

# **HIPPA PRIVACY AND THE LOCAL CHURCH**

**By Wilson Hayman**

A new federal Privacy Rule that became effective on April 14, 2003 to implement the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) has led to confusion about the legality of some longstanding local church practices.

HIPAA was initially enacted to address two major problems in health care, namely, (1) the portability of health care insurance as people move from job to job, and (2) the need to standardize the transmission of certain information being shared electronically and to simultaneously protect the privacy and security of personal health information.

Although HIPAA and its rules are far reaching in effect, it is important to remember that HIPAA only applies directly to health plans, health plan clearinghouses and health care providers that conduct certain administrative and financial transactions electronically. Those organizations are considered “covered entities” under HIPAA and are required to protect individually identifiable health care information. Consequently, the Privacy Rule generally affects a local church only if it maintains a health benefit plan for its employees and their dependents. If so, such a church must keep “protected health information” that is acquired in the administration of the health plan confidential unless the patient or his legally authorized representative furnishes written consent for release of information. Below is summary of the answers to some of the most frequently asked questions about these new requirements as they affect the local church.

Does the HIPAA Privacy Rule limit a church’s ability to release, either orally or in writing, the names of parishioners not covered by the church’s health benefit plan, as in publishing them in the church bulletin, bulletin board, prayer lists? No. Such information is not “protected health information,” because the Privacy Rule does not apply in any way to parishioners who are not employed or covered as dependents by the church’s health benefit plan.

When may the church release information about employees or others covered by the church’s health benefit plan? The church may release protected health information if it is obtained independently of the health benefit plan or with the patient’s consent. In other words, a church may release the names or medical information about employees or their dependents covered by the church’s health plan without the consent of the patient or his or her legally responsible person only if the information has been received not by virtue of administering the patient’s health plan, but from a source other than the plan or the patient’s medical file. Thus, if the patient has only communicated the health information to the church employee or pastor with responsibility for administering the plan, then such information should probably not be released without further consent. Of course, if any parishioner or family member communicates information to the person who is responsible for including information in the church bulletin, then that may occur without having to comply with HIPAA. Otherwise, the church would need the patient’s written consent to release protected health information.

Once information has been obtained independently of the health plan or limited consent has been given, may the church release additional protected health information about the patient? No. The church must be very careful to release only the information, which has been obtained outside of the health plan or for which the consent was given. Church administrators must resist the temptation of adding information, which may have been obtained through the health plan to the permitted disclosure without proper consent.

Do clergy have a right to review any hospital patient directory-listing patients by church or denominational affiliation for the purposes of visitation? Yes, hospitals may still prepare such directories and share them with clergy, unless the patient objects to such disclosure. The directory may only include the patient's name, location within the hospital, a general statement of the patient's condition and his or her religious affiliation. The hospital must inform the patient in advance of the information it plans to include in the directory and the persons to whom the information will be disclosed, and the hospital must provide the patient with the opportunity to agree or object orally to such disclosure. In the case of the emergency, the hospital need not provide such information to the patient when the opportunity to object cannot practicably be provided. In practice, hospitals should ask patients at the time of registration whether they agree or object to being listed in the patient directory and any listing by church affiliation or denomination for the purpose of sharing with clergy.