



DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

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May 25, 2005

UNDER SECRETARY FOR HEALTH'S INFORMATION LETTER
DISCLOSING PATIENTS' PROTECTED HEALTH INFORMATION TO
SURROGATES

1. This Information Letter provides clinicians and managers with information about the ethically challenging situation that arises when clinicians need to share details of patients' health information with surrogates but are prohibited from doing so by Federal law.
2. The Department of Veterans Affairs (VA) is committed to protecting patients' privacy. However, when patients lack decision-making capacity, good medical practice and professional ethics standards require that clinicians obtain informed consent from the patient's authorized surrogate. To meet that standard, clinicians must disclose to the surrogate information about the patient's clinical situation to enable the surrogate to make an informed decision on the patient's behalf. At times clinically relevant information may include information related to alcohol or drug abuse, sickle cell anemia, or Human Immunodeficiency Virus (HIV), which Federal law at Title 38 United States Code (U.S.C.) 7332 specifically prohibits VA practitioners from disclosing to the surrogate other than a legal guardian without the patient's written authorization. Such situations are rare, but when they occur VA clinicians face a serious conflict of duties.
3. A new report by VHA's National Ethics Committee (NEC), "Disclosing Patients' Protected Health Information to Surrogates," examines the ethical dilemmas these privacy constraints create for clinicians as they try to balance their duty to protect confidentiality and their duty to respect patient autonomy and support surrogates' participation in shared decision making on the patient's behalf. The NEC's analysis underscores the importance of stringent privacy protections for patients' health information, but recognizes that there may be a need to allow clinicians to disclose patients' protected health information to surrogates in certain limited circumstances.
4. To assure that VA adheres to the highest standards in providing care for all patients who lack decision-making capacity and to resolve the dilemma facing VA clinicians, the Under Secretary for Health has formally requested that VA General Counsel identify means to address the conflict of duties created for practitioners by 38 U.S.C. 7332.
5. The report is available from the National Center for Ethics in Health Care at:
http://vaww.va.gov/vhaethics/resources_4.cfm.

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6. Questions about the report may be directed to Ellen Fox, MD (10E), Director, National Center for Ethics in Health Care, (202) 501-0364.

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Under Secretary for Health

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