



Questions About Confidentiality and Health Related Information

How should our pastor and staff respect private information under HIPAA?

Health Insurance Portability and Accountability Act (HIPAA)

It is designed to keep information related to an individual's health private. In general, the HIPAA Privacy Rule does NOT apply to churches' disclosure of health related information about its parishioners in the context of publicizing prayer requests and prayer lists. However, good taste and overall concern for privacy should be used in discussing personal health issues. If the congregation is providing health care, such as a parish nurse, the privacy rules may apply. If the congregation learns health information from insurance records for employees, the privacy rules do apply.



What information can the hospital or nursing care facility release to the pastor?

The visiting pastor may be provided with the patient's name, location in the facility, condition in general terms, and religious affiliation as long as the patient has not objected.

- [Pastoral Care and HIPAA](#) from Lutheran Services in America
- [HIPAA Privacy Rule and Local Churches](#) from the United Methodist Church
- [HIPAA and Pastoral Care](#) from the Association of Professional Chaplains

[For other areas of privileged communication](#)

How should the pastor handle pastoral care information and files?

Pastoral Care Files

When the pastor, or other staff member, provides pastoral care to parishioners, such as marriage counseling or personal spiritual direction, the pastor may create a file containing:

- Date and time of consultation and persons present
- Observation notes
- Correspondence

Care

These files must be kept locked and held in strictest confidence as they involve a relationship at the highest level of trust and are usually subject to the clergy and penitent privilege. The parishioner should sign a release if any information is to leave the file. The pastor must use good judgment in establishing the nature of each relationship and in creating documentation of it. An understanding of the nature of this relationship will determine the appropriate creation and disposition of the records. See the [Records Retention Schedule for Congregations](#) for additional information on how to care for these files.

Retention

If the relationship is said to be that of care of souls, the pastor may decide what should be retained at his or her own discretion. The principle of confessional confidences, which applies to all ordained ministers of this church, is specified by ELCA churchwide constitutional provision (7.45.).

"In keeping with the historic discipline and practice of the Lutheran Church and to be true to a sacred trust inherent in the nature of the pastoral office, no ordained minister of this church shall divulge any confidential disclosure received in the course of the care of souls or otherwise in a professional capacity, nor testify concerning conduct observed by the ordained minister while working in a pastoral capacity, except with the express permission of the person who has given confidential information to the ordained minister or who was observed by the ordained minister, or if the person intends great harm to self or others" (churchwide constitutional provision (7.45.) in the [Constitution, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America](#)).

In all states, suspected cases of child abuse are required to be reported to the authorities. Whether such reporting requirements apply to pastors may vary. Consult an attorney in your state for guidance on such matters.