

LAW ENFORCEMENT INTERACTIONS

Guidance for Health Care Providers
in Colorado

Published August 2019



CONTENTS

Introduction	1
Law Enforcement and Protected Health Information	1
Protected Health Information Under HIPAA	1
Who is Considered a Law Enforcement Official?	1
Key Considerations for Any Law Enforcement Interaction	2
Disclosures Under HIPAA	3
Reporting Child Abuse or Neglect (Under HIPAA)	3
Reporting Regarding Adult Victims of Abuse, Neglect, or Domestic Violence (Under HIPAA)	3
Disclosures for Law Enforcement Purposes	4
Serious Threat to Health or Safety	5
Mental Health Patients	6
Patient in Custody	6
Mandatory Reporting Under Colorado Laws	7
Reporting of Certain Injuries	7
Sexual Assault	8
Mandatory Reporting of Mistreatment of At-Risk Elders and Adults with IDD	9
Child Abuse and Neglect	10
Patient Testing: Drug and Alcohol	12
Patient Testing: Sexually Transmitted Infections	13

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.** Carefully document any disclosures and any supporting information about why the decision was made to provide information to law enforcement officials.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 protected health information (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)

⁵45 C.F.R. § 164.502(b)

⁴45 C.F.R. § 164.514(h)(1)(ii)

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 see the Colorado 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.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.⁹

⁷45 C.F.R. § 164.512(a)(1)

⁸45 C.F.R. § 164.512(b)(ii)

⁹45 C.F.R. § 164.512(c)

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.¹⁰

1 Pursuant to process and as otherwise required by law¹¹

- As required by law, including laws that require the reporting of certain types of wounds (e.g., gunshot wounds) or other physical injuries¹²; 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 only¹³

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 crime¹⁴

Except for 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.

¹⁰45 C.F.R. § 164.512(f)

¹¹45 C.F.R. § 164.512(f)(1);

45 C.F.R. § 164.514(h)(2)(i)(A)

¹²45 C.F.R. § 164.512(f)(1)(i)

¹³45 C.F.R. § 164.512(f)(2)

¹⁴45 C.F.R. § 164.512(f)(3)

4 Deceased patients¹⁵

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 premises¹⁶

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 emergencies¹⁷

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.²⁰

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).¹⁸

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.¹⁹

¹⁵45 C.F.R. § 164.512(f)(4)

¹⁶45 C.F.R. § 164.512(5)

¹⁷45 C.F.R. § 164.512(f)(6)(i)

¹⁸45 C.F.R. § 164.512(f)(6)(ii)

¹⁹45 C.F.R. § 164.512(j)

²⁰45 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.²¹
- 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.²²
- 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.²³

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.²⁴



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

²¹45 C.F.R. § 164.512(f)(2)

²³45 C.F.R. § 164.512(j)

²²45 C.F.R. § 164.512(f)(1)

²⁴45 C.F.R. § 164.512(k)(5)

MANDATORY REPORTING UNDER COLORADO LAWS

REPORTING OF CERTAIN INJURIES

Licensees under Colorado’s Medical Practice Act, which includes physicians, physician assistants, and anesthesiologist assistants who attend or treat certain injuries are required to report the following to the police or sheriff in the city/county where the licensee is located:

- A bullet or gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp/pointed instrument that the licensee believes to have been intentionally inflicted;
- An injury arising from a dog bite that the licensee believes was inflicted upon a person by a dangerous dog, or
- Any other injury that the licensee has reason to believe involves a criminal act (with some exceptions in the case of domestic violence as noted below).²⁵

There is an exception to mandatory reporting in the case of an injury believed to be the result of **domestic violence** if the patient is age 18 or older and requests that the injury not be reported. This does not apply to the injuries in the first two bullets above or for **serious bodily injuries**.²⁶

All of those injuries would still need to be reported and the patient couldn’t request an “opt out.” Even if the patient requests that a more minor domestic violence injury not be reported, the licensee still may report it to law enforcement. The law allows a licensee to exercise his or her judgment in these cases. Before a licensee reports an injury that he or she has reason to believe resulted from domestic violence, he or she is required to make a good faith effort to confidentially advise the victim of the licensee’s intent to do so. This is consistent with the HIPAA requirements for victims (noted on page 3).

