



PRIVACY AND CONFIDENTIALITY

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Written By: ANA Center for Ethics and Human Rights
Adopted By: ANA Board of Directors

I. PURPOSE

Ongoing advances in technology, including computerized medical databases, telehealth, social media and other Internet-based technologies, have increased the likelihood of potential and unintentional breaches of private/confidential health information. The purpose of this position statement is to speak to the role of nurses in protecting privacy and confidentiality and provide recommendations to avoid a breach.

II. STATEMENT OF ANA POSITION

The American Nurses Association (ANA) believes that protection of privacy and confidentiality is essential to maintaining the trusting relationship between health care providers and patients and integral to professional practice (ANA, 2015a). ANA supports legislation, policies and standards that protect individually identifiable health information.

III. RECOMMENDATIONS

- In keeping with the profession's commitment to patient advocacy and the trust that is essential to the preservation of the high quality of care that patients expect from registered nurses, ANA supports the following recommendations with respect to patient privacy and confidentiality:
- The patient's right to privacy of individually identifiable health information, including genetic information, is established statutorily with specific exceptions. Individuals retain the right to decide to whom, and under what circumstances, their individually identifiable health information will be disclosed. Confidentiality protections should extend not only to health records, but also to other individually identifiable health information, including clinical research records, oral reporting, images and mental health therapy notes. This protection should be maintained in the treatment setting and in all other venues.

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- Patients should receive accurate information regarding federal legislation [the Health Insurance Portability and Accountability Act (HIPAA) and the Genetic Information Nondiscrimination Act (GINA)] addressing individually identifiable health information and any limitations or exceptions to that legislation.
 - A patient has the right to access personal health information and to supplement that information with what is necessary to make informed health care decisions, to correct erroneous information and to address discrepancies that they perceive.
 - Patients should receive written, clear notification of how their health records are used and when their individually identifiable health information is disclosed to third parties.
 - The use or disclosure of individually identifiable health information without an individual's informed consent is prohibited. Exceptions should be permitted only if a person's life is endangered, if there is a threat to the public or if there is an existing legal requirement. In the case of such exceptions, information should be limited to the minimum necessary for the situation. Individuals should be notified in writing of what information will be released, who is releasing the information, who will be receiving the information and the purpose of revealing the information, with the signature of the disclosing provider.
 - Organizations must develop appropriate administrative, physical and technical safeguards required to protect the confidentiality, integrity and availability of individually identifiable health information.
 - Legislative or regulatory protections on individually identifiable health information should not unnecessarily impede public health efforts or clinical, medical, nursing or quality of care research.
 - Strong and enforceable remedies for violations of privacy protections should be established, and health care professionals who report violations should be protected from retaliation.

IV. BACKGROUND

Continuous developments in technology have changed the delivery of health care and the systems used to record, retrieve and share patient information. Health professionals, insurers and others routinely employ computers, phones, faxes and other technologies to record and transfer information. This information, which may include diagnoses, prescriptions or insurance information, is readily available to anyone within proximity of the technology used to record, transfer or share the data. This lack of privacy can undermine patients' relationships with providers and may adversely affect the quality of care, if patients are reluctant to share personal health information. Despite the existence of laws and organizational policies intended to provide protection, patients may also worry that the exposure of personal health information, including genetic tests, may result in the loss or denial of health insurance, job discrimination or personal embarrassment.

V. HISTORY/PREVIOUS POSITION STATEMENTS

2006 Privacy and Confidentiality Position Statement

1999 Privacy and Confidentiality, House of Delegates

1995 Privacy and Confidentiality Related to Access to Electronic Data, House of Delegates

1991 Nursing and Human Immunological Virus, House of Delegates

1982 Computer Based Patient Record and Implications for the Profession of Nursing, House of Delegates

1974 National Health Insurance, House of Delegates

SUPPORTIVE MATERIAL

Code of Ethics for Nurses with Interpretive Statements (2015): Provision 3, interpretive statement 3.1, titled “Protection of the Rights of Privacy and Confidentiality” affirms the nurse’s role in this process.

Nurses safeguard the right to privacy for individuals, families, and communities. The nurse advocates for an environment that provides sufficient physical privacy, including privacy for discussions of a personal nature. Nurses also participate in the development and maintenance of policies and practices that protect both personal and clinical information at institutional and societal levels...The nurse has a duty to maintain confidentiality of all patient information, both personal and clinical, in the work setting and off duty in all venues, including social media or any other means of communication (p. 9)... When using electronic communications or working with electronic health records, nurses should make every effort to maintain data security (p. 10).

Nursing: Scope and Standards of Practice (2015): Standard 1, Assessment states, “The registered nurse collects pertinent data and information relative to the healthcare consumer’s health or the situation” (p. 4). This standard further states that the nurse “Applies ethical, legal, and privacy guidelines and policies to the collection, maintenance, use, and dissemination of data and information” (p. 54). Standard 7, Ethics, states, “The registered nurse practices ethically” and details the need further: “Safeguards the privacy and confidentiality of healthcare consumers, others, and their data and information within ethical, legal and regulatory parameters” (p. 67).

American Nurses Association. Essentials of Genetic and Genomic Nursing: Competencies, Curricula Guidelines, and Outcome Indicator (2008): This document defines essential genetic and genomic competencies for all registered nurses and identifies areas of knowledge and clinical performance indicators associated with protection of privacy and confidentiality.

The United States Department of Health and Human Services (DHHS) Privacy Rule and Security Rule: The Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) went into effect in 2003 to implement the requirement of HIPAA with the 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 and to protect the public’s health and well-being” (HHS, 2003, p. 1). The Security Rule operationalizes the protections contained in the Privacy Rule by addressing required technical and nontechnical safeguards that secure individuals’ electronic protected health information.

The Joint Commission: The Joint Commission provides several accreditation programs based on the type of health organization or facility. Each accreditation program has a specific set of standards, one of which is information management (IM). The IM standard emphasizes the importance of protecting the privacy of individually identifiable health information and monitoring access to that information.

The Genetic Information Nondiscrimination Act: As noted in the International Society of Nurses in Genetics Position Statement, Privacy and Confidentiality of Genetic Information: The Role of the Nurse (2010), “Assuring privacy and confidentiality of genetic information demands continued vigilance on the part of all nurses as genetic technologies and discoveries are translated into clinical application and practice” (p. 1). This vigilance includes an awareness of the provisions in GINA. Signed into law in 2008, the GINA has two parts: Title 1 prohibits health insurance providers from using genetic information to make decisions about an individual’s eligibility or coverage. Title 2 prohibits employers from using genetic information to make decisions about hiring, promotion or other terms of employment. There are limited exceptions to both Title 1 and Title 2.

American Nurses Association: Principles for Social Networking and the Nurse (2011): This document provides guidance on using social networking media in a manner that protects patients’ privacy and confidentiality and maintains the standards of professional nursing practice. The six essential principles are relevant to all registered nurses and nursing students across all roles and settings.

SUMMARY

Quality patient care requires the communication of relevant information between health care professionals and/or health systems. The rapid evolution of communication, recording and retrieval technologies poses challenges to maintaining the privacy, confidentiality and security of this information. Breaches of health information can have serious personal and reputational consequences for both patients and providers in addition to a financial and organizational impact.

Ensuring the integrity of the health information protection process is a shared responsibility of all health care providers and is vital to the fiduciary relationship with patients. Nurses and other health care professionals should contribute to the development and implementation of legislation, policies and standards that protect patient privacy and the confidentiality of patient information.

VI. REFERENCES

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