

*A Patient Rights Module:*

# **MAINTAINING CONFIDENTIALITY**

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Developing Top-Notch CNAs, One Inservice at a Time

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## A Patient Rights Module: Maintaining Confidentiality

### LOTTI GETS IT ALL WRONG!

Mindy, a nursing assistant, cares for Lotti, a 79 year old woman who suffers from severe arthritis.

While providing care for Lotti one day, the supervising nurse stops by to do a routine assessment. Just before she leaves, Mindy asks the nurse for some information about another client named Phil who she is going to see next.

The nurse and Mindy step into the hallway. They assume no one can hear their conversation as they discuss Phil's condition.

When the nurse and the Aide leave, Lotti calls the Pastor at the church that both she and Phil attend. She tells the Pastor that Phil is near death and that he should come for a visit right away. She doesn't tell the Pastor how she got this critical piece of information.

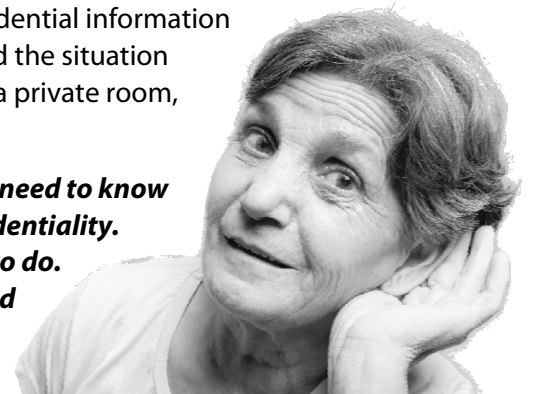
When the Pastor arrives, he offers his condolences to Phil's wife . . . who immediately becomes alarmed and confused.

It turns out that Phil is not near death. In fact his condition is improving. Lotti heard enough of the conversation to identify the client, but got the details all wrong.

The source of information was traced back to the conversation between Mindy and the Nurse. Mindy and the nurse were written up and later fined \$250 each for HIPAA violations.

While Mindy and the nurse did not know Lotti could hear them, the hallway is *never* a secure place to exchange confidential information about clients. They could have avoided the situation entirely by having the conversation in a private room, behind a closed door.

**Keep reading to learn everything you need to know about maintaining your clients' confidentiality. You'll learn what to do and what not to do. And, you'll learn all about the laws and consequences that are in place to protect clients.**



## WHAT EXACTLY IS CONFIDENTIALITY?

As a health care worker, you are trusted each day with confidential information about your clients.

As a nursing assistant, you spend more time with your clients than anyone else on the health care team. This helps you develop a close relationship with your clients. Your clients feel safe telling you personal details about their lives and their health because they know you will keep it to yourself.

Now, be honest. Have you ever discussed a client's private information with your family or laughed about a client with a group of coworkers? Most health care workers would probably answer "yes."

Unfortunately, it is easy to break confidentiality if you're not careful. So what exactly *is* confidentiality? **Confidentiality means that:**

- Your clients and your coworkers expect you to keep their personal information to yourself—and you expect the same from them.
- You guard information about your clients ALL THE TIME, even in the privacy of your own home.
- When you keep personal information safe, your clients come to trust you. This trust is an important part of your relationship with your clients.
- Health care organizations must *promise* clients that their medical information will be kept safe. This promise is included in the Patient's Bill of Rights in all health care facilities. Be sure you understand the Patient's Bill of Rights where you work.

## CONFIDENTIALITY VS. PRIVACY

It is easy to confuse confidentiality and privacy. They are very similar, but confidentiality usually applies to medical records and ensuring that information is available only to those who are allowed to see it. For example:

- Maintaining your clients' **confidentiality** involves keeping their medical records away from anyone who does not have the right to see them and never discussing their diagnosis with someone who is not a part of their health care team.
- Maintaining your clients' **privacy** has to do with things like not touching their personal possessions, not listening to their private conversations with others, and not entering their rooms or personal space without their permission.

