Critical care providers are often privy to confidential information in the course of clinical practice. A dilemma can arise when confidential information is requested by family members or friends of the patient. Critical care nurses must be aware of the regulations regarding confidentiality, as well as situations where the use and disclosure of protected health information are permitted. (Critical Care Nurse. 2012;32[5]:61-65)

Nurses are subject to numerous ethical and legal duties in their professional role, including the imperative to maintain patients' privacy and confidentiality. Beginning in 1893, nurses taking the Nightingale Pledge promised to do all in my power to maintain and elevate the standard of my profession, and hold in confidence all personal matters committed to my keeping and all family affairs coming to my knowledge in the practice of my calling.2

The duty continues today, with hospital policies, state regulations, and federal law aimed at protecting patients' confidentiality.

Critical care providers are often privy to confidential information in the course of clinical practice. The dilemma may arise when confidential information is requested by family members or friends of the patient. Although at times it seems that regulations and laws are so stringent that any disclosure of health care information is forbidden, it may be necessary and appropriate to make disclosures, and the current regulations and laws support the professional judgment in communicating patients’ health information.3

**Health Insurance Portability and Accountability Act**

The Health Insurance Portability and Accountability Act (HIPAA) was first enacted by Congress in 1996 to improve continuity of health insurance coverage, combat health care waste and fraud, and simplify the administration of health insurance.4 The provisions regarding health care privacy (“the Privacy Rule”) went into effect in 2003, with the stated goal to assure that individuals’ health information is properly protected while allowing the flow of health information needed to provide and promote high-quality health care. . . .5

The Privacy Rule protects all “individually identifiable health information” (also called “protected health information”), including demographic information, that relates to the (1) individual’s past, present, or future physical or mental health or condition; (2) provision of health care to the individual; or (3) past, present, or future payment for the provision of health care to the individual, and any information that can be used to identify the individual, including name, address, birth date, and Social Security number.5

Given the broad scope of the Privacy Rule, it would seem like little if any information could be exchanged among health care providers or other involved parties. However, the Privacy
Rule gives nurses and other professionals latitude in disclosing protected health information without an individual’s express authorization. Use and disclosure of protected health information is permitted, though not required, to the individual who is the subject of the information for treatment, payment, and health care operations activities:

1. Treatment is the provision, coordination, or management of health care–related services, including consultation between providers regarding a patient.
2. Health care operations are quality improvement assessments and activities, including case management and care coordination, and other activities related to credentialing of providers, compliance programs, and facility administration.
3. Uses and disclosures of psychotherapy notes generally require the patient’s authorization.

4. With opportunity to agree or object
   - Informal permission may be obtained by asking the individual outright, or by circumstances that give the individual the opportunity to agree or object.

5. If the individual is incapacitated, in an emergency situation, or not available, uses and disclosures are generally allowed if the clinician determines it to be in the best interests of the individual.

A health care facility may maintain a directory of information on patients, including the individual’s name, general condition, religious affiliation, and location in the facility.

A provider may disclose the individual’s condition and location in the facility to anyone asking for the individual by name, and also may disclose religious affiliation to clergy.

4. For notification and other purposes
   - A provider may rely on an individual’s informal permission to disclose to the individual’s family, friends, or other persons that the individual identifies, health information directly relevant to that person’s involvement in the individual’s care.

5. For public health and benefit activities
   - Providers may use and disclose protected health information without individual authorization as required by law (including by statute, regulation, or court orders).

- Providers may disclose information to public health authorities when authorized by law to collect or receive information for preventing or controlling disease, injury, or disability; and to individuals who may have contracted or been exposed to a communicable disease, when notification is authorized by law.

- Providers may disclose protected health information to appropriate government authorities regarding victims of abuse, neglect, or domestic violence.

- Protected health information may be used and disclosed to facilitate the donation and transplantation of cadaveric organs, eyes, and tissue.

- Providers may disclose protected health information when necessary to prevent or lessen a serious and imminent threat to a person or the public, when the disclosure is made to someone who can prevent or lessen the threat (including the target of the threat).

