Organ Procurement Organization
is Exempt From HIPAA Privacy Rules

Background: The HIPAA Privacy Rules grant an exemption to the patient authorization requirements for OPO (Organ Procurement Organization) groups for the limited purpose of procuring organs -- which includes cadaveric organ, eye, tissue donation and transplantation services. With regard to hospital affiliations, OPOs are neither covered entities, nor business partners, and are specifically permitted to perform their core function, with stringent confidentiality, but outside the scope of HIPAA. Covered entities are permitted to share PHI with OPOs engaged in procurement of organs.

Question-1: Does rounding in the inpatient units fit within what would be regarded as the OPO's "core functions" to facilitate organ donation?

In a recent Federal Register from CMS (May-2006) E6-7690.pdf

Supplemental information: "...OPOs are responsible for identifying potential organ donors and for obtaining as many organs as possible from those donors."

Therefore, the OPO presence on the inpatient unit could be viewed as supporting their core functions to identify as many donors as possible.

Question -2 : What PHI can be shared w OPO in the inpatient unit?
1. For patients that appear not to be potential organ donors: the information needed to convey to the OPO why the patient is not a potential organ donor.
2. For patients that are potential organ donors: the information needed by the OPO for organ donation purposes.

Here’s what the 2000 privacy rule preamble says (vol 65 no 250 p 82688 12/28/2000):

Section 164.512(h)—Uses and Disclosures for Organ Donation and Transplantation Purposes

Comment: Commenters noted that under the organ donation system, information about a patient is disclosed before seeking consent for donation from families. These commenters offered suggestions for ensuring that the system could
continue to operate without consent for information sharing with organ procurement organizations and tissue banks. Commenters suggested that organ and tissue procurement organizations should be “covered entities” or that the procurement of organs and tissues be included in the definition of health care operations or treatment, or in the definition of emergency circumstances.

Response: We agree that organ and tissue donation is a special situation due to the need to protect potential donors’ families from the stress of considering whether their loved one should be a donor before a determination has been made that donation would be medically suitable. Rather than list the entities that are “covered entities” or modify the definitions of health care operations and treatment or emergency circumstances to explicitly include organ procurement organizations and tissue banks, we have modified §164.512 to permit covered entities to use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissues.