2.05 HIPAA Privacy:

Balancing HIPAA Privacy and State Law and Law Enforcement – Permitted Disclosure Doesn't Mean Required:

The Need for Policy

By Cynthia F. Wisner,
Assistant General Counsel

New Patient's Right to Agree/Object

- Patients must be told and given the opportunity to agree or object
  - Listing in the facility directory (for public access)
  - Sharing information with family members and others close to the patient
  - Disaster relief

New Patient's Right to Agree/Object

- Public Information in the facility directory:
  - Patient name
  - Location in facility
  - Condition in general terms

- Member of the public must ask for patient by name
- New OCR Consumer Fact Sheet
  http://www.hhs.gov/ocr/hipaa/consumer_summary.pdf

HIPAA – Required Disclosures

New Required Disclosures

When requested by the Secretary of HHS to investigate or determine the Covered Entity's compliance with the privacy standards.

Permitted Disclosures

- HIPAA includes a list of Permitted Disclosures (without consent or authorization)
- 45 CFR 164.512 (a) – (g)
  - (a) required by law (meet requirements of c, e and f)
  - (b) public health activities
  - (c) victims of abuse, neglect or domestic violence
  - (d) health oversight activities
  - (e) judicial and administrative proceedings
  - (f) law enforcement purposes
  - (g) decedents

- List is necessary to facilitate disclosures required by State law that otherwise would be preempted by HIPAA

HIPAA State Preemption

- State law applies unless the state requirement prevents application of a HIPAA requirement
- Only contrary and less stringent state laws are preempted
- State law includes law, decisions, rules, regulations and other State action having the effect of law (e.g. State Bulletins)

Disclosures required by law are permitted

Disclosure is permitted as required by specific State laws that require the reporting of

- Certain types of wounds or injuries (e.g. gunshots) 45 CFR 164.512(f)
- Suspected abuse/neglect 45 CFR 164.512(b) and(c)
- Animal bites 45 CFR 164.512(f)
- Communicable diseases 164.512(b)
- State databases 164.512(b)

Obligation to Inform

- The covered entity reporting a victim of abuse, neglect or domestic violence must promptly inform (orally) the individual that the report of abuse, neglect or domestic violence has been made, unless
  - In exercise of professional judgment, the CE believes informing the individual would place the individual at risk of serious harm, or
  - The CE would be informing a personal rep and the CE reasonably believes the personal rep is responsible and informing such person would not be in the best interests of the individual

Enforcement

- HIPAA sets forth substantial criminal and non-criminal penalties for non-compliance
  - Failure to comply with transactions standards will carry fines up to $100 per person, per requirement or standard, up to an annual maximum of $25,000
  - Penalties for knowingly misusing individually-identifiable health information will be up to $250,000 and/or imprisonment of up to 10 years
- Privacy: Department of Health and Human Services' Office of Civil Rights
- EDI and Security: Center for Medicare/Medicaid Services division (CMS)

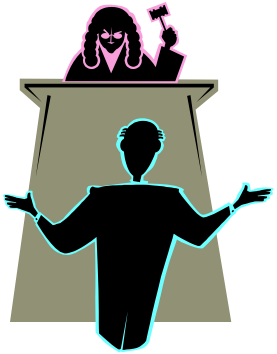
➔ Other non-legal "penalties" may also occur, particularly in the areas of operations, finance and public relations

Judicial and Administrative Proceedings (Criminal and Civil)

PHI is permitted to be disclosed in compliance with (and as limited by) the relevant requirements of

- a court order or court-ordered warrant;
- 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 authorized investigative demand, or similar process authorized under law.

Judicial Officer



- Judicial officer is not defined in HIPAA, but is defined in other federal laws
- Many federal agencies have judicial officers, e.g. USDA, USPS

- **The Lectric Law Library defines JUDICIAL OFFICER: Any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to detain or release a person before trial or sentencing or pending appeal in a court of the U.S. 18 U.S.C.**

  An officer of a court usually authorized to determine depositive matters. This can include judges, magistrates and such, but not usually clerks.