If the licensee does not report an injury at the victim’s request, he or she is required to document the victim’s

request in the medical record. Regardless of whether a licensee reports the injury to law enforcement, the licensee is required to provide the victim with information concerning services available to victims of abuse. The Colorado Department of Human Services’ Domestic Violence Program has community-based resources on its website.



Colorado Department of Human Services’ Domestic Violence Program:

<https://www.colorado.gov/pacific/cdhs/domestic-violence>

Liability protections in these situations include:

- Any licensee who, in good faith, makes a report when treating an injury or does not make a report in the case of domestic violence in compliance with the law is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report, and has the same immunity with respect to participation in any judicial proceeding resulting from such report.²⁷
- A licensee who in good faith, refers a victim to a victim’s advocate or provides a victim with information concerning services available to victims of abuse is not civilly liable for any act or omission of the victim’s advocate or of any agency that provides such services to the victim.²⁸
- A licensee who makes a report pursuant to this law is not subject to the physician-patient privilege as to the medical exam and diagnosis. The licensee may be examined as a witness, but not as to any statements made by the patient acquired in attending the patient that was necessary to prescribe or act for the patient.²⁹

Domestic violence is an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.³⁰

Serious bodily injuries are defined as a bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.³¹

²⁵C.R.S. § 12-36-135(1)(a)

²⁶C.R.S. § 12-36-135(2)(b)

³⁰C.R.S. § 12-36-135(1.5)(a)

²⁶C.R.S. § 12-36-135(1)(a)(III)

²⁹C.R.S. § 12-36-135(3);

³¹C.R.S. § 18-1-901(3)(p)

²⁷C.R.S. § 12-36-135(2)(a)

C.R.S. § 13-90-107(1)(d)

SEXUAL ASSAULT

When a licensee (physician or physician assistant) or nurse performs a medical forensic exam that includes the collection of evidence at the request of a victim of sexual assault, the licensee or nurse’s employing medical facility is required to, with the consent of the victim of the sexual assault, make one of the following reports to law enforcement:

1 Victim wants to be examined and make a report to law enforcement

A **law enforcement report** if a victim wishes to obtain a medical forensic examination with evidence collection; and at the time of the medical forensic examination chooses to participate in the criminal justice system.

2 Victim wants to be examined, but does not want to make a report to law enforcement

A **medical report** if a victim wishes to obtain a medical forensic examination with evidence collection but at the time of the medical forensic examination chooses not to participate in the criminal justice system. The licensee or nurse is required to collect such evidence and victim identifying information, and the employing medical facility is required to release the evidence and information to law enforcement for testing and storage.

3 Victim wants to be examined, but does not want personal information given to law enforcement

An **anonymous report** if a victim wishes to obtain a medical forensic examination with evidence collection but at the time of the medical forensic examination chooses not to have personal identifying information provided to law enforcement or to participate in the criminal justice system. The licensee or nurse is required to collect such evidence, and the employing medical facility is required to release it to law enforcement for storage. Law enforcement can receive no identifying information for the victim. Law enforcement is required to assign a unique identifying number to the evidence, and the licensee or nurse must record the identifying number in the medical record and notify the victim that the identifying number is recorded. Additionally, the licensee or nurse must provide the identifying number to the victim.³²

This law does not:

- Prohibit a victim from anonymously speaking to law enforcement about the victim’s rights or options prior to determining whether to consent to a report; or
- Require a licensee, nurse, or medical facility to make a report to law enforcement concerning an alleged sexual assault if medical forensic evidence is not collected.³³

If the licensee’s employing medical facility knows where the alleged sexual assault occurred, the facility is required to make the report with the law enforcement agency in whose jurisdiction the crime occurred regarding preservation of the evidence. If the medical facility does not know where the alleged sexual assault occurred, the facility must make the report with its local law enforcement agency regarding preservation of the evidence.³⁴

In addition to the report required to be filed by the employing medical facility, a licensee who attends or treats an injury from a weapon or other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person who is a victim of sexual assault must also report the injury to the police or sheriff as required for these types of injuries (see page 7).³⁵

The “Colorado Sexual Assault Consent and Information Form” must be utilized to obtain consent from and provide information to sexual assault victims regarding:

- Evidence collection through a medical forensic exam;
- Forensic evidence analysis/release of results;
- Reporting options, and
- Victims’ ability to withdraw consent.