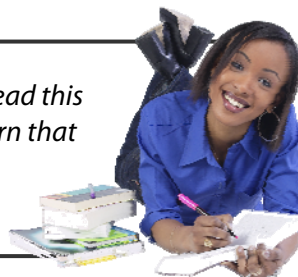


## Key Terms

- **Breach of confidentiality** is sharing verbal or written information regarding a client with someone who is *not* on the care team of the client—or who does not have signed permission from the client to have that information.
- **Informed consent** is when a resident or client acknowledges and allows the release of information to other parties. This permission is given by filling out a legal consent form, which becomes part of the resident or client's permanent record.
- Private healthcare information should be available only on a **"Need-To-Know"** basis. This means that each person on the care team should only have access to information that he or she needs to know to carry out the plan of care.

## WHAT'S NEW?

Grab your favorite highlighter! As you read this inservice, **highlight five things** you learn that you didn't know before. Share this new information with your co-workers!





## THEY DID WHAT?

### TRUE STORIES OF BREAKS IN CONFIDENTIALITY

- A hospital in Michigan accidentally posted the medical records of thousands of patients on the internet.
- Four hospital workers (including two nurses) in California took pictures of a dying man and posted them on Facebook.
- A children's hospital in California accidentally sent 6 faxes containing private health information to an auto mechanic's shop.
- The health insurance claims forms of thousands of patients blew out of a truck on its way to a recycling center in Connecticut.
- A patient in a Boston-area hospital discovered that her medical record had been read by more than 200 of the hospital's employees.

## HOW CONFIDENTIALITY IS BROKEN

**There are a few common ways that health care workers breach confidentiality. See if you can spot the mistakes these nursing aides made:**

### 1. TALKING IN FRONT OF A CLIENT

A client, Mrs. Jones, had been unconscious for several weeks. Two aides, Sally and Mary, were working together to bathe Mrs. Jones. During the bath, Sally told Mary that she overheard the doctor saying Mrs. Jones will die soon.

*Never talk about your clients in their rooms, even if they are unconscious or asleep. You don't know what your clients might be able to hear.*

### 2. TALKING TO CO-WORKERS

During a lunch break with five other nursing assistants, Jim told a story about his client, Mr. Smith. Jim said Mr. Smith was very forgetful and kept trying to eat his dinner with a toothbrush instead of a fork. The whole group laughed at Jim's story.

*Even if it seems like a harmless story, avoid discussing your clients with other employees—unless they are part of the client's health care team. And then, do it in private, not at lunch. If Mr. Smith were your father, would you want a bunch of people laughing at him?*



### 3. TALKING TO OTHER CLIENTS

Susan's new client, Mrs. Brown, was a friend of Susan's neighbor. Susan told her neighbor that Mrs. Brown was pretty sick and would probably enjoy a visit.

*Even if you mean well, never discuss your clients with anyone outside of work, even your friends and family. They have no business knowing the names or condition of your clients.*

### 4. TALKING TO FAMILY MEMBERS

John had been caring for Mr. Carter for several weeks. Mr. Carter's daughter visited and asked John if her father's blood pressure was okay. John told her that Mr. Carter's pressure had been high recently because Mr. Carter was eating too many salty potato chips.

*If a client's family members ask you about the client's condition, it's best to suggest they get information from your supervisor or the doctor. The rule states that you can give information to a person who has a role in taking care of the patient if you believe that releasing the information is in the patient's best interest. However, it's not always easy to determine that on your own.*



## MORE WAYS CONFIDENTIALITY CAN BE BROKEN

### 5. UNSECURED ELECTRONIC MEDICAL RECORDS (EMR)

Jane works in a facility that uses computer charting. While charting at a mobile laptop station one day, Jane leaves to answer a call bell without closing the client's record and logging out of the system.

*Always close the record and log off when you leave a computer or anyone can walk up and read private information about your clients.*

### 6. MEDICAL RECORD LEFT IN PUBLIC PLACE

Sasha works in home health. Before visiting a new client, she receives a report with all the client's information, including name, age, medical condition and care plan. Sasha makes a stop at a convenience store before going to the client's home and leaves the report in plain view on her passenger side seat.