Scrutiny Required for Administrative Requests

PHI requested in an administrative request, including an administrative subpoena or summons, a civil or authorized investigative demand, or similar process authorized under law must be

- relevant and material to a legitimate law enforcement inquiry;
- specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
- for a purpose for which de-identified information could not reasonably be used

Health Oversight Activities

Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

- (i) The health care system;
- (ii) Government benefit programs for which health information is relevant to beneficiary eligibility;
- (iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
- (iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

Adequate Assurances Required for Subpoenas, Discovery Requests and Other Lawful Process

- If not accompanied by an order of a court or administrative tribunal, then CE must receive satisfactory assurances regarding notice to the individual or a qualified protective order
- Satisfactory assurance can be in form of written statement and accompanying documentation Or CE can make reasonable efforts to notify or seek protective order
- In some states adequate assurance is not enough. E.g. in Colorado and Oregon, the physician-patient privilege attaches and medical records cannot be released pursuant to a subpoena without a court order, patient authorization, or unless an exception applies.
- Accordingly, the hospital may have to file a protective order, seek a stipulated protective order from the parties, or obtain an authorization.

Sample Adequate Assurance

Adequate Assurance of Notice to Individual who is subject of Protected Health Information

Please provide on your stationery the following written statement

A. I have made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

B. The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and

C. The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:

1. No objections were filed; or

2. The court or the administrative tribunal has resolved all objections filed by the individual to the disclosures.

Please advise of the address and contact person from whom copies of the notice and information confirming the attempted provision of notice may be obtained:

_____

_____

_____

_____

Adequate Assurances

From the AHLA In-House Listserve: Anonymous posting: One of our hospitals has been contacted by OCR in connection with a complaint about producing records in response to a subpoena. The hospital received the subpoena in say July 2003. The subpoena requested patient records be produced say August 15, 2003. The subpoena had proper documentation of notice to the patient. The hospital produced the records on August 25, 2003. Apparently, unbeknownst to the hospital, the patient filed a motion to quash which was not heard until December 2003. The motion was granted (although subsequently that decision was reversed).

State law has no express limit on when a motion to quash may be filed. We have all been proceeding on the assumption that the deadline for a motion to quash is the date the record is to be produced and that, if the provider has received no notice of a motion to quash, the provider can produce on that date. However, OCR is stating that the proper interpretation of "satisfactory assurances" in 512 (e)(1)(ii) as provided in 512 (e)(1)(iii)(C) is that the provider has to receive a positive statement from the person subpoenaing the record that no objections have been filed OR that objections have been resolved. Alternatively, the provider may make reasonable efforts to notify the patient "sufficient to meet the requirements of paragraph (e)(1(iii)". So - either the provider has to receive a second notification from the person subpoenaing the record OR has to notify the patient itself.

DOJ Subpoenas

- Department of Justice issued series of subpoenas to hospitals seeking records for defense of partial birth abortion ban act
- Trial in federal court in New York—hospital appealed subpoena to 2nd Circuit Court of Appeals
- Office of New York Attorney General, Elliot Spitzer submitted amicus curiae brief to ask court to quash subpoenas
- Recognize physician- patient privilege existing under New York law for over 150 years
- Northern District of Illinois quashed subpoena issued to Northwestern Memorial Hospital
- District Court judge quashed subpoena issued to Planned Parenthood clinics
- DOJ withdrew subpoena and completed trial

ACLU Government Access to Medical Information FAQs

Q. Can the police get my medical information without a warrant?

A. Yes. The HIPAA rules provide a wide variety of circumstances under which medical information can be disclosed for law enforcement purposes without explicitly requiring a warrant.