The Privacy Rule allows practices that are common in health care but have the potential for protected health information to be disclosed incidentally. The incidental disclosure may include a hospital visitor overhearing a conversation among providers or glimpsing information about a patient on a nursing station whiteboard. Incidental uses and disclosures of health information are permitted if reasonable safeguards are implemented to protect the individual’s privacy. Appropriate safeguards including talking quietly when
discussing a patient’s condition in a waiting room, avoiding the use of patients’ names when in public areas, and posting signs to remind employees to protect patients’ confidentiality.6

HIPAA established the minimum federal privacy protections for individuals’ health information, but state law and professional codes may provide even greater protection for patients. In those cases, the more stringent rule is applied. In addition, state law may require reporting of specific diseases, injuries, births, deaths, or data required for health surveillance and investigation.7

**Challenges to Maintaining Confidentiality**

Maintaining the balance between personal protection and efficient delivery of health care can be difficult. There has been confusion and misinformation regarding the Privacy Rule3,8 (see Sidebar on Myths About HIPAA). Nurses often wonder how to respond to questions regarding a patient’s condition, explaining diagnoses and procedures to patients in areas where the conversation may be overheard, and disposing of medications and intravenous infusion bags in an appropriate, confidential manner.8 Although the Privacy Rule does offer nurses some latitude in using professional judgment regarding disclosures, reasonable safeguards must be employed for personal health information.

Inappropriate use or disclosure of protected health information occurs when it is provided to a person not involved in the patient’s treatment and care coordination, to persons who do not require the information to perform their treatment activities, or in situations where disclosure is not in the best interests of the patient. The inappropriate disclosure may be inadvertent, including faxing data to the incorrect party or mailing information to the wrong recipient, or a nurse may discuss details of a patient’s case with a colleague not involved in the patient’s care or mention a patient’s presence in the hospital to a friend.

Inappropriate disclosures also occur when documents containing patients’ information are not disposed of properly. Documents with identifiable information about patients, including patient assignment sheets, diagnostic reports, and billing information should be shredded or otherwise stripped of identification that identifies patients.

**Protecting Patients’ Confidentiality**

A nurse is obligated to protect confidential information about patients, unless required by law to disclose the information. The nurse discloses patients’ information on a “need to know” basis, when it is required by an individual to provide care to the patient. Permission to disclose confidential information should be obtained by asking the patient, or when circumstances clearly give the individual the opportunity to agree or object. When the individual is incapacitated or in an emergency situation, providers may generally make disclosures if it is determined to be in the best interests of the individual. Passwords should not be shared, and personal information shared via e-mail should be encrypted. Failure to protect patients’ information can result in significant penalties (see Sidebar on Notable Privacy Violations and Consequences). CCN

**Financial Disclosures**

None reported.

**Sidebar: Myths About the Health Insurance Portability and Accountability Act (HIPAA)**

- HIPAA prohibits providers from discussing a patient’s condition over the phone with a patient, provider, or a family member.
- HIPAA prevents providers from discussing a patient’s condition or treatment in a semiprivate room.
- HIPAA prohibits providers from leaving any messages for patients at their homes, either on an answering machine or with a family member.
- HIPAA prohibits leaving patients’ medical charts at the bedside or outside patients’ rooms.
- HIPAA prevents displaying patient care signs (eg, “fall risk” or “diabetic diet”) at the patient’s bedside or at the door of the hospital room.
- HIPAA prohibits displaying patients’ names next to the door of their hospital room.

Sidebar: Notable Privacy Violations and Consequences

Felony conviction
Ms S, a licensed practical nurse, accessed a patient’s medical record, then provided confidential details of the medical record to her husband. Mr S then called the patient, stating that he intended to use the information against the patient in an upcoming legal proceeding. When the HIPAA breach was discovered, Ms S was fired and later indicted on federal charges of wrongful disclosure of individually identifiable health information for personal gain and malicious harm. Ms S ultimately pled guilty. Although she faced imprisonment of 10 years and a fine of $250,000, Ms S was sentenced to 2 years probation and 100 hours of community service.

Health Insurance Portability and Accountability Act and Facebook
A patient was admitted to an emergency department with an object lodged in his rectum. Two nurses each took a picture of the patient’s radiograph with their cell phones, and it was alleged that 1 nurse posted the photo on her Facebook page. The accused nurse admitted to taking the photo and discussing the incident on her Facebook page, but denied posting any picture of the radiograph. The 2 nurses who took the photos were fired.

Privacy of colleague
A medical resident was admitted to the hospital after being shot during a robbery. Sixteen employees, including nurses, doctors, and managers, were fired for violating the resident’s privacy by looking through her confidential medical information. An emergency medicine technician (EMT) responded to an emergency call regarding a possible overdose. On arrival, the patient was found unresponsive and transported to the hospital. The EMT later told a friend that she had helped transport the patient to the hospital for treatment of a possible overdose. The EMT’s friend told another about the medical treatment. The EMT then learned that her friend worked with the patient (a nurse at another hospital). The patient claimed that the EMT had defamed her and violated her privacy by publicizing information regarding her medical condition and making untrue statements including that she had attempted suicide. The patient was awarded $3,000 in compensatory damages and more than $30,000 in legal fees.