

DISCLOSING PHI FOR LAW ENFORCEMENT PURPOSES

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. The default position under HIPAA is that protected health information (PHI) cannot be disclosed without the patient's authorization, but there are some exceptions relevant to law enforcement. A provider may disclose PHI for a law enforcement purpose to a law enforcement official if any of the following conditions are met, as applicable.¹

1 Pursuant to process and as otherwise required by law

- As required by law, including laws that require the reporting of certain types of wounds (e.g., gunshot wounds) or other physical injuries²; 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.³

2 Information for identification and location purposes only

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.⁴

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

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.⁵

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4 Deceased patients

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.⁶

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.⁹

5 Crime on premises

A provider may disclose PHI that the provider believes in good faith constitutes evidence of criminal conduct that occurred on the provider's premises.⁷

6 Reporting crime in emergencies

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.

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."⁸

¹45 C.F.R. § 164.512(f)

²45 C.F.R. § 164.512(f)(1)(i)

³45 C.F.R. § 164.512(f)(1); 45 C.F.R. § 164.514(h)(2)(i)(A)

⁴45 C.F.R. § 164.512(f)(2)

⁵45 C.F.R. § 164.512(f)(3)

⁶45 C.F.R. § 164.512(f)(4)

⁷45 C.F.R. § 164.512(f)(5)

⁸45 C.F.R. § 164.512(f)(6)(ii)

⁹45 C.F.R. § 164.502(b), 164.514(d)