

Health Information Compliance Alert

READER QUESTIONS: GET SIGNED CONSENT FOR INMATE'S PHI

Question: Our hospital recently treated an inmate of the county correctional facility. Can we discuss her treatment with the correctional facility? Is her information protected?

Answer: Yes, you can discuss the inmate's treatment with the correctional facility if she consented to that disclosure, experts say. However, "the patient does not have to authorize the county to see the medical information," explains **Barry Herrin**, an attorney in the Atlanta, GA office of **Smith Moore**.

Tip: Before treatment begins, your facility and the correctional institution should get the prisoner's written consent, he suggests.

If the prisoner does not consent to the disclosure, her information is "subject to the same rights and restrictions as any other health information," barring the noted inmate exceptions, says **Tom Schroeder**, an attorney in **Faegre & Benson's** Minneapolis, MN office.

Remember: The correctional facility can work around a prisoner's refusal to sign a consent if that information is necessary. "They can get as much information as they can justify," Schroeder asserts.

Section 164.512(k)(5) of the HIPAA privacy rule has made exceptions for the following six situations:

- a) the provision of health care to such individuals;
- b) the health and safety of such individuals or other inmates;
- c) the health and safety of the officers or employees or others at the correctional institution;
- d) the health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility or setting to another;
- e) law enforcement on the premises of the correctional institution; and f) the administration and maintenance of the safety, security and good order of the correctional institution.

The Bottom Line: Get consent out of the way before treating a prisoner if the correctional facility is interested in that information. If the prisoner refuses to consent, her information is off limits to the correctional institution unless it can prove that her PHI is necessary.