

HIPAA: NEGOTIATING THE SECULAR IN THE INTEREST OF THE SACRED

What is HIPAA?

The Health Information Portability and Accountability Act, or HIPAA as it is commonly known, is a federal law that went into effect on April 14th, 2003. As its name suggests, the law is designed to address the portability of an individual's health information, particularly through shared technological resources, and the accountability of those who manage such information. In other words, the law is designed to give an individual more immediate control over his/her health information.

The effects of HIPAA will continue to be felt in the private and public sector as the law is fully implemented in stages over the next few years. Because it is a federal law, HIPAA has been and will be interpreted by the lawyers representing the interests of each institution directly affected by its mandates. These institutions include, but are not limited to: hospitals, both public and private; nursing homes and similar elderly care institutions; pharmacies; mental health institutions; physicians' offices; insurance companies; financial institutions; and employers. (For example, different hospitals in Vermont will have different interpretations and implementations of the law with regard to security. While some already require ID badges for local clergy, others may not consider them until the parts of the law addressing security go into full effect in 2005.)

How are clergy and members of religious communities in Vermont affected?

With the granting of control to an individual comes the potential of his/her limiting access to him/herself in an effort to maintain privacy. Clergy's access to an individual when that individual is receiving medical care is a small but vital part of the law. If HIPAA has done anything, it has raised awareness for those wishing to give and receive spiritual support during times of medical treatment to be intentional about communicating these wishes. The law confirms the need for clergy to attend to two specific relationships in pastoral ministry:

1. Develop trust-based, life-giving relationships with parishioners. If clergy are an integral part of the support system, members of faith communities and/or their families will consult clergy in times of medical concern. If clergy are directly consulted by an individual or by the immediate family, their access to the person is fully permitted under HIPAA regulations.
2. Develop a relationship with the chaplain(s) at local health care facilities. Clergy may need to take the first step—a phone call or a visit to the office. Chaplains can be a source of information for clergy about HIPAA and how it is affecting access to parishioners. Chaplains can also be a great bridge between clergy and parishioners who are receiving medical care.

We are a diverse network of Christians in Vermont working together to serve the common good through public worship and prayer; acts of mercy and care; and loving prophetic witness for peace, justice and the integrity of creation.

In addition to these two relationships, under the auspices of HIPAA the burden of developing the relationship between clergy and the health care team falls more clearly upon clergy who will need to be more proactive if they wish to have a significant role in the care of an individual. (For example, clergy may want to know what type of meals members of the religious community can provide for a parishioner when s/he returns home after surgery. HIPAA forces a medical team to be more cautious in revealing this kind of information to anyone without the individual's consent.)

As mentioned, HIPAA regulations are still being interpreted and implemented in a variety of ways institution-wide and nationwide. However, there is a basic protocol clergy can follow when wishing to visit a parishioner in a health care facility. (For the purposes of this discussion, it will be assumed that the person is in a local hospital.)

1. If clergy hear about a parishioner being in the hospital from that individual or his/her family, clergy have the right to visit and offer spiritual support if requested to do so.
2. If clergy hear about a parishioner being in the hospital from anyone other than the individual and/or the immediate family, s/he can call the hospital and ask if the person in question is listed in the directory as a patient.

If the answer is yes, a hospital employee will be allowed to give the clergy the patient's room and bed number. Clergy may ask about the patient's medical condition and should be afforded by law a one-word descriptive response (stable, critical, etc.) from either the nurse assigned to the patient or the attending physician. This is the only information provided to clergy by law. You may:

- a. Ask to be connected to the patient's room and ask the individual for permission to visit. If denied, clergy must honor the request.
- b. Or, call the immediate family. If they wish for clergy to see their relative while s/he is in the hospital, clergy have the right to do so unless the patient does not grant permission.

If the answer is no and the individual is at the hospital, s/he has elected to keep the medical care confidential. This is his/her right. No one, including immediate family members, will be told of the individual's location and condition.

In some instances, clergy will be visiting a parishioner at the hospital and, while there, will run into another member of the community. Clergy have the right to visit this individual and his/her family as long as they are receptive. The individual and family likewise have the right to refuse the visit by dismissing clergy. It is understood they will choose in the moment whether or not they wish for clergy to have access to them.

Under HIPAA regulations, one of the most important aspects of the ministry of spiritual care during times of medical care is educating religious community members about the questions they will be asked when being admitted to health care facilities. In addition to encouraging parishioners to contact clergy directly

when anticipating or experiencing medical care, clergy can encourage parishioners to answer in the affirmative questions regarding religious affiliation and chaplaincy services.

1. If a person when asked at admission willingly offers his/her religious affiliation (Baptist, Catholic, Jewish, etc.), his/her name may be listed with this affiliation on a daily directory maintained by the chaplain(s)' office. In institutions where such a directory exists and is maintained, any clergy have access to the list and can in turn visit those identifying with their religion or denomination even when those on the directory have not made an initial contact.

2. If a person at admission answers in the affirmative if asked about seeing a chaplain, the chaplain can in turn receive permission from that individual to contact the clergyperson and make you aware of the care being provided.

If a person denies either this information or this care, the chaplain(s) are no longer able to help clergy connect with parishioners. If a person gives religious affiliation information but denies care of the chaplain, the chaplain(s) may be more limited in their access to the patient than clergy.

There are any number of reasons why an individual, when being admitted to a health care facility, would deny care from a chaplain or conceal his/her religious affiliation. Here are a few:

Fear Am I dying? Do I need a chaplain? Is the chaplain trying to convert me while I'm sick?

Resistance My religious life is my own business.

Lack of knowledge

What is a chaplain? What does a chaplain do? (A hospital employee who works in admitting may not have adequate information to answer this question.)

Reluctance Don't bother the chaplain. I'm only in for a few days. (Patients do not always have an accurate sense of how long they will have to stay.)

Passivity My minister will visit. I haven't attended in a long time but hopefully s/he will remember me.

Medical Condition / Confusion

I feel awful. The last thing I want to do is talk to someone. (Patient thinks the chaplain will want to talk right away.)

Concern about ecumenism / interfaith issues / religious identity

I'm Catholic. Is the chaplain a priest?

I don't have a religious affiliation. How can the chaplain help me?



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Clergy can dispel people's fears and minister to them long before they anticipate needing health care by talking with them about what kind of support a chaplain can offer and about how beneficial spiritual support can be.

Privacy, healing, and clergy rights

Whether clergy conceive of the ministry of spiritual support/pastoral care during times of medical need as a calling, a privilege, or a burden, I hope that clergy can appreciate the need for someone to offer and receive it. I also hope clergy and members of religious communities can appreciate the intentions of HIPAA—to protect the privacy of the individual by granting the individual control over the distribution of his/her health information. The law serves as a gentle reminder to faith communities; the distinction between sharing information about a family member or friend for the purpose of corporate prayer and gossiping about those we know and love is not always clear. This law challenges clergy to define and advocate for the right to be members of the team of people supporting those in need of healing.

This paper was written by the [Reverend Jill C. Robinson](#), a United Methodist Elder and member of the Faith and Order Commission of the Vermont Ecumenical Council, in consultation with the Reverend Diana Scholl, Chaplain at Porter Medical Center in Middlebury, Vermont.

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