

Does the COVID-19 Public Health Emergency alter the HIPAA Privacy Rule's restrictions on disclosures of protected health information to the media?

No. The COVID-19 public health emergency does not alter the HIPAA Privacy Rule's existing restrictions on disclosures of protected health information (PHI) to the media. As explained in prior guidance,¹ HIPAA does not permit covered health care providers to give the media, including film crews, access to any areas of their facilities where patients' PHI will be accessible in any form (e.g., written, electronic, oral, or other visual or audio form), without first obtaining a written HIPAA authorization *from each patient whose PHI would be accessible to the media.*² Additionally, covered health care providers may not require a patient to sign a HIPAA authorization as a condition of receiving treatment.³

May HIPAA-covered health care providers allow media or film crews to film patients in their facilities where patients' protected health information will be accessible without the patients' authorization if the patients' faces are blurred or their identities are otherwise masked in the video?

No. It is not sufficient for a covered health care provider to require the media to mask patients' identities when airing recorded video (such as by blurring, pixelation, or voice alteration), after the fact. Prior, express authorization from the patient is always required.

When a patient is receiving treatment, they are typically surrounded by PHI, such as their name or medical record number on a hospital room door or identification bracelet, notes about their care including conditions or medications written on bulletin boards, real-time displays of heart or lung function, and oral communications about their health and health care.⁴ In addition, a patient's presence in an area of a health care facility that is

¹ See OCR's frequently asked question, Can health care providers invite or arrange for members of the media, including film crews, to enter treatment areas of their facilities without prior written authorization?, at <https://www.hhs.gov/hipaa/for-professionals/faq/2023/film-and-media/index.html>.

² See 45 CFR 164.508 for the requirements of a valid HIPAA authorization. See also 45 CFR 160.103 (definition of "covered entity" to include health care providers, such as hospitals).

³ See 45 CFR 164.508(b)(4).

⁴ Individually identifiable health information is, generally, information that relates to the health or condition of an individual, the provision of health care to an individual, or payment for the provision of health care to an individual, and that identifies the individual or with respect to which there is a reasonable basis to believe the information could be used to identify the individual. See 45 CFR 160.103 (definition of "individually identifiable health information").

dedicated to the treatment of a specific disease or condition, such as COVID-19, reveals the patient's diagnosis. The HIPAA Privacy Rule does not permit a covered entity to give the media access to such patient PHI unless it obtains a valid HIPAA authorization from the patient *before* giving such access.

For example, a covered hospital may not allow media personnel access to the emergency department where patients are receiving treatment for COVID-19, without **first** obtaining each patient's authorization for such filming.

In 2016 and 2018, OCR successfully resolved investigations of covered hospitals' unauthorized disclosures of patients' PHI to television film crews. All of the cases concluded with corrective action plans and monetary settlements.⁵

Can a covered health care provider ever allow the media to film patients in areas of their facilities where patients' PHI will be accessible?

Yes. If every patient who is or will be in the area, or whose PHI otherwise will be accessible to the media, has first signed a valid HIPAA authorization, then a covered health care provider may permit the media to film in areas of their facilities where patients' PHI will be accessible.

Even then, covered health care providers must ensure that reasonable safeguards are in place to protect against unauthorized disclosures of PHI. Reasonable safeguards can include installing computer monitor privacy screens to prevent the film crew from viewing PHI on computers, and setting up opaque barriers to block the film crew's access to the PHI of patients who did not sign an authorization.

⁵ See <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/new-york-presbyterian-hospital/index.html> and <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/bostoncases/index.html>.