

# South Dakota Code of Cooperation

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



## ACKNOWLEDGEMENT

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## **SOUTH DAKOTA CODE OF COOPERATION**

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

The purpose of this guide is to assist health care facility administrators, staff, nurses, physicians and the media with the communication of facts and data regarding patients and residents. It also provides reporters with information regarding health care facilities' legal and ethical responsibilities to patients in reporting admission, patient status and other patient data.

Guidelines outlined in the Code of Cooperation follow the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA mandates standards of privacy and confidentiality for patients, residents and their information. Individuals and entities, including health care facilities and media outlets, that do not follow these federally mandated regulations may be subject to fines and other penalties.

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandated regulations that govern privacy, security and administrative simplification standards for personal health care information. HIPAA regulations specify the purposes for which information may and may not be released without authorization from the patient. This guide is consistent with HIPAA medical privacy regulations as well as guidance documentation from the U.S. Department of Health and Human Services. State and other federal law, as well as individual health care facility policies, may establish stricter guidelines. In those cases, the more restrictive policy takes precedence.

It is the constitutional right of the news media to research and publish medical information responsibly. Medical professionals and health care 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 professional or a health care facility to furnish information to the news media except as it serves the best interest of the patient and the public.** The right to privacy must be afforded to all patients regardless of their social, economic or moral qualities.

This document is a code of cooperation, not of censorship. It is a guide for health care information officers, physicians, and for the news media for the release of patient information. By agreeing with its tenets, the medical profession and health care facilities each 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 privacy, professional and medical ethics or uninterrupted patient care.

## **SPOKESPERSON(S)**

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

- South Dakota hospitals and long term care facilities are expected to 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 health care facilities, physicians, and the news media has been approved by the South Dakota Association of Healthcare Organizations (SDAHO), the South Dakota State Medical Association (SDSMA), and the South Dakota Newspaper Association (SDNA).

### **About the Spokesperson:**

The hospital or long term care facility spokesperson is familiar with media requests and is the individual best suited to provide patient information, when appropriate, and to arrange interviews. Calls made to others in the organization will be routed to the official spokesperson.

The 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 facility should be informed of the identity and phone number of the designated spokesperson(s). Since each facility may have a different system for the release of information, it is the facility'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 spokesperson is responsible for obtaining that approval, even if he or she refers the media representative directly to the physician.

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

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

When information about facility procedures, equipment, special facilities for treatment or other features of facility services is provided, 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.

Health care facilities 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.

### **ADDITIONAL GUIDELINES FOR LONG TERM CARE FACILITIES OR PROVIDERS**

Each long-term care (LTC) facility or provider is expected to designate an authorized spokesperson(s) that will be accessible to the media. The spokesperson is responsible for obtaining resident or legal representative consent and 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.

## **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 chief executive officer and the president or their designee. However, all requests shall go through the Director of Membership and Communications.

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 medical 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 the SDSMA.



## **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, 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.

## **GAINING ACCESS TO FACILITIES AND PATIENTS**

Media representatives and photographers acting in official capacity must contact the facility spokesperson for access assistance. Facilities require that a representative accompany news personnel at all times. It is not possible to grant open access to some areas of facility due to laws and regulations to protect patient privacy.

### **Access to treatment areas:**

Health care providers cannot invite or allow media personnel, including film crews, into treatment or other areas of their facilities where patients' personal health information (PHI) will be accessible in written, electronic, oral or other visual or audio form, or otherwise make PHI accessible to the media, without prior written authorization from each individual who is or will be in the area or whose PHI otherwise will be accessible to the media. Only in very limited circumstances, as set forth below, does the HIPAA Privacy Rule permit health care providers to disclose protected health information to members of the media without a prior authorization signed by the individual.

It is not sufficient for a health care provider to request or require media personnel to mask the identities of patients (using techniques such as blurring, pixelation, or voice alteration software) for whom an authorization was not obtained, because the HIPAA Privacy Rule does not allow media access to the patients' PHI, absent an authorization, in the first place.

In addition, the health care provider must ensure that reasonable safeguards are in place to protect against impermissible disclosures or to limit incidental disclosures of other PHI that may be in the area but for which an authorization has not been obtained.

Treatment areas include, but aren't limited to, operating rooms, intensive care units, labor and delivery rooms, maternity units, nurseries, emergency departments, psychiatric departments or facilities, dialysis units, nurseries and substance abuse units. The HIPAA Privacy Rule does not require health care providers to prevent members of the media from entering areas of their facilities that are otherwise generally accessible to the public, which may include public waiting areas or areas where the public enters or exits the facility. At times, circumstances may necessitate that those areas generally accessible to the public may be designated as off-limits. There are very limited situations in which the HIPAA Privacy Rule permits a covered entity to disclose limited PHI to the media without obtaining a HIPAA authorization. For example, a covered entity may seek to have the media help identify or locate the family of an unidentified and incapacitated patient in its care. In that case, the covered entity may disclose limited PHI about the incapacitated patient to the media if, in the facility's professional judgment, doing so is in the patient's best interest. See 45 C.F.R. 164.510(b)(1)(ii) of the HIPAA Regulation.

Written permission from the patient or patient representative is needed to obtain photos or interviews. Consent forms will be available through the facility spokesperson. If the patient is a minor, permission must be obtained from a parent or legal guardian.

