



November 2005

PHIPA and Spiritual/Religious Care

Since the passage of the Personal Health Information Protection Act (PHIPA) last year, a number of questions have arisen with respect to how these new privacy rules impact spiritual and religious care provided in the hospital setting. The below material, developed by the OHA in collaboration with Ministry of Health and Long-Term Care, provides guidance on these issues. For further information, we would encourage hospitals to consult the Hospital Privacy Toolkit (pg. 58) found on the OHA's website.

Spiritual and religious care is an important aspect of the programs and services that hospitals make available to patients. Indeed, accrediting bodies recognize that a patient's spiritual needs should be considered in determining the appropriate care for the patient (e.g., Canadian Council on Health Services Accreditation (1999)). In order to deliver such programs and services, hospitals often need to use personal health information about patients and disclose that information to others. PHIPA includes provisions that support the information exchanges that are necessary to deliver such programs and services while respecting the privacy of patients.

Collecting information about a patient's religious affiliation

Hospitals may collect information about a patient's religious affiliation in a variety of ways. For example, a hospital may choose to request information about the religious affiliation of a patient as part of the information that a patient provides at time of admission. A patient may provide the information orally to an agent of the hospital, such as an admitting clerk, or in writing by including the information on a form.

Using information to deliver spiritual and religious care programs

Many hospitals have programs to provide patients and their families with spiritual or religious care. The program may include, for example, visits from hospital staff or volunteers, such as: chaplains; clergy; trained lay spiritual care visitors; or other spiritual or religious care providers. The program may also include such activities as the provision of appropriate religious services to a patient or arranging a visit from a representative of the patient's religious organization.

Where a hospital has such program in place, the hospital may use a patient's personal health information without the consent of the patient for the purpose of delivering the program to the patient. [s. 37(1)(c)] This use of the patient's personal health information may include providing the information to an agent of the hospital, such as spiritual care visitor. For example, a hospital may use information about the patient's religious affiliation by providing the information to a spiritual care visitor who volunteers with the hospital for the purpose of arranging a visit with the patient.

Disclosure of information to religious organization based on implied consent

A hospital may rely on an individual's implied consent to provide a patient's name and location in the hospital to a representative of a religious organization where:

- the patient provided information about his/her affiliation to the religious organization to the hospital; and,
- the hospital has offered the patient the opportunity to withhold or withdraw his/her consent to provide the information to the religious organization but the patient has not done so. [s. 20(4)]

To provide a patient with this opportunity to withhold or withdraw consent, a form on which a patient records his/her religious affiliation, or the agent of the hospital to whom a patient provides the information, for instance, could make it clear that the hospital may provide the patient's name and location in the hospital to a representative of the religious organization, unless the patient withholds or withdraws his/her consent by indicating to the hospital that he/she does not want that information to be provided.

Alternatively, the hospital may notify patients of the opportunity to withhold or withdraw consent as part of a broader notice that a hospital develops to inform patients of the hospital's information practices.

Where a patient does not withhold or withdraw his/her consent to the hospital's provision of the patient's information to a representative of the religious organization with which the patient is affiliated, the hospital may rely on the patient's implied consent to provide this information to the representative of the appropriate religious organization. For example, a representative of a religious organization may work outside a hospital but attend at the hospital weekly to visit patients. Upon or prior to the representative's arrival, on the basis of the patient's implied consent, the hospital may disclose to the representative the names and room numbers of the patients who have indicated that they belong to the representative's religious organization.

In some instances, a hospital may have information about a patient's religious affiliation, but may not be able to offer the patient the opportunity to withhold or withdraw his/her consent to provide the information to a representative of the applicable religious organization. For example, a hospital may not have this opportunity when admitting an unconscious patient. In such instances, PHIPA does not permit the hospital to disclose this information about the patient's religious affiliation to a representative of the applicable religious organization on the basis of the patient's implied consent.

Disclosure of information to religious organization based on express consent

Whether orally or in writing, a patient may expressly indicate to a nurse, chaplain or other member of a hospital's team that he/she would like the hospital to communicate to a representative of a particular religious organization on the patient's behalf, for example, to arrange a visit. Depending on the circumstances, such a request may constitute or lead to the patient's express consent to the hospital's disclosure of the patient's personal health information to the religious organization.



Substitute decision-makers' consent on behalf of patients

Where a patient's substitute decision-maker is available, the substitute decision-maker may consent to a hospital's disclosure of personal health information to a religious organization on the patient's behalf. [s. 23] A parent of a child, for instance, may indicate to a nurse that he/she would like a representative of a religious organization to visit his/her child and ask the nurse to communicate with the hospital's chaplain about coordinating the visit.

Information about a patient's location and health status

Where a representative of a religious organization is aware that a particular individual is a patient in a hospital, the hospital may disclose certain information about the patient to the representative at the request of the representative, in the same way that the hospital may disclose such information to others. The hospital may disclose information to the effect that the individual is a patient in the hospital, information about the individual's general health status (e.g., described as critical, poor, fair, stable or satisfactory), and the location of the individual in the facility. The hospital may disclose this information without the consent of the individual, provided that the hospital offers the individual the option, at the first reasonable opportunity after admission, to object to such disclosures, and the patient has not made such an objection. [s. 38(3)] A hospital may provide a patient with the option to make the objection, for example, through forms that the individual completes, discussions with the patient, or notices in the patient's room.

Through effective communication with religious organizations in its community and hospital staff and volunteers, a hospital can both respect the privacy of its patients in accordance with PHIPA and ensure the availability of spiritual and religious care programs to its patients.