

# LAW ENFORCEMENT INTERACTIONS

Guidance for Health Care Providers  
in Iowa

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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.<sup>1</sup>

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

**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.<sup>1</sup>

### 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.<sup>2</sup>

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.*

<sup>1</sup>45 C.F.R. § 160.103

<sup>2</sup>45 C.F.R. § 164.103

## KEY CONSIDERATIONS FOR ANY LAW ENFORCEMENT INTERACTION:

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- 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.<sup>3</sup> 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.<sup>4</sup>
  
- 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.<sup>5</sup> A provider may rely upon the representations of a law enforcement official that the information requested is the minimum necessary for the stated purpose.<sup>6</sup>

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<sup>3</sup>45 C.F.R. § 164.514(h)(1)(i)

<sup>4</sup>45 C.F.R. § 164.514(h)(1)(ii)

<sup>5</sup>45 C.F.R. § 164.502(b)

<sup>6</sup>45 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.<sup>7</sup> Please see the Iowa section (starting on page 7) for more specifics on what rules and regulations apply to various situations.

## 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.<sup>8</sup>

*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.<sup>9</sup>*

## 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.<sup>10</sup>

<sup>7</sup>45 C.F.R. § 164.512(a)(1)

<sup>8</sup>45 C.F.R. § 164.512(b)(ii)

<sup>9</sup>45 C.F.R. § 164.512(c)(2)

<sup>10</sup>45 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.<sup>11</sup>

### 1 Pursuant to process and as otherwise required by law<sup>12</sup>

- As required by law, including laws that require the reporting of certain types of wounds (e.g., gunshot wounds) or other physical injuries<sup>13</sup>; 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 only<sup>14</sup>

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 crime<sup>15</sup>

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.

<sup>11</sup>45 C.F.R. § 164.512(f)

<sup>13</sup>45 C.F.R. § 164.512(f)(1)(i)

<sup>12</sup>45 C.F.R. § 164.512(f)(1);

<sup>14</sup>45 C.F.R. § 164.512(f)(2)

45 C.F.R. § 164.514(h)(2)(i)(A)

<sup>15</sup>45 C.F.R. § 164.512(f)(3)

## 4 Deceased patients<sup>16</sup>

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 premises<sup>17</sup>

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 emergencies<sup>18</sup>

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.<sup>21</sup>*

*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).<sup>19</sup>*

## 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.<sup>20</sup>

<sup>16</sup>45 C.F.R. § 164.512(f)(4)

<sup>17</sup>45 C.F.R. § 164.512(f)(5)

<sup>18</sup>45 C.F.R. § 164.512(f)(6)(i)

<sup>19</sup>45 C.F.R. § 164.512(f)(6)(ii)

<sup>20</sup>45 C.F.R. § 164.512(j)

<sup>21</sup>45 C.F.R. § 164.502(b), 164.514(d)

## MENTAL HEALTH PATIENTS

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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.<sup>22</sup>
- 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.<sup>23</sup>
- 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.<sup>24</sup>

## PATIENT IN CUSTODY

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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.<sup>25</sup>



### 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](http://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf)

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<sup>22</sup>45 C.F.R. § 164.512(f)(2)

<sup>23</sup>45 C.F.R. § 164.512(f)(1)

<sup>24</sup>45 C.F.R. § 164.512(j)

<sup>25</sup>45 C.F.R. § 164.512(k)(5)

# MANDATORY REPORTING UNDER IOWA LAWS

HIPAA allows disclosures of PHI to law enforcement officials under Iowa's mandatory reporting laws for health care providers.

## REPORTING OF WOUNDS BY CRIMINAL VIOLENCE OR MOTOR VEHICLE

Any health care provider who attends or treats certain injuries is required to report the injury within 12 hours to the law enforcement agency in whose jurisdiction the treatment was administered, or if ascertainable, to the law enforcement agency in whose jurisdiction the injury occurred. This includes:

- A gunshot or stab wound; or
- Other **serious injury** that appears to have been received in connection with the commission of a criminal offense, or a motor vehicle accident or crash.<sup>26</sup>

The report should include the name of the patient, the patient's residence if ascertainable, and a brief description of the gunshot or stab wound or other serious injury.<sup>27</sup>

### *Serious injury means any of the following:*

- *Disabling mental illness*
- *Bodily injury which does any of the following:*
  - ◆ *Creates a substantial risk of death*
  - ◆ *Causes serious permanent disfigurement*
  - ◆ *Causes protracted loss or impairment of the function of any bodily member or organ.*
- *Any injury to a child that requires surgical repair and necessitates the administration of general anesthesia.*

*Serious injury includes but is not limited to skull fractures, rib fractures, and metaphyseal fractures of the long bones of children under the age of 4 years.<sup>28</sup>*

## REPORTING OF SEXUAL ABUSE

Iowa does not mandate the reporting of sexual abuse of an adult patient. However, the Iowa Department of Public Health highly recommends that health care providers encourage patients who experienced sexual abuse to be examined for the purpose of obtaining medical treatment and to collect forensic evidence in the event the patient decides to later pursue legal options.



