

HIPAA allows a hospital to refuse treatment to a patient who declines to consent to the parts of the hospital's privacy notice that govern uses of patient information for treatment, payment and health care operations. Does that conflict with EMTALA's care obligations?

Answer: No. Two exceptions to the consent requirement under the final HIPAA privacy regulations attempt to resolve the possible conflict. Under the exceptions, the regulation allows the hospital to use and disclose health information about a patient for treatment, payment and health care operations without the patient's consent. The first exception is a general exception that waives the consent requirement when the hospital is required by law to provide treatment. The hospital must, however, (1) try to get the patient's consent, (2) document the hospital's attempt, and (3) document the reason consent was not received. The second exception is more specific and temporarily waives the consent requirement in emergency treatment situations. This exception applies when a hospital initially is unable to get consent because of the emergency situation. The hospital must get the patient's consent as soon as possible after emergency treatment is provided. The two provisions work together as follows: If a hospital emergency room provided care to a patient without the consent being signed, the regulation would not be violated unless the hospital did not try to get consent as soon as possible. If the patient then refused to sign the consent, but the hospital was required to provide care because of EMTALA, the regulations allow the hospital to use and disclose the health information for treatment, payment and health care operations, consistent with the hospital's notice of information practices. A hospital that agreed to more restrictive practices in its notice would be limited by that notice.