Hurricane Katrina displaced thousands of New Orleans and Mississippi residents, many of whom need health care and assistance in contacting family members and other individuals. One question that arises is how health care providers and disaster relief agencies such as the American Red Cross can coordinate health care and contact family members and friends without violating the federal privacy regulations that implement the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (the “Privacy Rule”).

As discussed in more detail below, the Privacy Rule generally permits covered entities, including most health care providers, to use and disclose protected health information to: (1) treat patients; (2) identify, locate and notify family members and certain other individuals of a patient’s location, general condition or death; (3) obtain the services of disaster relief agencies such as the American Red Cross; (4) carry out certain public health activities; and (5) prevent or lessen serious and imminent threats to health or safety.

**Treatment Activities.** The Privacy Rule allows covered health care providers to use and disclose protected health information without prior patient permission for treatment activities. Treatment activities include, but are not limited to, the provision, coordination or management of health care and related services by one or more health care providers, as well as the referral of patients for health care from one provider to another. For example, the HIPAA Privacy Rule certainly would permit covered health care providers in New Orleans and Mississippi to disclose patient information to other providers for purposes of coordinating treatment and transferring patients to other medical facilities.

**Notifying Family Members.** The Privacy Rule also allows covered health care providers to use and disclose protected health information to identify, locate and notify a family member, personal representative or other person responsible for the care of a patient of the patient’s location, general condition or death. For example, health care providers in New Orleans certainly would be permitted to contact a family member of an elderly

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2 The Privacy Rule applies to those health care providers who transmit health information in electronic form in connection with a standard transaction. 45 C.F.R. § 164.501 (2005). Disaster relief agencies, such as the American Red Cross, do not constitute health care providers and need not comply with the Privacy Rule. DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE FOR CIVIL RIGHTS, HURRICANE KATRINA BULLETIN: HIPAA PRIVACY AND DISCLOSURES IN EMERGENCY SITUATIONS (Sept. 2, 2005) [hereinafter, KATRINA BULLETIN], available at http://www.hhs.gov/ocr/hipaa/KATRINAHIPAA.pdf (“Thus, for instance, the HIPAA Privacy Rule does not restrict the American Red Cross from sharing patient information.”).
3 45 C.F.R. § 164.506(c)(1).
4 Id. § 164.501.
5 Id. § 164.510(b).
patient and notify the family member of the patient’s general condition and the patient’s new location if the patient has been transferred to another medical facility, subject to the following requirements: In non-emergency situations, health care providers must do one of the following before making the notification: (1) obtain the patient’s agreement to the notification; (2) provide the patient with the opportunity to object to the notification and confirm that no objection is expressed; or (3) reasonably infer from the circumstances, based on the exercise of professional judgment, that the patient does not object to the notification.  

In emergency situations, or in situations in which the patient is otherwise incapacitated, health care providers may exercise their professional judgment in determining that a particular notification would be in the best interests of the patient and may disclose the information that is directly relevant to the person’s involvement with the patient’s health care. Thus, a health care provider in Mississippi certainly would be permitted to decide to contact a family member of an unconscious patient and notify the family member of the patient’s location and general condition. A bulletin released by the federal Department of Health and Human Services on September 2, 2005, clarifies that the notification provisions discussed in this paragraph also would permit covered providers to “notify the police, the press, or the public at large to the extent necessary to help locate, identify or otherwise notify family members and others as to the location and general condition of their loved ones.”

Disaster Relief Activities. The Privacy Rule also permits covered entities to disclose protected health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts (such as the American Red Cross) for purposes of obtaining assistance in identifying, locating or notifying family members, personal representatives and other responsible persons. For example, a health care provider stationed at the Houston Astrodome may decide to disclose patient information to the American Red Cross to obtain the Red Cross’ assistance in notifying family members of the patient’s location and general condition. The Privacy Rule would not regulate the American Red Cross’ subsequent use of the information because the American Red Cross is not a covered entity.

Public Health Activities. The Privacy Rule permits covered entities to disclose protected health information to a public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability, as well as for the conduct of public health surveillance, public health investigations and public health interventions. For example, health care providers in Houston can report to public health authorities, including the Texas Department of State Health Services or the Public Health Preparedness division of the Houston Department of

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6 Id. § 164.510(b)(2).
7 Id. § 164.510(b)(3).
8 KATRINA BULLETIN, supra note 2.
9 45 C.F.R. § 164.510(b)(4) (2005). The requirements set forth in the paragraph entitled “Notifying Family Members” also apply to disclosures for disaster relief activities.
10 KATRINA BULLETIN, supra note 2.
Health and Human Services, as appropriate, information that is needed to respond to injuries and diseases of individuals who have been displaced from New Orleans and Mississippi.

Situations Involving Imminent Danger. Finally, the Privacy Rule permits covered health care providers, consistent with applicable law and standards of ethical conduct, to use or disclose protected health information if the covered entity has a good faith belief that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is to a person reasonably able to prevent or lessen the threat.\textsuperscript{12}

In summary, the Privacy Rule was not designed to interfere with the provision of health care or the coordination of disaster relief efforts that are needed to respond to Hurricane Katrina.

September 2005

\textsuperscript{12} \textit{Id.} § 164.512(j).