In other words, law enforcement is entitled to your records simply by asserting that you are a suspect or the victim of a crime

- http://www.aclu.org/

Permitted Disclosures to Law Enforcement Officials

A law enforcement official, is defined as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe," who is empowered by law to:

- investigate or conduct an official inquiry into a potential violation of law; or
- prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

National Security and Intelligence or Protective Activities

- PHI may be disclosed to authorized federal officials who are conducting national security and intelligence activities or providing protective services to the President or other important officials.
- Section 215 of the U.S. Patriot Act allows the FBI Director or his designee to get a court order under the Foreign Intelligence Act to require production of medical records
- ACLU believes this easy, warrantless access violates the U.S. Constitution
- FAQ on Government Access to Medical Records May 30, 2003

Iowa Women's Health Clinic Order to Name Women

Reason, Oct, 2002 by Sara Rimensnyder

- **Storm Lake, a town of about 10,000 in Buena Vista County, Iowa**
- **In late May an abandoned newborn, possibly born prematurely, was left for dead in a local recycling center**
- **With the police department at a loss for leads, County Attorney Phil Havens sought access to the names and address of every woman who took a pregnancy test at the town's Planned Parenthood clinic during a nine-month period**
- **Once authorities had the names, they would check that each woman gave birth to a living infant; when this wasn't possible, they'd question the mothers**
- **Havens, the county attorney, argues that pregnancy test information is not protected by doctor-patient privilege laws because the test could be performed and interpreted by non-medical personnel**
- **Judge Nelson who issued the order to the clinic to produce the records cited a case suggesting that privilege only applies when you're in court**

Verification

45 CFR 164.514 (h)

Prior to any permitted disclosure, a covered entity must:

- (i) Verify the identity of a person requesting protected health information and the authority of any such person to have access to protected health information under this subpart, if the identity or any such authority of such person is not known to the covered entity; and
- (ii) Obtain any documentation, statements, or representations, whether oral or written, from the person requesting the protected health information when such documentation, statement, or representation is a condition of the disclosure.

Verification

Identity of public officials. A covered entity may rely, if such reliance is reasonable under the circumstances, on any of the following to verify identity when the disclosure of protected health information is to a public official or a person acting on behalf of the public official:

- (A) If the request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status;
- (B) If the request is in writing, the request is on the appropriate government letterhead; or
- (C) If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes that the person is acting on behalf of the public official.

Verification

Authority of public officials. A covered entity may rely, if such reliance is reasonable under the circumstances, on any of the following to verify authority when the disclosure of protected health information is to a public official or a person acting on behalf of the public official:

- (A) A written statement of the legal authority under which the information is requested, or, if a written statement would be impracticable, an oral statement of such legal authority;
- (B) If a request is made pursuant to legal process, warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or

administrative tribunal is presumed to constitute legal authority.

Identification and Location of Persons

Limited PHI may be disclosed in response to a law enforcement officer's official request to identify or locate

- a suspect
- fugitive,
- material witness, or
- missing person.

Identification and Location

Only the following information may be disclosed for identification and location:

- 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
- a description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or mustache), scars, and tattoos.

  Permitted disclosures specifically exclude any PHI related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue (other than the items listed above).

Testimony on Implementation of the HIPAA Privacy Rule: Application to Law Enforcement Agencies and Schools

Before the National Committee on Vital and Health Statistics
Washington , D.C.
February 18, 2004

Law Enforcement Panel

- Robert Gellman, Privacy & Information Policy Consultant
- Robert C. Williamson, Drug Enforcement Administration
- Christopher Calabrese, American Civil Liberties Union

Testimony of Robert Gellman on problems with the breadth of HIPAA

- Virtually every federal, state and local government agency qualifies as a law enforcement official if they have the authority to investigate or conduct an inquiry into any potential violation of law.
- There is no differentiation between a Medicare fraud investigator and a school crossing guard.
- Real focus- administrative request part of the Rule
- Does not require subpoena, in writing, no approval by supervisor, no emergency and no procedures no meaningful procedures or standards
- Law enforcement official need only say it is relevant, specific and limited in scope and de-identified data cannot be used