*Please see link below to download the form. This form should be utilized prior to the collection of forensic medical evidence whether collected by medical or law enforcement personnel. Consent or non-consent must be confirmed through the victim’s initials and signature on the form.*³⁶



The **Colorado Attorney General’s Victim Assistance Program** has resources for domestic violence and sexual violence on its website: <https://coag.gov/resources/victim-assistance>

Information about the reporting options for victims of sexual assault and the consent forms in English and Spanish are available on the **Colorado Division of Criminal Justice, Department of Public Safety** website: www.colorado.gov/pacific/dcj/reporting-options

³²C.R.S. § 12-36-135(1)(b)(I)

³⁵C.R.S. § 12-36-135(1)(b)(IV)

³³C.R.S. § 12-36-135(1)(b)(II)

³⁶C.C.R. 1507-29

³⁴C.R.S. § 12-36-135(1)(b)(III)

MANDATORY REPORTING OF MISTREATMENT OF AT-RISK ELDERS AND ADULTS WITH IDD

Colorado requires reporting of the mistreatment or imminent risk of mistreatment of at-risk elders and at-risk adults with an intellectual and developmental disability (IDD). Mandatory reporters include any person providing health care or health care-related services, and hospital/long-term care facility personnel engaged in the admission, care or treatment of patients.³⁷

An **at-risk elder** is any person who is seventy years of age or older. An **at-risk adult with IDD** is a person who is eighteen years of age or older with an intellectual and developmental disability that manifests before the person reaches age 22, and constitutes a substantial disability to the affected person, that is attributable to an intellectual and developmental disability or related conditions, including:

- Prader-Willi syndrome;
- Cerebral palsy;
- Epilepsy;
- Autism;
- Or other neurological conditions when the condition or conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual and developmental disability.³⁸

Mistreatment means:

- **Abuse**, which means any of the following acts or omissions committed against an at-risk person:
 - ◆ The nonaccidental infliction of **bodily injury** (physical pain, illness, or any impairment of physical or mental condition³⁹), **serious bodily injury** (see definition on page 7), or death;
 - ◆ Confinement or restraint that is unreasonable under generally accepted caretaking standards; or
 - ◆ Subjection to sexual conduct or contact classified as a crime.
- **Caretaker neglect**, which means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, habilitation, supervision, or any other treatment necessary for the health or safety of an at-risk person is not secured for an at-risk person or is not provided by a caretaker

in a timely manner and with the degree of care that a reasonable person in the same situation would exercise, or a caretaker knowingly uses harassment, undue influence, or intimidation to create a hostile or fearful environment for an at-risk person.

- **Exploitation**, which means an act or omission committed by a person who:
 - ◆ Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk person of the use, benefit, or possession of any thing of value;
 - ◆ Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk person;
 - ◆ Forces, compels, coerces, or entices an at-risk person to perform services for the profit or advantage of the person or another person against the will of the at-risk person; or
 - ◆ Misuses the property of an at-risk person in a manner that adversely affects that person's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.⁴⁰

A mandatory reporter who observes the mistreatment of an at-risk elder or an at-risk adult with IDD, or who has reasonable cause to believe that an at-risk elder or an at-risk adult with IDD has been mistreated or is at imminent risk of mistreatment, is required to report such fact to a law enforcement agency not more than 24 hours after making the observation or discovery.⁴¹

- *A person who willfully (knowingly) fails to report commits a class 3 misdemeanor.⁴²*
- *Reporting is not required if the person knows that another person has already reported the mistreatment to a law enforcement agency.⁴³*
- *A person who reports in accordance with the law is immune from suit and liability for damages in any civil action or criminal prosecution if the report was made in good faith.⁴⁴*

³⁷C.R.S. § 18-6.5-108(1)

³⁹C.R.S. § 18-1-901(3)(c)

⁴²C.R.S. § 18-6.5-108(1)(c)

³⁸C.R.S. § 18-6.5-102;

