



LAW ENFORCEMENT INTERACTIONS

General Guidance for All Health Care Providers

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IMPORTANT NOTE

The information in this publication focuses on common situations where providers may interact with law enforcement. It offers a summary that is meant to provide general guidance and is not legal advice. In addition, laws and regulations vary across states. Readers should seek appropriate legal counsel or other professional advice for guidance particular to their situation.

INTRODUCTION

Health care providers may experience interactions with law enforcement personnel that create uncertainty around their responsibilities to patients, including the duty to protect patients' privacy. Law enforcement personnel are tasked with ensuring public safety and conducting criminal investigations. When these duties intersect as they relate to patients in the health care system, providers should understand how to meet their obligations while respecting the requests of law enforcement personnel.

LAW ENFORCEMENT AND PROTECTED HEALTH INFORMATION

PROTECTED HEALTH INFORMATION UNDER HIPAA

Before disclosing patient information to law enforcement, a provider should consider whether it is protected under the federal Health Insurance Portability and Accountability Act (HIPAA) rules, which provide privacy protections for individually identifiable health information held by health care providers and their business associates. HIPAA "covered entities" include health care providers who transmit any health information in electronic form in connection with a transaction covered under the HIPAA regulations.¹

Protected health information (PHI) includes individually identifiable health information transmitted or maintained in electronic media or any other form or medium.¹

Individually identifiable health information is information created or received by a health care provider that identifies the individual and relates to the past, present, or future physical/mental health or condition of an individual; the provision of health care to the individual; or payment for the provision of health care to the individual.¹

WHO IS CONSIDERED A LAW ENFORCEMENT OFFICIAL?

As outlined in the HIPAA Privacy Rule, a **law enforcement official** means an officer or employee of any agency or authority within the U.S., who is empowered by law to:

- (1) Investigate or conduct an official inquiry into a potential violation of law; or
- (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.²

Law enforcement officials include (but are not limited to):

- Police officers and state troopers
- Sheriffs and sheriffs' deputies
- District attorneys
- DEA and FBI special agents
- ICE officers

The default position under HIPAA is that PHI cannot be disclosed without the patient's authorization, but there are some exceptions relevant to law enforcement, including where reporting is required by state law.

¹45 C.F.R. § 160.103

²45 C.F.R. § 164.103

KEY CONSIDERATIONS FOR ANY LAW ENFORCEMENT INTERACTION:

- Don't be afraid to ask for identification.** Have they properly identified themselves? If the law enforcement official is not known to the provider, the provider must verify the identity and authority of the person.³ Processes should be in place for in-person, phone, and email interactions.

- Share your side of the situation.** Explain your understanding of the situation and the laws (HIPAA, etc.) that govern your actions of what you can and can't do.

- When trying to decide which federal or state law applies, the more restrictive one will likely apply.** In general, if there is a state or federal law that is more restrictive than HIPAA (more protective of a patient's privacy), providers are required to comply with the more restrictive law.

- Document the details.** Obtain any documentation or statements from the person requesting protected health information (PHI) when these documents or statements are relied upon to make the disclosure.⁴

- Respect law enforcement and the challenges they are dealing with.** Do not physically interfere with law enforcement officials or provide them false or misleading information.

- Don't provide more information than what is necessary.** Unless disclosures made to law enforcement are required by law, they should be held to the "minimum necessary" standard. This means that when using or disclosing PHI, the HIPAA-covered entity or provider must make reasonable efforts to limit PHI to the minimum necessary to accomplish the purpose of the use, disclosure, or request.⁵ A provider may rely upon the representations of a law enforcement official that the information requested is the minimum necessary for the stated purpose.⁶

³45 C.F.R. § 164.514(h)(1)(i)

⁴45 C.F.R. § 164.514(h)(1)(ii)

⁵45 C.F.R. § 164.502(b)

⁶45 C.F.R. § 164.514(d)(3)(iii)(A)