*Never leave charts or papers out in the open where others can see. In facilities, never leave the nurses station with a chart in your hand.*

### 7. SHIFT REPORT SUMMARY THROWN IN PUBLIC TRASH CAN

Robert works in a facility where he receives a shift report summary before each shift. The summary lists the last names of the clients, their room and bed number and any special care needs they have for the day. The policy at the facility is to shred the report at the end of the shift. One day, Robert forgets to shred it and just tosses it in a trash can in a public restroom on his way out of the facility.

*It is never appropriate to dispose of private healthcare information in a public trash can.*

### 8. MEDICAL RECORD "SNOOPING"

A local celebrity was admitted to a nursing home for rehabilitation after a stroke. After about two days in the facility, it was discovered that his electronic medical record had been accessed over 300 times. Since employees had to log in with a password, there was a record of every single person that looked at the chart. Those individuals who "snooped" were written up. The celebrity sued the facility and each individual involved.

*Information in the medical record is intended for healthcare workers who "need to know" only. If you are not caring for an individual, you have no business reading the chart.*



## TALK ABOUT IT!

You are caring for a client who has had a stroke and cannot speak. While you feeding this client, a woman enters the room and asks how he is doing.

***What should you do? You may assume this is a family member and volunteer the information.***

- But, what if you find out later that this is a relative the family has tried to keep away from the client?
- Or, what if you learn later that this is a mentally ill person who was in the facility to visit someone else but got confused?

***How will you know if it is okay to give information about your client to this person? And, what information can you give?***

***Discuss your answers with your co-workers and supervisor and find out what they would do.***



## THE NEXT STEP!

The best way to learn a difficult concept is to learn it well enough to teach it to someone else!

***You have a client who is just being admitted. She has many papers to sign, including the HIPAA documents required by all healthcare providers.***

***She is not sure what it all means and asks you to help explain it to her.***

- On a separate sheet of paper, write a simple paragraph, with just 2 to 3 short sentences describing HIPAA to your client.

***Share your paragraph with your supervisor to make sure it is correct.***

***Ask your supervisor how he/she explains HIPAA to clients in a way that is easy to understand.***

## KNOW THE LAWS, HIPAA AND HITECH

If you've worked in healthcare longer than a minute, you've probably heard of HIPAA (which stands for **H**ealth **I**nsurance **P**ortability and **A**ccountability **A**ct). HIPAA is the law which outlines the privacy rules that protect clients' medical records and information.

This law was developed by the U.S. Department of Health and Human Services and gives clients more control over how their personal medical information is used and to whom it can be given. A client **must** give authorization before any personal medical information can be given out.

### **HIPAA guarantees clients the right to:**

- Privacy.
- Receive a written Notice of Privacy Practices that describes how their information will be used.
- Access and copy their own medical records.
- Fix mistakes or information in their records that is not accurate.
- Request special instructions for how their information is sent to other places.
- Ask for limits on how their information is used and given out.
- Get a list of all non-routine times when their information may be given out.
- Complain about privacy violations to the institution and to the Department of Health and Human Services.

### **The rules cover all forms of client information like:**

- Names
- Social Security numbers
- Addresses and phone numbers
- Fax numbers
- Email addresses
- Medical record numbers
- Dates of birth
- Diagnoses

### **THEN CAME HITECH!**

In 2009, The Department of Health and Human Services introduced The **H**ealth **I**nformation **T**echnology for **E**conomic and **C**linical **H**ealth (HITECH) Act. This Act gives HIPAA more teeth!

HITECH significantly increases the fines that may be issued for violations of the HIPAA rules and encourages quick and decisive action.

Prior to HITECH, fines were limited to \$100 for each violation or \$25,000 for all identical violations. Now there are tiered ranges of fines, with a maximum penalty of \$1.5 million and potential jail time. In addition, individuals who violate privacy laws can no longer claim they "didn't know" a violation occurred.



