



***FACT SHEET: WHAT LAW ENFORCEMENT OFFICERS “NEED TO KNOW” ABOUT THE FEDERAL MEDICAL RECORDS PRIVACY REGULATION AND ACCESS TO “PROTECTED HEALTH INFORMATION”***

- Since April 14, 2003, a federal regulation gives federal privacy protections to medical records (45 Code of Federal Regulations – Parts 160 & 164).
- The regulation places legal obligations on doctors, hospitals, pharmacies, insurance companies, etc., governing their ability to disclose medical information about a suspect or victim and may, *in some situations*, prevent them from giving such information.
- ***This FACT SHEET will help law enforcement officers understand how to obtain personal medical evidence needed for investigations, within the bounds of federal law.***

**Health Insurance Portability and Accountability Act of 1996 (HIPAA): Standards for Confidentiality of Individually Identifiable Health Information (HIPAA Privacy Rule)**

- HIPAA’s “Standards for Confidentiality of Individually Identifiable Health Information” governs how and when a “***Covered Entity***” can use or disclose “individually identifiable health (medical) information (in whatever form) concerning an individual person (in HIPAA terminology: “***protected health information***”).
- There are three types of ***Covered Entities*** under HIPAA: (1) health plans: group and individual health insurance, HMOs, Medicare, Medicaid and other government health plans; (2) health care clearinghouses: billing services and providers; (3) health care providers: doctors, nurses, paramedics and other emergency services personnel; hospitals and clinics; pharmacies (see 45 CFR 160.103). A fourth type of covered entity included Medicare prescription drug discount card sponsors.
- ***Protected health information*** is “individually identifiable health information” which is transmitted by electronic media, or maintained in any electronic medium (defined at 45 CFR 162.103), or transmitted or maintained in any other form or medium (essentially all health records identifiable by a patient name or other personal identifier – such as a Social Security Number – is ***protected health information!***).
- As a general rule, ***Covered Entities*** may not use or disclose ***protected health information*** unless permitted by a provision of the rules, such as the
  - ▶ patient provides ***written authorization*** (permission) for the disclosure, or
  - ▶ disclosure is for a ***health oversight*** purpose, or
  - ▶ disclosure is for a certain ***law enforcement*** purpose (*see back of this Fact Sheet*), or
  - ▶ disclosure is otherwise ***required by law***, e.g., statute, subpoena, court order.
- The behavior of government agencies that are ***not*** covered entities (e.g., law enforcement) is ***not*** regulated by the HIPAA Privacy Rule, but when ***law enforcement agencies*** seek protected health information from covered entities, the rules will dictate how the covered entities respond to law enforcement requests for ***protected health information***.

The HIPAA Privacy Rule provides “***law enforcement exceptions***” to the requirement that patients authorize a Covered Entity’s disclosure of their protected health information. So, if a Covered Entity or a person speaking on behalf of a Covered Entity, says: “***Sorry, officer, I can’t give you that information because of the HIPAA privacy regulations...***” or “***the patient didn’t authorize this disclosure...***”

You can respond with one of the following responses, IF it applies... ***“Yes, [Covered Entity], you can give me the information I need because [one of the following law enforcement exceptions applies] ...”***

1. **Required by law** [45 CFR 164.512(f)(1)(i)] *e.g., “the laws of this State require reporting of [certain types of wounds or other physical injuries...] to law enforcement agencies...”*
2. **Court order, or warrant, subpoena or summons issued by a judicial officer** [45 CFR 164.512(f)(1)(ii)(A)] *“I am serving a court-ordered subpoena on you, so can (and must) produce the medical records I am seeking.”*
3. **Grand jury subpoena** [45 CFR 164.512(f)(1)(ii)(B)] *“I am serving a grand jury subpoena on you, so you can (and must) produce the medical records that I seek.”*
4. **Administrative subpoena or request, but only if 3 specific requirements are met** [45 CFR 164.512(f)(1)(ii)(C)] *“because I am serving an administrative subpoena on you, and I certify that the subpoena meets the three-part test... (1) the information sought is material to a legitimate law enforcement inquiry; (2) the request is specific and limited in scope to the purpose for which it is being sought; and (3) de-identified information could not reasonably be used (i.e., without SSN or name, the information would be useless as evidence).*
5. **Locate or identify** [45 CFR 164.512(f)(2)] *“I am trying to locate OR identify a suspect... fugitive...material witness...OR a missing person.”* This exception will permit access to 8 types individually identifiable information (but excludes DNA, dental records, body fluid, or tissue, which would require a subpoena).
6. **Information about a victim of a crime** [45 CFR 164.512(f)(3)] *“I need this information about this person, who is or I suspect is a victim of a crime...or to determine if someone else committed a crime...that cannot be delayed until the victim approves the disclosure... ”*
7. **Crime on premises** [45 CFR 164.512(f)(5)] *“the [covered entity] believes that the information is evidence of a crime that occurred on the premises” (e.g. a nursing home, hospital, etc.)*
8. **Reporting crime in emergencies** [45 CFR 164.512(f)(6)] *“you are an emergency health care worker who responded to a medical emergency outside the hospital (etc.) and you can tell law enforcement about the commission and nature of the crime; location of the crime and victims; the identity, description or location of the perpetrator...”*
9. **Victims of abuse, neglect, domestic violence** [45 CFR 164.512(c)] This exception is limited to four specific scenarios; if possible, get a subpoena or the individual’s agreement to use his/her medical information instead of relying on this exception.
10. **Coroners** [45 CFR 164.512(g)(1)] *“because the coroner or medical examiner needs the information to determine the cause of death or perform his other duties.”*
11. **To avert a serious threat to health/safety** [45 CFR 164.512(j)] *“the disclosure is necessary to avert a serious and imminent threat to a person’s safety or the public...; OR to identify or apprehend an individual ... because that individual admitted participating in a violent crime that may have caused serious physical harm to the victim”; OR “to identify or apprehend someone who escaped from a correctional institution or from lawful custody.”*
12. **Other important miscellaneous exceptions:** national security and intelligence; protective services for the President and others; ***jails, prisons, law enforcement custody*** to safeguard the person/s in custody or corrections employees who are in proximity of the person/s in custody.

***Remember to show your badge, that you need to satisfy only ONE of the law enforcement exceptions, AND that you also must familiarize yourself with the requirements of your state’s medical records privacy laws. To stop a Covered Entity from disclosing to patients that you have their medical information, (1) make an oral request that the entity not make a disclosure to the patient and (2) follow up with a written request, on official letterhead, within 30 days.***