⁴⁰C.R.S. § 18-6.5-102(10.5)

⁴³C.R.S. § 18-6.5-108(1)(d)

C.R.S. § 25.5-10-202(26)(a)

⁴¹C.R.S. § 18-6.5-108(1)(a)

⁴⁴C.R.S. § 18-6.5-108(3)

CHILD ABUSE AND NEGLECT

Any physician, mental health professional, or other health care professional or hospital personnel engaged in the admission, care, or treatment of patients who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately, upon receiving such information, report or cause a report to be made of such fact to the county or district department of human or social services, the local law enforcement agency, or through the child abuse reporting hotline (1-844-CO-4-KIDS or 1-844-264-5437).⁴⁵

This reporting requirement does not apply if the person who is otherwise required to report does not:

- Learn of the suspected abuse or neglect until after the alleged victim of the suspected abuse or neglect is eighteen years of age or older; and
- Have reasonable cause to know or suspect that the perpetrator of the suspected abuse or neglect:
 - ◆ Has subjected any other child currently under eighteen years of age to abuse or neglect or to circumstances or conditions that would likely result in abuse or neglect; or
 - ◆ Is currently in a position of trust with regard to any child currently under eighteen years of age.⁴⁶

One in a **position of trust** includes any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief.⁴⁷

For purposes of mandatory reporting, **child abuse or neglect** means an act or omission in one of the following categories that threatens the health or welfare of a child:

- Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death and either: Such condition or death is not justifiably explained; the history given concerning such condition is at variance with the degree or type of such condition or death; or the circumstances indicate that such condition may not be the product of an accidental occurrence;
- Any case in which a child is subjected to unlawful sexual behavior, which includes unlawful sexual contact with a child under the age of eighteen, indecent exposure, and promoting obscenity to a minor.
- Any case in which a child is a child in need of services because the child's parents, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.
- Any case in which a child is subjected to emotional abuse, defined as an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development.

⁴⁵C.R.S. § 19-3-304(1)(a)

⁴⁶C.R.S. § 19-3-304(1)(b)

⁴⁷C.R.S. § 18-3-401(3.5)

- Any act or omission describing when a child is neglected or dependent if:
 - ◆ A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;
 - ◆ The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;
 - ◆ The child's environment is injurious to his or her welfare;
- Any case in which, in the presence of a child, or on the premises where a child is found, or where a child resides, a controlled substance is manufactured or attempted to be manufactured;
- Any case in which a child tests positive at birth for either a schedule I controlled substance or a schedule II controlled substance, unless the child tests positive for a schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed.
- Any case in which a child is subjected to human trafficking of a minor for sexual servitude.⁴⁸

Female genital mutilation is child abuse under the Colorado Criminal Code.⁴⁹

The Colorado Child Abuse and Neglect Hotline 1-844-CO-4-KIDS (1-844-264-5437) serves as a direct and efficient route to the counties which are responsible for accepting and responding to child abuse and neglect inquiries and reports. Through the hotline system, all calls are immediately routed to the county where a child resides and the Colorado Department of Human Services is able to capture information critical to ensuring each call across the state is handled quickly and appropriately. This phone number for reporting suspected child abuse and neglect is available 24/7, 365 days a year.

Information to Report

A report of known or suspected child abuse or neglect must include the following information whenever possible:

- The name, address, age, sex, and race of the child;
- The nature and extent of the child's injuries, including any evidence of previous cases of known or suspected abuse or neglect of the child or the child's siblings;
- The names and addresses of the persons responsible for the suspected abuse or neglect, if known;
- The family composition;
- The source of the report and the name, address, and occupation of the person making the report;
- Any action taken by the reporting source;
- Any other information that the person making the report believes may be helpful in furthering the purposes of the Child Protection Act;
- The military affiliation of the individual who has custody or control of the child who is the subject of the investigation of child abuse or neglect, if such individual is a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces.⁵⁰

A physician, nurse or hospital personnel engaged in the admission, examination, care or treatment of patients who has before him or her a child the provider reasonably believes has been abused or neglected may take color photographs of the areas of trauma visible on the child. If medically indicated, the person may have X-rays taken of the child. Copies of these photographs and X-rays which show evidence of child abuse should be made available to the county or district department of human or social services or to the local law enforcement agency.⁵¹