## EXCEPTIONS TO CONFIDENTIALITY

***Did you know that there are times when you are not required to keep a client's information confidential? Here are some examples of when you should share information:***

- You are caring for a client, Mrs. Adams. A doctor or nurse who has been treating your client asks for information about Mrs. Adams. You are allowed to share information with another health care provider who is treating your client.
- Your client, Mr. Johnson, has bruises that he did not have the day before. He had no injury that you know about, and when you ask him about it, Mr. Johnson gives you a suspicious reason for his injury. If you suspect your client is being abused, you should report it to your supervisor or the authorities.
- You are working in a nursing home caring for Mr. Sanders, a client with dementia. One day Mr. Sanders has an argument with another client and you hear him threaten to hit that client. If a client physically threatens to harm you, himself or anyone else, you should report it to your supervisor.
- Your client, Mrs. Robertson, has been attempting to drive a car when she is unfit to drive. If your client is a danger to others, you should report it to your supervisor.
- You have a client, Mr. Anderson, who is having chest pains. In an emergency, you are allowed to share confidential information about your client with emergency personnel. You should report this to your supervisor and/or follow emergency procedures for your workplace.

## CONFIDENTIALITY AND MINORS

***In most states, children are considered minors until their 18th birthday. In general, while they are minors, their parents have the right to make decisions about their medical care and to be kept informed about their health and well-being. However, there are exceptions. For example, medical information may be withheld from parents:***

- When the parents agree that their child and a health care provider may have a confidential relationship.
- When a health care provider believes that a child may have been abused or neglected.
- When a child has been declared "independent" from his or her parents—either through court proceedings or by getting married.

The laws covering disclosure of information about minors to their parents vary from state to state. If you are unsure about specific laws in your state, check with your supervisor.



# GET OUT!

## THINK OUTSIDE OF THE BOX!

*Working with clients in the home often requires coming up with creative solutions to uncommon problems.*

- **THE PROBLEM:** You are caring for a woman who was just discharged home. During a visit with your new client a neighbor comes to visit.
- The neighbor tells you she has a friend who gets home visits from your agency. After a few minutes you realize you know her friend. She begins to ask questions about the friend's health.
- **WHAT YOU KNOW:** You know HIPAA laws require you to protect confidentiality. But, you feel this friend is just genuinely concerned.
- **GET CREATIVE:** Think of 3 creative replies you could use to (kindly) let this friend know that you are not at liberty to share any clients' personal information.
- **TALK ABOUT IT:** Ask your co-workers how they would solve this problem.



## THINK ABOUT IT!

### WHAT YOU DON'T KNOW

***Do you think you should be told if a client is HIV positive?***

- Do you believe you have the **right** to know this bit of private information—especially since you might be providing personal care to this person?

**Well, the answer is NO!**

You don't have the right to know if a particular client is HIV positive.

As health care workers, we protect ourselves from contagious diseases like AIDS by using Standard Precautions with EVERY client.

By treating all your clients as if they might have an infectious disease, you can protect yourself without knowing a particular client's HIV status.

## HOW DO YOU DO IT?

### CONFIDENTIAL DOCUMENTATION



***Which of the following do you think “qualifies” as confidential documentation?***

- A client's medical record.
- Your client care notes.
- A bulletin board listing each client and his or her diagnosis.
- The results of a coworker's TB test.
- Your annual job evaluation.
- A client's address and telephone number.
- A copy of a doctor's order.

What's the right answer? **THEY ALL ARE!** Any personal information about you, your clients or your coworkers should be kept confidential. This means keeping medical records and personnel files in locked cabinets, locked rooms or in supervised areas.

### CONFIDENTIALLY SPEAKING

***Remember to be careful when you are talking about your clients. Before speaking, ask yourself:***

- Is what I have to say confidential information?
- Is the person I am speaking to part of the client's health care team?
- Am I in a private place or are there other people around me who shouldn't hear what I am saying?
- Am I sharing this information for the client's benefit? Or is it just “gossip”?

***What would you do if the following people asked you for information about your client?***

- Friends
- Partners
- Family Members

The answer is the same for all — politely ask them to speak to your supervisor. Just being a family member, partner or friend does give someone the right to have information about your client.





## CONFIDENTIALITY IN SMALL TOWNS

### ***Maintaining confidentiality in a small community presents it's own unique set of problems.***

People who live in small communities are generally acquainted with everyone else in the area. When people are acquainted in this way, leaks in confidentiality can have serious consequences. For example:

- The local pastor at the church cannot afford to have his church members find out that he is suffering from a damaged liver after years of secret alcoholism.
- The second grade school teacher does not want her current or former students to know she has cancer.
- The man who owns the coffee shop would like to keep his family history of mental illness to himself.

