfy the training requirement by furnishing each new member of the workforce with a copy of its privacy procedure and documenting the policy review. A hospital could be expected to set aside time to provide privacy instruction in a classroom setting.
  - The policies and procedures of small group practices may be more limited under the Privacy Rule based on the volume of health information maintained by the covered entity and the number of interactions with other providers and vendors.
- *Can health care providers to whom a patient is referred for the first time use protected health information to set up appointments or schedule surgery without a patient's written consent?*

Yes. The HIPAA Privacy Rule does not require covered entities to obtain an individual's consent prior to using or disclosing protected health information for treatment, payment or health care operations.

- *Can I still display patient photos such as a “no cavity” bulletin board?*

This should be permissible. Although not specifically addressed in the regulations and guidance, the closest analogous provision concerns patient or facility directories. All covered entities must obtain an individual's verbal agreement before using or disclosing protected health information for facility

directories, for persons assisting in the individual's care and for other purposes described. A patient or parent/guardian may opt out of inclusion of personal information in a health care facility's directory. Health care facilities may include patient information in their directory for the general public only if:

- They inform incoming patients or parents/guardians of their policies regarding the directory;
  - They give patients or parents/guardians a meaningful opportunity to opt out of the directory listing or to restrict some or all of the uses and disclosures that can be included in the directory; and
  - The patient or parent/guardian does not object to being included in the directory.
- *Is there guidance for an overall "model" small health care practice regulatory compliance plan?*

Yes. The Web address below will take you directly to the Final Compliance Guidance that was issued by HHS-Office of the Inspector General in the Federal Register. The benefits of an overall compliance plan (beyond just HIPAA) were discussed by Dr. Michael Ryan during the February 8, 2003 AAPD HIPAA CE course.

<http://www.oig.hhs.gov/authorities/docs/physician.pdf>

- *Are covered entities required to provide their notices to patients they treat in an emergency?*

Covered entities with a direct treatment relationship with individuals are not required to provide their notices to patients at the time they are providing emergency treatment. Providers must give notices when it is practical to do so at the conclusion of the emergency situation. Where notice is delayed by an emergency treatment situation, the privacy rule does not require that providers make a good faith effort to obtain the patient's written consent of receipt of notice.

- *Can covered entities distribute notices as part of other mailings or distributions?*

Yes. No special mailings are required to satisfy the notice requirements. Any future revisions to the policy do not have to be mailed directly to patients, but must be available upon request and posted in a clear and prominent location.

- *Are health care providers required to post their entire notice in their facility?*

Covered entities that have a patient facility must post their entire notice at the facility in a clear and prominent location. Although there is no specific format for the notice, it must include the same information distributed directly to the individual.

- *Does a notice have to be mailed to a new patient's family prior to treatment?*

No. December 4, 2002 OCR guidance indicates "when a health care provider's initial contact with the patient is simply to schedule an appointment or procedure, the notice provision and acknowledgement requirements may be satisfied at the time the individual arrives at the provider's facility for his or her appointment."

- *Can notices be provided to the parent, guardian or third party accompanying the child to the appointment?*

December 4, 2002 HHS OCR guidance indicates that the provider should make a good faith effort to obtain the patient's personal representative acknowledgement of the notice. The personal representative of an unemancipated minor is a parent, guardian or other person acting *in loco parentis* with legal authority to make health care decisions on behalf of the minor child. Acknowledgement by third party, such as a grandparent, is not addressed by OCR. The best advice is to mail the notice to the parent or legal guardian indicating that they must sign the acknowledgement in order for treatment of the child to continue.

- *What constitutes "minimum necessary?"*

The HIPAA Privacy Rule requires a covered entity to make their own determinations of what information is reasonably necessary for a specific purpose. This is a standard that calls for an approach consistent with the best

practices and guidelines already used by many providers to limit unnecessary access to protected health information.

- *Can I still use patient sign-in sheets?*

Covered entities are permitted to use patient sign-in sheets or to verbally announce patient names in waiting rooms provided that the information disclosed is appropriately limited. These incidental disclosures are permitted only when the covered entity has implemented reasonable safeguards and the minimum necessary standard. For instance, a patient sign-in sheet may not reveal individual health information that is unnecessary to the sign-in process.