### Resources regarding sexual abuse examination from the Iowa Department of Public Health:

<https://idph.iowa.gov/Portals/1/userfiles/143/Iowa%20Sexual%20Assault%20Examination%20Protocol%20%282015%20update%29.pdf>

Any sex act between persons is "sexual abuse" by either person when the act is performed in any of the following circumstances:

- The act is done by force or against the will of the other. An act is done against the will of the other if the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness.
- Such other person is suffering from a mental defect or incapacity which precludes giving consent or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
- Such other person is a child.<sup>29</sup> For purposes of the criminal statutes, unless another age is specified, a "child" is any person under age 14.<sup>30</sup>

When an adult patient who has experienced sexual abuse consents to undergo a sexual abuse examination and to having the evidence preserved, a sexual abuse evidence collection kit must be collected and properly stored with the law enforcement agency under whose jurisdiction the offense occurred or with the agency collecting the evidence to ensure that the chain of custody is complete and sufficient.<sup>31</sup>

<sup>26</sup>Iowa Code § 147.111(1)

<sup>27</sup>Iowa Code § 147.111(2)

<sup>28</sup>Iowa Code § 702.18

<sup>29</sup>Iowa Code § 709.1

<sup>30</sup>Iowa Code § 702.5

<sup>31</sup>Iowa Code § 709.10(1)

If the patient has not filed a complaint and the sexual abuse evidence collection kit has been completed, the kit must be stored by the law enforcement agency for a minimum of ten years. In addition, if the patient does not want his or her name to be recorded on the sexual abuse collection kit, a case number or other identifying information must be assigned to the kit in place of the name of the patient.<sup>32</sup>



#### Resources regarding anonymous sexual abuse kits:

[http://www.ncdsv.org/IDCICL\\_Anomyous-SA-Kits-in-IA-Fact-Sheet.pdf](http://www.ncdsv.org/IDCICL_Anomyous-SA-Kits-in-IA-Fact-Sheet.pdf)

A “sex act” or “sexual activity” means any sexual contact between two or more persons by any of the following:

- Penetration of the penis into the vagina or anus.
- Contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person.
- Contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a licensed physician, physician assistant, chiropractor, or nurse.
- Ejaculation onto the person of another.
- By use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.<sup>33</sup>

A person commits sexual abuse in the **first degree** when in the course of committing sexual abuse the person causes another **serious injury**. (see page 7 reference).<sup>34</sup>

A person commits sexual abuse in the **second degree** under any of the following circumstances:

- During the commission of sexual abuse, the person displays in a threatening manner a dangerous weapon or uses or threatens to use force creating a substantial risk of death or serious injury to any person.
- The other person is under the age of 12.
- The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other person against whom the sex act is committed.<sup>35</sup>

A person commits sexual abuse in the **third degree** when the person performs a sex act under any of the following circumstances:

- The act is done by force or against the will of the other person, whether or not the other person is the person’s spouse or is cohabiting with the person.
- The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:
  - ◆ The other person is suffering from a mental defect or incapacity which precludes giving consent.
  - ◆ The other person is 12 or 13 years of age.
  - ◆ The other person is 14 or 15 years of age and any of the following are true:
    - ▶ The person is a member of the same household as the other person.
    - ▶ The person is related to the other person by blood or affinity to the fourth degree.
    - ▶ The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.
    - ▶ The person is 4 or more years older than the other person.
- The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:
  - ◆ The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.
  - ◆ The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.
- The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.<sup>36</sup>



#### Iowa Department of Justice Office of the Attorney General victim services resources:

<https://www.iowaattorneygeneral.gov/for-crime-victims/victim-services-support-program>

<sup>32</sup>Iowa Code § 709.10(2)    <sup>35</sup>Iowa Code § 709.3

<sup>33</sup>Iowa Code § 702.17    <sup>36</sup>Iowa Code § 709.4

<sup>34</sup>Iowa Code § 709.2

## REPORTING OF ABUSE OF A DEPENDENT ADULT

Any health care provider who, in the course of employment, examines, attends, counsels, or treats a **dependent adult** and reasonably believes the dependent adult has suffered abuse, must report the suspected abuse to Iowa's Department of Human Services.<sup>37</sup> The report can be made by calling (800) 362-2178 (24 hours a day, 7 days a week) or by calling 911 if a person is in imminent danger.