DISCLOSURES UNDER HIPAA

Covered entities may disclose PHI without a patient authorization or an opportunity for the patient to agree or object to the extent that such use or disclosure is required by law, and it complies with and is limited to the relevant requirements of such law.⁷ **Please be aware that HIPAA allows disclosures of PHI to law enforcement under state mandatory reporting laws for health care providers to report certain injuries related to crimes (e.g., gunshot wounds) or victims of crimes such as child abuse.**

REPORTING CHILD ABUSE OR NEGLECT (UNDER HIPAA)

HIPAA allows a provider to disclose PHI for public health activities including to a public health authority or other appropriate government authority, including law enforcement, authorized by law to receive reports of child abuse or neglect.⁸

A provider that makes a permitted disclosure must promptly inform the patient that such a report has been or will be made, except if, in the provider's professional judgment:

- 1. The provider believes informing the patient would place the patient at risk of serious harm; or*
- 2. The provider would be informing a personal representative, and the provider reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the patient as determined by the provider.⁹*

REPORTING REGARDING ADULT VICTIMS OF ABUSE, NEGLECT, OR DOMESTIC VIOLENCE (UNDER HIPAA)

A provider may disclose PHI about an individual the provider reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive such reports:

- To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
- If the individual agrees to the disclosure; or
- To the extent the disclosure is expressly authorized by statute or regulation and:
 - ◆ The provider, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
 - ◆ If the person is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the PHI for which disclosure is sought is not intended to be used against the person, and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the person is able to agree to the disclosure.¹⁰

⁷45 C.F.R. § 164.512(a)(1)

⁸45 C.F.R. § 164.512(b)(ii)

⁹45 C.F.R. § 164.512(c)(2)

¹⁰45 C.F.R. § 164.512(c)(1)

DISCLOSURES FOR LAW ENFORCEMENT PURPOSES

A provider may disclose PHI for a law enforcement purpose to a law enforcement official if the following conditions are met, as applicable.¹¹

1 Pursuant to process and as otherwise required by law¹²

- As required by law, including laws that require the reporting of certain types of wounds (e.g., gunshot wounds) or other physical injuries¹³; or
- In compliance with and as limited by the relevant requirements of:
 - ◆ A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
 - ◆ A grand jury subpoena; or
 - ◆ An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law. The administrative request must include a written statement that:
 - ▶ The information sought is relevant and material to a legitimate law enforcement inquiry (one regarding a potential violation of law);
 - ▶ The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - ▶ De-identified information could not reasonably be used.

2 Information for identification and location purposes only¹⁴

Providers may disclose limited PHI in response to a request for such information for the purposes of identifying or locating a suspect, fugitive, material witness, or missing person. The provider may disclose only the following information:

- Name and address;
- Date and place of birth;
- Social security number;
- ABO blood type and Rh factor;
- Type of injury;
- Date and time of treatment;
- Date and time of death, if applicable; and
- Distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

Except as permitted above, the provider may not disclose for the purposes of identification or location any PHI related to the patient's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

3 Victims of a crime¹⁵

In addition to disclosures required by law, a provider may disclose PHI in response to a request for such information about a patient who is or is suspected to be a victim of a crime if:

- The patient agrees to the disclosure; or
- The provider is unable to obtain the victim's agreement because of incapacity or other emergency circumstance, provided that:
 - ◆ The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred and such information is not intended to be used against the victim;
 - ◆ The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the patient is able to agree to the disclosure; and
 - ◆ The disclosure is in the best interests of the patient as determined by the provider's professional judgment.

¹¹45 C.F.R. § 164.512(f)

¹³45 C.F.R. § 164.512(f)(1)(i)

¹²45 C.F.R. § 164.512(f)(1);

¹⁴45 C.F.R. § 164.512(f)(2)

45 C.F.R. § 164.514(h)(2)(i)(A)

¹⁵45 C.F.R. § 164.512(f)(3)

4 Deceased patients¹⁶

A provider may disclose PHI about a patient who has died for the purpose of alerting law enforcement of the patient's death if the provider has a suspicion that the person's death resulted from criminal conduct.

5 Crime on premises¹⁷

A provider may disclose PHI that the provider believes in good faith constitutes evidence of criminal conduct that occurred on the provider's premises.