Facility personnel and physicians with admitting privileges may deny the media access to the patient if it is determined the presence of photographers or reporters would aggravate the patient's condition or interfere with appropriate clinical care.

Advance notice of visits to health care facilities by news media 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 and video crews will not impede patient care. In some areas, news representatives may be required to wear special clothing and have their equipment disinfected or protected.

## **RELEASE OF PATIENT 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, the following information may be placed in a facility directory:

- Patient name
- Patient location in the facility (see "Patient/Resident Location" section below)
- Patient condition, described in general terms (see "Patient/Resident Conditions" section below) that do not communicate specific information about the individual

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 patient's medical condition may prevent staff from asking about information preferences upon admission. In those circumstances, condition information should be released only if, in the facility's professional judgment, releasing such information would be in the patient's best interest. As soon as the patient recovers sufficiently, the facility 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 provided 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.

## **PATIENT/RESIDENT CONDITIONS**

As prior stated, a person, including the media, must have the name of the patient before the facility releases the information that is included in the facility directory. If a patient does not object to be listed in the directory, a facility may disclose a patient's location in the facility and condition in general terms that do not communicate specific medical information. See 45 C.F.R. 164.510(a) of the HIPAA Regulation.

HIPAA standards have established five one-word condition reports which are used to describe a patient's current condition in general terms:

- Undetermined — patient currently being evaluated
- Good — vital signs are stable and within normal limits; patient is conscious and comfortable; indicators are excellent
- Fair — vital signs are stable and within normal limits; patient is conscious, but may be uncomfortable; indicators are favorable
- Serious — vital signs may be unstable and not within normal limits; patient is acutely ill; indicators are questionable
- Critical — vital signs are unstable and not within normal limits; patient may be unconscious; indicators are unfavorable

### Other approved conditions:

- Treated and Released – received treatment, but no long being treated at the facility
- Treated and Transferred — received treatment; transferred to a different facility
- Deceased -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. See "Deceased" section for more information.
- Not in the Directory — Patient or resident is not in the facility or has asked not to be listed in the directory. Facilities can also issue this condition if a patient, resident or family member cannot provide consent, or if it has been determined to be in the patient's best interest to not be listed in the directory, for example, in an effort to protect one's safety. Law enforcement can also request this designation for individuals under arrest.
- Discharged — Patient or resident is no longer in the facility.

## IMPORTANT NOTES

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. 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.

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

**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.

**Psychiatric and Chemically Dependent Patients:** State and Federal laws prohibit the disclosure of any information about psychiatric patients or residents or patients being treated for alcohol or substance abuse. 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. Facilities should obtain consent from the parents before permitting photographs or release of any information. Facilities usually are able to obtain approval from parents for release in newsworthy situation, such as those involving famous parents or multiple births.

The facility will not release information relating to births, except as required by law or court process, unless the parent gives 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.

**Other Circumstances:** Hospitals will not issue statements on sexual assaults, child abuse, suicide or suicide attempts, or cases involving drugs or alcohol.

**Deceased:** 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.

## **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.

If the patient is no longer at the facility, the hospital may disclose that fact in response to such an inquiry with the one-word condition "discharged" as listed above.

Information on patients that are transferred to another hospital must be obtained from the hospital where the patient is currently located. HIPAA regulations do not allow hospitals to comment on patients once they have left the facility.

A hospital may not release information regarding the date of release or where the patient went upon release, without patient authorization.

## **OTHER IMPORTANT INFORMATION**

### **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 or legal representative, will media coverage of unconscious patients, residents or patients suffering from severe illnesses or injury be permitted.

### **PATIENT RELIGIOUS AFFILIATION**

Patient religious affiliation may not be released to anyone but clergy members, who may be given this information even if they do not have the patient's name.

### **FILM CREWS**

A health care provider may utilize the services of a contract film crew to produce training videos or public relations materials on the provider's behalf if certain protections are in place. If patients are to be identified by the provider and interviewed by a film crew, or if PHI might be accessible during filming or otherwise disclosed, the provider must enter into a HIPAA business associate agreement with the film crew acting as a business associate. Among other requirements, the business associate agreement must ensure that the film crew will safeguard the PHI it obtains, only use or disclose the PHI for the purposes provided in the agreement, and return or destroy any PHI after the work for the health care provider has been completed. See 45 C.F.R.

164.504(e)(2) of HIPAA Regulation. As a business associate, the film crew must comply with the HIPAA Security Rule and a number of provisions in the Privacy Rule, including the Rule's restrictions on the use and disclosure of PHI. In addition, authorizations from patients whose PHI is included in any materials would be required before such materials are posted online, printed in brochures for the public, or otherwise publicly disseminated.

### **Penalties for HIPAA Violations**

- The federal government may impose criminal penalties of as much as \$50,000 and/or imprisonment for as long as one year.
- If the offense is one of disclosure under false pretenses, the federal fine is a maximum of \$100,000 and/or imprisonment for as long as five years.
- If the offense is committed with the intent to sell, transfer or use patient information for commercial advantage, personal gain or malicious harm, the federal fine is a maximum of \$250,000 and/or imprisonment for as long as 10 years.



For more information:



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