"Dependent adult abuse" means:

- Any of the following as a result of the willful or negligent acts or omissions of a **caretaker**:
  - ◆ Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.
  - ◆ The commission of a "sexual offense" (as that term is defined below) with or against a dependent adult.
  - ◆ Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.
  - ◆ The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.
  - ◆ Personal degradation of a dependent adult by a caretaker, which means a willful act or statement intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker reasonably should have known that would occur.
- The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.
- Sexual exploitation of a dependent adult by a caretaker. "Sexual exploitation" means any consensual or nonconsensual sexual conduct with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or sex act (as that term is defined on page 8). It includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation or investigation.

*A dependent adult is a person 18 years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another.<sup>41</sup>*

*A caretaker is a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by a court order.<sup>42</sup>*

- Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice of employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.<sup>38</sup>

"Dependent adult abuse" *does not* include any of the following:

- Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin, attorney in fact, or guardian.<sup>39</sup>

A **sexual offense** is "sexual abuse" as (defined on page 7) or "incest," where a person other than a child performs a sex act with another whom the person knows to be related as an ancestor, descendant, brother or sister of the whole or half blood, aunt, uncle, niece, or nephew.<sup>40</sup>

<sup>37</sup>Iowa Code § 235B.3(2)(e)

<sup>40</sup>Iowa Code § 235B.2(5)(a)(1)(b)

<sup>38</sup>Iowa Code § 235B.2(5)(a)

<sup>41</sup>Iowa Code § 235B.2(4)

<sup>39</sup>Iowa Code § 235B.2(5)(b)

<sup>42</sup>Iowa Code § 235B.2(1)

## REPORTING OF CHILD ABUSE AND NEGLECT

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For purposes of the child abuse reporting statutes, unless the context otherwise requires, a “child” means any person under the age of 18. A “person responsible for the care of a child” means a parent, guardian or foster parent; a relative or any other person with whom the child resides; an employee or agent of a public or private facility providing care for a child including a child care facility; and any person providing care for a child but with whom the child does not reside, regardless of the duration of care.

“Child abuse” means:

- Any nonaccidental physical injury, or injury which is at variance with the history given of it, as a result of the acts or omissions of a person responsible for the care of the child.
- Any mental injury to a child’s intellectual or psychological capacity as a result of the acts or omissions of a person responsible for the care of the child.
- The commission of a sexual offense with or to a child as a result of the acts or omissions of the person responsible for the care of the child or of a person who is 14 years of age or older and resides in a home with the child. The commission of a sexual offense includes any sexual offense with or to a person under the age of 18 years.
- The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child’s health and welfare when financially able to do so.
- The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in prostitution. This includes an act or omission with or to a person under the age of 18 years.
- An illegal drug is present in a child’s body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.
- The person responsible for the care of a child, in the presence of the child, unlawfully uses, possesses, manufactures or distributes a dangerous substance or knowingly allows such use, manufacture, or distribution by another person in the presence of the child. A “dangerous substance” includes amphetamine, methamphetamine, cocaine, heroin, opium, opiates and derivatives.
- The commission of bestiality in the presence of a minor by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child.
- Knowingly allowing a person custody or control of, or unsupervised access to a child under the age of 14 or a child with a physical or mental disability after knowing the person is required to register or is on the sex offender registry.
- The person responsible for the care of the child has knowingly allowed the child access to obscene material or has knowingly disseminated or exhibited such material to the child.
- The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of commercial sexual activity.<sup>43</sup>

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<sup>43</sup>Iowa Code § 232.68

Every health care practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused must make a report to the Department of Human Services within 24 hours. This provision applies to a health care practitioner who receives information confirming that a child is infected with a sexually transmitted disease.<sup>44</sup> If the person making the report has reason to believe that immediate protection for the child is advisable, that person must also make an oral report to an appropriate law enforcement agency.<sup>45</sup>

In addition, a health care practitioner is required to make a report of abuse of a child who is under the age of twelve, and may make a report of abuse of a child who is twelve years old or older, which would be defined as “child abuse” except that the abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child.<sup>46</sup>

If a health practitioner discovers in a child physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine or other illegal drugs which were not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed in utero, the practitioner may perform a **medically relevant test** on the child.<sup>47</sup>

*A medically relevant test is a test that produces reliable results of exposure to these illegal drugs, including a drug urine screen test.<sup>48</sup> The practitioner must report any positive results of such a test to the department of human services.<sup>49</sup>*

A person participating in good faith in the making of a report, photographs, or X-rays, or in the performance of a medically relevant test, or assisting in an assessment of a child abuse report, has immunity from any liability, civil or criminal, which might otherwise be incurred.<sup>50</sup>

## PATIENT TESTING

Iowa law allows patient testing in certain circumstances for drugs, alcohol, or sexually transmitted infections.