Testimony of ACLU

1. No meaningful judicial review
2. Not a meaningful or adequate judicial review standard
3. No notice to individuals required
4. Over-broad identification exemption
5. Blanket exemptions for intelligence and national security
6. Evidence obtained in violation of legal standard of regulation should be inadmissible at trial

Testimony of DEA

- Have found it to be a confusing law
- Impact has been a reluctance to provide DEA Diversion Investigators with records that we have a right to under the law without some sort of paperwork
- Provider have concerns about calling DEA with suspicions

Crime Victims

In response to a law enforcement official's request (even without the individual's agreement, in the case of incapacity or other emergency circumstances) may disclose PHI provided that:

1. 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;
2. Law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
3. Disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

Accidents and Investigations

- Stamford police could not get information about the condition of a victim of a car accident
- A Kansas police chief could not verify the location of two patients wanted for murder
- Nurses in South Carolina would not disclose the condition of a shooting victim without the family's approval
- Peter Swire, who served as former President Bill Clinton's counselor on HIPAA policy and helped craft key parts of the law enforcement exemptions, said patients are getting the benefit of the doubt that investigators used to enjoy.
- "Medical Privacy laws frustrate police," Associated Press October 31, 2003

Suspicious Death or Crime on Premises

To a law enforcement official about an individual who has died for the purpose of alerting law enforcement to the suspicion that the death may have resulted from criminal conduct

To a law enforcement official if the covered entity believes in good faith that the information constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

Crime Information

A health care provider providing emergency health care in response to a medical emergency, off the premises of the covered health care provider or covered entity may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to the:

- commission and nature of a crime;
- location of such crime or of the victim(s) of such crime; and
- identity, description, and location of the perpetrator of such crime.

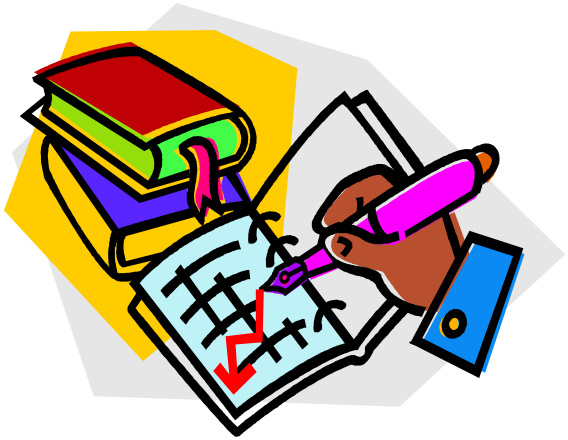
Accounting of Disclosures

Permitted disclosures that are not made for treatment, payment or operations must be accounted for by the Covered Entity.

An accounting of disclosures must be provided to the patient upon request

Disclosures required to be INCLUDED in the accounting:

- Disclosures required
  or authorized by law
- Subpoenas and court orders



Incidental Disclosures

- The goal of the Privacy Rule is not to prevent discussions related to treatment, but to ensure that providers, and its employees, are doing what is reasonable to protect a patient's PHI. Compliance with the privacy rule does not eliminate every risk of incidental use or disclosure of PHI.

- Incidental use or disclosure is defined as a secondary use or disclosure that can not be reasonably prevented, is limited in nature, and is a by-product of an otherwise permitted use. Providers must apply reasonable safeguards to minimize accidental or deliberate exposure, such as:
  - Talking to patients in a semi-private areas
  - Not discussing patient information at the reception desk
  - Minimize possibility of overhearing a phone conversation between a nurse and a patient

Patient Requested Restrictions

- Patients have the right to request restrictions on how their information is used or disclosed

- Covered entities are not required to agree to restrictions

- If Covered Entity agrees, it must abide by the restriction unless it tells patient it can no longer do so