It's important to be even more protective of your clients' confidential health information when you work in a small community.

If you grew up in a small community, you probably already know many of your clients and their families before they even need care. This can lead to a situation where boundaries can easily be crossed.

For example, you grew up with Loretta. You were friends all the way through high school. You spent the night at her house dozens of times. Now Loretta's grandmother is sick, and you are her caregiver.

You run into Loretta in the grocery store and quickly blurt out how happy you are to be able to take care of her grandmother. Loretta's aunt (whom you've never met) is with Loretta and begins asking probing questions about her mother-in-law's health. You provide information without considering confidentiality.

Later that night, you get a call from Loretta who is angry with you for talking about her grandmother to her aunt. It seems there is a family feud going on between the two women that you were not aware of, and now you're caught in the middle of it.

What's worse, you've possibly lost a friend . . . and Loretta's family could actually sue you for violating HIPAA laws.



## TIME TO LAUGH!

***Here is a quick little tip-a,***

***'Bout a law that's known as HIPAA.***

***My advice is to try,***

***Really hard to comply,***

***Or else a new one they'll rip ya!***

~ Michael Devault

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***What do you call someone who complains incessantly about HIPAA?***

HIPAAchondriac

***What do you call urgent HIPAA issues?***

HIPAAcritical

***What is the disease you get from too much HIPAA?***

HIPAAatitis

***What do you call someone who is delighted with HIPAA?***

HIPAA-go-lucky

~ D. Hager, Paramedic



## FIVE KEY POINTS!

### REVIEW WHAT YOU LEARNED!

1. Confidentiality involves keeping clients' medical information away from anyone who does not have the right to know it.
2. HIPAA is the law which outlines the privacy rules that protect clients' medical records and information.
3. Your clients feel safe telling you personal details about their lives and their health. They trust that you will keep it to yourself.
4. Healthcare workers who breach confidentiality can be fined, lose their license and even be put in jail.
5. Your clients' medical information is something they own. You wouldn't take a client's clothes and pass them around to other people. So, don't pass around a client's private information either.

## CONFIDENTIALITY Q & A

### Q. Why is confidentiality such an important part of your relationship with your clients?

- A. Remember that clients have to talk to you about private things such as pain, skin rashes, bowel movements and urination. Think of how embarrassing it would be if it was announced to everyone at work that you had three loose bowel movements today! You would never want to tell anyone about your bowels ever again. If a client believes he can trust you to keep his information confidential, he will continue telling you how he feels. If you break confidentiality, the client might stop telling you when his condition changes. That could be dangerous for the client!

### WHAT WOULD YOU DO IF . . .

#### Q. Pretend your client, Mr. Brown, tells you that he has fallen down three times in the last few days. He asks you not to tell his daughter or anyone else since he doesn't want to worry anyone. He says he knows he can trust you to keep it a secret. What would you do?

- A. You need to tell Mr. Brown that it is your duty to report any changes in his condition to your supervisor. You want him to continue trusting you, but you must tell your supervisor about the falls. Remind Mr. Brown that you want what is best for him and that his safety is your responsibility. Tell him that you will not say anything to his daughter, only to your supervisor. Report the client's condition to your supervisor, but be sure to say that you were not present when he fell. Also, let your supervisor know that Mr. Brown is worried about his daughter finding out. Your supervisor will follow up with the client according to policy.

#### Q. Let's say that a fellow employee tells you in private that she may have a drinking problem. While there have been no problems with her client care, you are afraid there might be, so you tell your supervisor what she said. Your supervisor fires the employee immediately. Have you broken confidentiality about your coworker?

- A. This is a difficult situation, but, yes, you have broken confidentiality. Your fellow employee could sue you for not keeping the secret, saying you caused her to lose her job. However, you also have a responsibility for keeping clients safe. Instead of telling the supervisor yourself, you might try encouraging the coworker to talk to the supervisor about her drinking problem. Some workplaces have programs to help employees with drug or drinking addictions. (NOTE TO INSTRUCTOR: Obviously, this is a complex issue. You may want to explore it further based on your workplace policies.)