### DRUG AND ALCOHOL TESTING

Iowa has an “implied consent” law for drug and alcohol testing of possible impaired drivers. Any person who operates a motor vehicle under circumstances which give reasonable grounds to believe that the person is operating while intoxicated by alcohol or drugs (OWI) is deemed to have given consent to the withdrawal of specimens of the person’s blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of a controlled substance or other drugs.<sup>51</sup>

A person is OWI under any of the following conditions:

- While under the influence of alcohol or other drug or a combination of such substances;
- While having an alcohol concentration of .08 or more;
- While any amount of a controlled substance is present in the person, as measured in the person’s blood or urine;
- The person is under age 21 and has an alcohol concentration of .02 or more.<sup>52</sup>

The withdrawal of the body substances and the test or tests must be administered at the written request of a peace officer having reasonable grounds to believe that the person was OWI and if any of the following conditions exist:

- A peace officer has lawfully placed the person under arrest for operating a vehicle while intoxicated.
- The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.
- The person has refused to take a preliminary breath screening test.
- The preliminary breath screening test was administered, and it indicated an alcohol concentration equal to or more than .08.

<sup>44</sup>Iowa Code § 232.69

<sup>45</sup>Iowa Code § 232.70(3)

<sup>46</sup>Iowa Code § 232.69(1)

<sup>47</sup>Iowa Code § 232.77(2)

<sup>48</sup>Iowa Code § 232.73(2)

<sup>49</sup>Iowa Code § 232.77(2)

<sup>50</sup>Iowa Code § 232.73(1)

<sup>51</sup>Iowa Code § 321J.6(1)

<sup>52</sup>Iowa Code § 321J.2; Iowa Code § 321J.2A

- The preliminary breath screening test was administered to a person operating a commercial motor vehicle and it indicated an alcohol concentration of 0.04 or more.
- The preliminary breath screening test was administered, and it indicated an alcohol level less than .08 and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.
- The preliminary breath screening test was administered, and it indicated an alcohol concentration of .02 or more but less than .08 and the person is under age 21.<sup>53</sup>

The peace officer must determine which of the three substances, breath, blood, or urine, shall be tested.<sup>54</sup> Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and the driver's license may be revoked by the Department of Transportation.<sup>55</sup>

A refusal to submit to a chemical test of blood is *not* deemed a refusal to submit, but in that case, the peace officer shall then determine whether the urine or breath shall be tested and shall offer the test. If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused or the arrest is made, whichever occurs first, a test is not required, and there shall be no revocation of the driver's license.<sup>56</sup>

If the peace officer has reasonable grounds to believe that the person was under the influence of a controlled

substance, a drug other than alcohol, or a combination of alcohol and another drug, a blood or urine test shall be required even after another type of test has been administered.<sup>57</sup> A person who refuses to submit to a chemical test of urine or blood in this situation is subject to a driver's license revocation.<sup>58</sup>

Only a licensed physician, licensed physician assistant, medical technologist, or registered nurse, acting at the request of the peace officer, may withdraw a specimen of blood to determine the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and methods approved by the Commissioner of Public Safety, may take a specimen of a person's breath or urine to determine the alcohol concentration, or may take a specimen of a person's urine to determine the presence of a controlled substance or other drugs. Only new equipment kept under strictly sanitary and sterile conditions may be used for drawing blood.<sup>59</sup>

For purposes of the Iowa OWI statutes, a "peace officer," is:

- A member of the state patrol,
- A police officer under civil service,
- A sheriff,
- A regular deputy sheriff who has had formal police training,
- Or any other law enforcement officer who has satisfactorily completed an approved course relating to motor vehicle operators under the influence of alcoholic beverages.<sup>60</sup>