OCR Letter Clarifying Privacy Rule 5/18/04

- HIPAA does not prevent child abuse reporting: Doctors may continue to report child abuse or neglect to appropriate government authorities.
- Q. My State law authorizes health care providers to report suspected child abuse to the State Department of Health and Social Services. Does the HIPAA Privacy Rule preempt this State law? A: No. The Privacy Rule permits covered health care providers and other covered entities to disclose reports of child abuse or neglect to public health authorities or other appropriate government authorities. See 45 C.F.R. 164.512(b)(1)(ii). Thus, there is no conflict between the State law and the Privacy Rule, and no preemption. Covered entities may report such information and be in compliance with both the State law and the Privacy Rule (even state laws that permit, but do not require reports, apply).

- Public Health Fact Sheet http://www.hhs.gov/ocr/hipaa/guidelines/publichealth.pdf

Office of Civil Rights
NEW FAQ 7/27/04

- Privacy Rule FAQ on Disclosures to Law Enforcement: May Covered entities disclose protected health information to law enforcement officials?
- When does the Privacy Rule allow covered entities to disclose protected health information to law enforcement officials?
- The Privacy Rule is balanced to protect an individual's privacy while allowing important law enforcement functions to continue. The Rule permits covered entities to disclose protected health information (PHI) to law enforcement officials, without the individual's written authorization, under specific circumstances summarized below.
- http://www.os.dhhs.gov/ocr/hipaa/
- http://answers.hhs.gov/cgi- bin/hhs.cfg/php/enduser/std_adp.php

Office of Civil Rights
NEW FAQ 7/27/04

- Privacy Rule FAQ on Disclosures to Law Enforcement: May Covered entities disclose protected health information to law enforcement officials?

- Except when required by law, the disclosures to law enforcement summarized above are subject to a minimum necessary determination by the covered entity (45 CFR 164.502(b), 164.514(d)). When reasonable to do so, the covered entity may rely upon the representations of the law enforcement official (as a public officer) as to what information is the minimum necessary for their lawful purpose (45 CFR 164.514(d)(3)(iii)(A)).

- Moreover, if the law enforcement official making the request for information is not known to the covered entity, the covered entity must verify the identity and authority of such person prior to disclosing the information (45 CFR 164.514(h)).

Will this HIPAA Privacy Rule make it easier for police and law enforcement agencies to get my medical information?

- No. The Rule does not expand current law enforcement access to individually identifiable health information. In fact, it limits access to a greater degree than currently exists, since the Rule establishes new procedures and safeguards that restrict the circumstances under which a covered entity may give such information to law enforcement officers.

  For example, the Rule limits the type of information that covered entities may disclose to law enforcement, absent a warrant or other prior process, when law enforcement is seeking to identify or locate a suspect. It specifically prohibits disclosure of DNA information for this purpose, absent some other legal requirements such as a warrant. Similarly, under most circumstances, the Privacy Rule requires covered entities to obtain permission from persons who have been the victim of domestic violence or abuse before disclosing information about them to law enforcement. In most States, such permission is not required today.

  Where State law imposes additional restrictions on disclosure of health information to law enforcement, those State laws continue to apply. This Rule sets a national floor of legal protections; it is not a set of “best practices.”

Source: OCR Web-Site.

Is Date of Discharge PHI?

- ***Issues:*** Can a provider inform the police of a substance abuse patient's date and time of discharge so they can arrest the patient upon discharge?

- ***HIPAA:*** One could argue that it is a permitted disclosure under HIPAA in an effort for the law enforcement official to locate a suspect. However, the Federal Substance Abuse Patient Records Act is more stringent than HIPAA and it should be followed.

- ***Federal Substance Abuse Patient Records Act – Applicability:*** This act applies to any federally assisted alcohol or drug program. The term "federal assistance" is broadly defined and includes federally conducted or funded programs, federally licensed or certified programs, and programs that are tax exempt.