# FINAL CONFIDENTIALITY TIPS!

- Be aware of who is around you whenever you speak about a client. Remember that you are responsible for what you say, and that health care workers have been sued for saying the wrong thing at the wrong time!
- All medical information is confidential, especially about a client with HIV. Every state has laws about how to handle HIV information. If you don't know the law in your state, ask your supervisor for more information.
- Think of your clients' medical information as something they own. You wouldn't take a client's clothes and pass them around to other people. So, don't pass around a client's private information either.
- Be careful if you use a cellular telephone during your work day. When you talk on a cell phone, your conversation might be picked up by strangers. Never give a client's full name or address over a cellular telephone.
- If you leave messages about your clients on an answering machine or a voice mail system, be careful what you say. You never know who might hear the message.
- Never leave any charts, papers or computer screens containing client information visible in public areas. Others may be able to see them.
- If you work at a facility, avoid talking about clients in public areas like the cafeteria or front desk. You never know who may be able to hear you.
- After viewing client information on a computer, don't leave without logging off of the computer first. Also, don't share computer passwords or codes with anyone.
- Do not share personal information about your coworkers with anyone. For example, if Mary covers for Betty one day, she should not tell the client that Betty had to stay home because she's pregnant again and has morning sickness! Don't break confidentiality about your coworkers.
- Always be careful with what you say. For example, Tom was late with his client's bath. He said, "Sorry. I would have been here sooner, but Mr. Smith had diarrhea and I had to clean him up all over again." Tom broke confidentiality by talking about Mr. Smith to another client!
- It is important for you to share confidential information with your supervisor if it involves a client's health or well-being. For example, if a client tells you that the right side of his body has gone numb, you do not keep that information secret! Let your supervisor know right away.



## WHAT I KNOW NOW!

*Now that you've read this inservice on confidentiality, jot down a couple of things you learned that you didn't know before.*

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*Developing Top-Notch CNAs, One Inservice at a Time*

## A Patient Rights Module: Maintaining Confidentiality

EMPLOYEE NAME  
*(Please print):*

\_\_\_\_\_

DATE: \_\_\_\_\_

- ***I understand the information presented in this inservice.***
- ***I have completed this inservice and answered at least eight of the test questions correctly.***

EMPLOYEE SIGNATURE:

\_\_\_\_\_

SUPERVISOR SIGNATURE:

\_\_\_\_\_

### Inservice Credit:

<input type="checkbox"/> Self Study	1 hour
<input type="checkbox"/> Group Study	1 hour

***File completed test in employee's personnel file.***

***Are you "In the Know" about confidentiality? Circle the best choice or fill in your answer. Then check your answers with your supervisor!***

- 1. Clients have the right to confidentiality as stated in the:**
  - A. Patient Privacy Act.
  - B. Patient Bill of Confidentiality.
  - C. Patient Bill of Rights.
  - D. Insurance Agreement Act.
- 2. Someone who breaches confidentiality may be:**
  - A. Fired.
  - B. Put in jail.
  - C. Fined.
  - D. All of the above.
- 3. Your client is complaining of chest pains. You call 911 on his behalf. The operator begins asking you questions about his medical history, you should:**
  - A. Hang up and have your supervisor make the call.
  - B. Provide the information because it's an emergency situation.
  - C. Put the client on the phone to give consent for you to speak for him.
  - D. Politely refuse to provide your clients personal health information.
- 4. The best place to discuss your clients with other co-workers is:**
  - A. In the hallway.
  - B. In the cafeteria.
  - C. In a private room with a closed door
  - D. In the employee break room.
- 5. True or False**  
Breach of confidentiality is when a client acknowledges and allows the release of information to other parties.
- 6. True or False**  
You don't have the right to know if a particular client is HIV positive.
- 7. True or False**  
It's okay to discuss your client's health status with people who are directly involved in the client's care.
- 8. True or False**  
The HITECH Act of 2009 decreased the fines and penalties for HIPAA violations.
- 9. True or False**  
If you use a computer to chart, you should always log off before leaving the computer.
- 10. True or False**  
A copy of the client's care plan is considered confidential information.