## TESTING FOR SEXUALLY TRANSMITTED INFECTIONS

Patients generally must consent to be tested for a sexually transmitted infection (STI).<sup>61</sup> However, if a care provider (which includes a peace officer) sustains a significant exposure from an individual while rendering health care services or other services, the individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider of the results of the test, upon submission of a significant exposure report by the care provider to the hospital, clinic, or other health facility to whom the individual is delivered by the care provider.<sup>62</sup> When the exposure occurred outside a clinical setting, the care provider who has sustained a significant exposure should file the report with the infection control, occupational health, or other designated office of the facility to which the patient was transported.<sup>63</sup>

A significant exposure form is *not* required to document the exposure if a care provider sustains a significant exposure from a patient while rendering services within a hospital, clinic or other health facility and a general consent form was signed and in effect at the time of the significant exposure and the source patient is an adult. An incident or other similar form may be used for this purpose.<sup>64</sup>

The hospital, clinic, or other health facility to whom the source patient is delivered or in which the significant exposure occurred is required to conduct the test.<sup>65</sup>

<sup>53</sup>Iowa Code § 321J.6(1)

<sup>54</sup>Iowa Code § 321J.6(2)

<sup>55</sup>Iowa Code § 321J.6(2);  
Iowa Code § 321J.9

<sup>56</sup>Iowa Code § 321J.6(2)

<sup>57</sup>Iowa Code § 321J.6(3)

<sup>58</sup>Iowa Code § 321J.9

<sup>59</sup>Iowa Code § 321J.11

<sup>60</sup>Iowa Code § 321J.1(8)

<sup>61</sup>Iowa Code § 141A.6

<sup>62</sup>Iowa Code § 139A.2(3);  
Iowa Code § 139A.19(1)(a)

<sup>63</sup>Iowa Admin. Code r. 641-11.23(1)

<sup>64</sup>Iowa Admin. Code r. 641-11.24(1)(a)

<sup>65</sup>Iowa Code § 139A.19(1)(b);

Iowa Admin. Code r. 641-11.23(4)

## POLICIES AND PROCEDURES

The health facility is required to have written policies and procedures for reviewing and certifying significant exposure report forms; testing a source patient; and notifying a care provider regarding his or her exposure.

- These must include designation of a representative of the care provider to whom notification shall be provided and who, in turn, must notify the care provider.

## NOTIFICATION

- If the test results are positive, the health facility or other person performing the test must notify the subject of the test (the source patient) and make any required reports to the Department of Public Health. The report must include the name of the individual tested.<sup>67</sup>
- While no further consent from the source patient is required, the source patient must be notified that an exposure has occurred, and which specific tests are being performed to determine the presence of contagious or infectious disease.<sup>68</sup>
- If the individual tested is diagnosed or confirmed as having a contagious or infectious disease, the health facility or other person conducting the test must notify the care provider or the designated representative of the care provider who must then notify the care provider.<sup>69</sup>
- The notification to the care provider must be provided as soon as is reasonably possible following determination that the subject of the test has a contagious or infectious disease. The notification must not include the name of the individual tested for the disease unless the individual consents. If the care provider determines the identity of the individual diagnosed as having a contagious or infectious disease, the identity of the individual is confidential information and must not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual.<sup>70</sup> However, this does not preclude a health facility or a health care provider from providing notification to a care provider under circumstances in which the health facility's or health care provider's policy provides for notification of the health facility's or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.<sup>71</sup>

- The identity of the designated representative of the care provider must not be revealed to the source patient tested.
- The designated representative must inform the health facility of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the health facility must inform the individual of the parties to whom notification was provided.<sup>66</sup>

A health facility, health care provider, or other person participating in good faith in complying with the provisions of this law is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.<sup>72</sup>

A health facility's or health care provider's duty to notify under the law is not continuing but is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the patient who was the source of the significant exposure.<sup>73</sup> However, the health facility may have a procedure to notify the exposed care provider if, following discharge from or completion of care or treatment by the health facility, the patient who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source patient's contagious or infectious disease status to the exposed care provider.<sup>74</sup>

<sup>66</sup>Iowa Code § 139A.19(1)(c);

Iowa Admin. Code r. 641-11.23(3)

<sup>67</sup>Iowa Code § 139A.19(2)(a)

<sup>68</sup>Iowa Admin. Code r. 641-11.23(2);

Iowa Admin. Code r. 641-11.24(1)

<sup>69</sup>Iowa Code § 139A.19(2)(b)

<sup>70</sup>Iowa Code § 139A.19(2)(c)

<sup>71</sup>Iowa Code § 139A.19(3)

<sup>72</sup>Iowa Code § 139A.19(4)

<sup>73</sup>Iowa Code § 139A.19(5)

<sup>74</sup>Iowa Code § 139A.19(6)



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