Any person participating in good faith in making a report or taking photographs or X-rays of a child believed to be abused or neglected is immune from any liability unless a court determines that the person's behavior was willful, wanton, and malicious.⁵²

⁴⁸C.R.S. § 19-1-103(1)(a)

⁴⁹C.R.S. § 18-6-401(1)(b)

⁵⁰C.R.S. § 19-3-307

⁵¹C.R.S. § 19-3-306

⁵²C.R.S. § 19-3-309

PATIENT TESTING: DRUG AND ALCOHOL

Colorado has an “express consent” law for drug and alcohol testing of possible impaired drivers. Any person who drives a motor vehicle is deemed to have expressed such person’s consent to the provisions of the drug and alcohol testing law.

The law requires a driver to consent to a chemical test (breath or blood) if a law enforcement officer has probable cause to believe that the person was driving a motor vehicle in violation of the prohibitions against DUI, DUI per se, Driving While Ability Impaired (DWAI), or Underage Drinking and Driving (UDD).⁵³

If a person refuses to cooperate with testing by the person or entity authorized to obtain such specimens, including the signing of any release or consent forms, it is considered a refusal to submit to testing subject to penalties.⁵⁴

There is immunity from civil liability for the person who draws the blood “if such specimens were obtained according to the rules and regulations prescribed by” the Colorado Department of Health and Environment.⁵⁵

There is a provision in the law that limits the requirements for the nurse or other person who draws the blood to be required to testify at trial if the law enforcement office testifies that he or she witnessed the taking of a blood specimen by a person the law enforcement officer reasonably believed was authorized to draw blood specimens.⁵⁶

No law enforcement officer shall physically restrain any person for the purpose of obtaining a specimen of such person’s blood, breath, saliva, or urine for testing except when the officer has probable cause to believe that the person has committed criminally negligent homicide, vehicular homicide, assault in the third degree, or vehicular assault, and the person is refusing to take or to complete, or to cooperate in the completing of, any test or tests, then, in such event, the law enforcement officer may require a blood test.⁵⁷

⁵³C.R.S. § 42-4-1301.1(2)

⁵⁵C.R.S. § 42-4-1301.1(6)(b)

⁵⁴C.R.S. § 42-4-1301.1(3);

⁵⁶C.R.S. § 42-4-1301(6)(h)

C.R.S. § 42-4-1301(6)(d)

⁵⁷C.R.S. § 42-4-1301.1(3)

PATIENT TESTING: SEXUALLY TRANSMITTED INFECTIONS

Patients generally must consent to be tested for a sexually transmitted infection (STI). This requirement is satisfied if the patient signs a general consent form for treatment; the patient is provided with a verbal consultation about STIs, testing, and reporting requirements; and the patient is provided with an opportunity to opt out of testing following the verbal consultation.⁵⁸ There are certain exceptions including:

- Where a patient's medical condition is such that consent cannot be obtained;
- When a public safety worker (which includes a law enforcement officer), emergency or other health care provider, first responder, victim of a crime, or a staff member of a correctional facility, the state department of public health and environment, or a local public health agency is exposed to blood or other bodily fluids under circumstances that pose an evidence-based risk of transmission of an STI;
- When the patient to be tested is sentenced to and in the custody of the department of corrections or is committed to the Colorado mental health institute at Pueblo and confined to the forensic ward or the minimum or maximum-security ward of the institute.⁵⁹

A health care provider is required to notify a patient who was tested for an STI without his or her knowledge or consent. The notification must be prompt, personal, and confidential and inform the patient that a test sample was taken and that the results of the test may be obtained upon his or her request.⁶⁰

⁵⁸C.R.S. § 25-4-410(1)(a)

⁵⁹C.R.S. § 25-4-410(1)(b)

⁶⁰C.R.S. § 25-4-410(1)(c)



**Law Enforcement Interactions: Guidance for Health Care Providers in Colorado
August 2019**

7351 E. LOWRY BLVD., STE. 400, DENVER, CO 80230
720.858.6000 • 800.421.1834 • CALLCOPIC.COM