- *Can I still use appointment reminder postcards?*

Postcard reminders of appointments remain permissible.

- *Do I have to make major modifications to my office?*

No, as described below:

- **Office layout:** Although the privacy regulation does not require office redesigns, covered entities may need to make adjustments (e.g. lock file cabinets, install screens) to prevent unauthorized disclosure of health information.
- **Soundproofing:** Soundproofing is not required, although “reasonable safeguards” should be taken to prevent disclosure of protected health information.
- **Are curtains and screens required for “open bays?”** *This depends.* The December 4, 2002 OCR guidance indicates the use of cubicles, dividers, shields, curtains or similar barriers *may* constitute a reasonable safeguard. Covered entities should assess potential risk for impermissible disclosures, the ability to deliver quality health care and the administrative or financial burden to be incurred from instituting specific safeguards.

It may be tenable that consistent use of the additional reasonable safeguards described below may obviate the need for screens or curtains. *Unfortunately, there is no clear-cut guidance from HHS.* The best advice would be to establish a

protocol that the parent/guardian will be asked to come forward to the chair-side and conversation would be conducted in such a tone as to minimize being overheard (in other words, don't shout across the room). Utilize the private office consultation for certain sensitive matters, such as discussing the need for sedation or general anesthesia in the context of either behavior management problems or extensive caries. Evaluate how this works in terms of a reasonable safeguard.

- *What is a reasonable safeguard?*

The HIPAA Privacy Rule requires covered entities to implement reasonable safeguards that reflect their particular circumstances. However, the rule recognizes that oral communications often must occur freely and quickly for the administration of quality health care. The rule also acknowledges that some overheard communications are unavoidable in the health care setting. The following practices are permissible under the Privacy Rule, provided that reasonable care was taken to minimize incidental disclosures to third parties (each covered entity must evaluate what measures are reasonable and appropriate in its environment):

- Health care staff may communicate and coordinate verbally at nursing kiosks.
- Health care providers may have confidential conversations with other providers and patients even when there is a chance they might be overheard.
- Health care professionals may discuss a patient's condition over the phone with a patient, provider or family member.
- Health care professionals may discuss lab test results with a patient or provider in a joint treatment area.
- Health care professionals may discuss a patient's condition during training rounds in an academic or training institution.

- *What types of reasonable safeguards should be implemented?*

In determining what is reasonable, providers should assess the potential risks to patient privacy and the potential effects on patient care. Reasonable safeguard examples would be:

- Speak quietly when discussing a patient with family members in a public area such as a waiting room or hallway.
- Avoid using patient names in public spaces when unnecessary.

- Post signs to remind employees to protect patient confidentiality.
- Isolate or lock filing cabinets or record areas.
- Limit access to areas where patient charts hang outside of patient rooms, and place patient charts with medical information facing the wall or door.
- Add passwords to computers.
- Limit the amount of information disclosed on patient answering machine messages.
- Consider steps taken by other providers to limit inappropriate disclosures.

- *Are locks required for filing cabinets containing patient records?*

This is not a mandate under the HIPAA rule. Such a step *may* constitute a reasonable safeguard. The best advice would be to assess the overall access to protected health information in your office and consider this decision in the context of your overall office privacy policy.

- *How can I designate a privacy officer?*

The HIPAA Privacy Plan mandates that each company should designate a “privacy officer” to ensure proper compliance with the privacy rules. Although no standard consensus has yet been reached regarding who should take the position of privacy officers, they may have audit, legal or operational backgrounds. The selection of a privacy officer reflects how a plan intends to address HIPAA issues. Primary functions of the privacy officer will include:

- Ensuring that the compliance program is being implemented.
- Monitoring and evaluating its implementation and progress.
- Periodically revising the program to make changes based on the organization’s needs and/or regulatory environments.
- Independently reviewing certain critical decisions prior to their implementation.
- The privacy officer should work closely with counsel to review and update the education, training, and standards of conduct to reflect current federal, state and local laws.

**But see the note above about “scalability” to a small health care practice.**

- *Do parents/guardians have to sign a separate acknowledgement of privacy policies for each child being treated in my practice?*

No. One acknowledgement should be sufficient. Just indicate on the form the children/dependents who are treated in the practice.

**For further information:**

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