6 Reporting crime in emergencies¹⁸

A provider providing emergency health care in response to a medical emergency, other than an emergency on the provider's premises, may disclose PHI if the disclosure appears necessary to alert law enforcement to:

- The commission and nature of a crime;
- The location of such crime or the victims of such crime; and
- The identity, description, and location of the perpetrator of such crime.

The Privacy Rule is balanced to protect an individual's privacy while allowing important law enforcement functions to continue. Except when required by law, the disclosures to law enforcement are subject to a minimum necessary determination by the covered entity.²¹

If the provider believes that the medical emergency is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, this section does not apply, and any disclosure would fall under the requirements for "disclosures about adult victims of abuse, neglect, or domestic violence" (see page 3).¹⁹

SERIOUS THREAT TO HEALTH OR SAFETY

A provider may use or disclose PHI without a patient's written authorization or the opportunity for the person to agree or object in certain situations where there is a possible threat to public safety. Under HIPAA, a provider may, consistent with applicable law and standards of ethical conduct, use or disclose PHI if the provider, in good faith, believes 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 or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
- For law enforcement to identify or apprehend an individual:
 - ◆ Because of a statement by an individual admitting participation in a violent crime that the provider reasonably believes may have caused serious physical harm to the victim; or
 - ◆ Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

A use or disclosure of PHI may not be made if this information is learned by the provider:

- In the course of treatment to affect the propensity to commit the criminal conduct that is the basis of the disclosure or counseling or therapy; or
- Through a request by the individual to initiate or be referred for such treatment, counseling, or therapy.²⁰

¹⁶45 C.F.R. § 164.512(f)(4)

¹⁷45 C.F.R. § 164.512(f)(5)

¹⁸45 C.F.R. § 164.512(f)(6)(i)

¹⁹45 C.F.R. § 164.512(f)(6)(ii)

²⁰45 C.F.R. § 164.512(j)

²¹45 C.F.R. § 164.502(b), 164.514(d)

MENTAL HEALTH PATIENTS

The Department of Health and Human Services (HHS) has released guidance under HIPAA regarding the situation where law enforcement requests to be notified when a patient is released from a mental health hold. Under the HHS guidance, a facility could inform law enforcement of the release if it falls within one of the permitted disclosures:

- The Privacy Rule permits a HIPAA covered entity, such as a hospital, to disclose certain PHI, including the date and time of admission and discharge, in response to a law enforcement official's request, for the purpose of locating or identifying a suspect, fugitive, material witness, or missing person.²²
- Other Privacy Rule provisions also may be relevant depending on the circumstances, such as when a law enforcement official is seeking information about a person who may not rise to the level of a suspect, fugitive, material witness, or missing person, or needs PHI not permitted under the above provision. For example, the Privacy Rule's law enforcement provisions also permit a provider to respond to an administrative request, such as an investigative demand for a patient's PHI, provided the administrative request includes or is accompanied by a written statement specifying that the information requested is relevant, specific and limited in scope, and that de-identified information would not suffice in that situation.²³
- Finally, the Privacy Rule permits a covered entity to disclose a patient's PHI, consistent with applicable legal and ethical standards, to avert a serious and imminent threat to the health or safety of the patient or others. Such disclosures may be to law enforcement authorities or any other persons, such as family members, who are able to prevent or lessen the threat.²⁴

PATIENT IN CUSTODY

A provider may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about such inmate or individual, if the correctional institution or such law enforcement official represents that such information is necessary for:

- The provision of health care to such individuals;
- The health and safety of such individual or other inmates;
- The health and safety of the officers, employees, or any others at the correctional institution;
- The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution; or
- The administration and maintenance of the safety, security, and good order of the correctional institution.²⁵



HIPAA Privacy Rule and Sharing Information Related to Mental Health:

www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf

²²45 C.F.R. § 164.512(f)(2)

²³45 C.F.R. § 164.512(f)(1)

²⁴45 C.F.R. § 164.512(j)

²⁵45 C.F.R. § 164.512(k)(5)



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