Confidentiality of Alcohol and Drug Abuse Patient Records Regulation (42 CFR, Part 2) and HIPAA (45 CFR Parts 160 and 164, Subparts A and E)

The Confidentiality Of Alcohol And Drug Abuse Patient Records Regulation and the HIPAA Privacy Rule: Implications For Alcohol and Substance Abuse Programs
June 2004

- The Confidentiality Of Alcohol And Drug Abuse Patient Records Regulation and the HIPAA Privacy Rule: Implications For Alcohol and Substance Abuse Programs **(HTML)**
  - The Confidentiality Of Alcohol And Drug Abuse Patient Records Regulation and the HIPAA Privacy Rule: Implications For Alcohol and Substance Abuse Programs **(Word Document)**
  - The Confidentiality Of Alcohol And Drug Abuse Patient Records Regulation and the HIPAA Privacy Rule: Implications For Alcohol and Substance Abuse Programs **(PDF Format)**

- DHHS/SAMHSA publication (07/04)
  http://www.hipaa.samhsa.gov/Part2ComparisonCleared.htm

Confidentiality of Alcohol and Drug Abuse Patient Records Regulation (42 CFR, Part 2) and HIPAA (45 CFR Parts 160 and 164, Subparts A and E)

- Part 2 was enacted in early 1970s which gave patients a right to confidentiality of patient records (e.g., to avoid stigma with substance abuse which deterred people from seeking medical treatment).

- Substance abuse treatment programs that are subject to HIPAA must comply with the Privacy Rule (e.g., transmits health information electronically in connection with a transaction – submission of a claims, coordination of benefits with health plans, inquires of enrollment and other information related to payment, etc.).

- In the event a substance abuse program identifies a conflict between Part 2 and HIPAA, it should notify the Substance Abuse and Mental Health Administration (SAMHA) of HSS immediately for assistance in resolving the conflict.

Introduction - Confidentiality of Alcohol and Drug Abuse Patient Records Regulation (42 CFR, Part 2) and HIPAA (45 CFR Parts 160 and 164, Subparts A and E)

- Part 2 was enacted in early 1970s which gave patients a right to confidentiality of patient records (e.g., to avoid stigma with substance abuse which deterred people from seeking medical treatment).

- Substance abuse treatment programs that are subject to HIPAA must comply with the Privacy Rule (e.g., transmits health information electronically in connection with a transaction – submission of a claims, coordination of benefits with health plans, inquires of enrollment and other information related to payment, etc.).

- Substance abuse programs that already comply with Part 2 should not have a difficult time complying the HIPAA since the Privacy Rule parallels many of the requirements of Part 2.

- In the event a substance abuse program identifies a conflict between Part 2 and HIPAA, it should notify the Substance Abuse and Mental Health Administration (SAMHA) of HSS immediately for assistance in resolving the conflict.

Required Steps Before Disclosure of Information

- The "general rules" regarding disclosure between Part 2 and HIPAA are very different. Substance abuse programs must comply with both rules (assuming the Privacy Rule applies) in the following order:

- <u>REQUIRED STEPS TO DISCLOSE INFORMATION:</u>

  1st they — Under Part 2, information cannot be disclosed unless obtain <u>*consent*</u> or point to <u>*an exception*</u> to the rule that specifically permits the disclosure.

  2nd also — Programs must then make sure that the disclosure is permissible under the Privacy Rule.

<u>Note:</u> Part 2 uses the term "disclosure" to cover that the Privacy Rule refers to as "uses" and "disclosures."

The NEED for Policy

- Even in those circumstances when disclosure to law enforcement is permitted by the Rule, the Privacy Rule does not require covered entities to disclose any information. Some other Federal or State law may require a disclosure, and the Privacy Rule does not interfere with the operation of these other laws. However, unless the disclosure is required by some other law, covered entities should use their professional judgment to decide whether to disclose information, reflecting their own policies and ethical principles. In other words, doctors, hospitals, and health plans could continue to follow their own policies to protect privacy in such instances. Source: OCR Website

- Why Now?
  - Increased Patient Rights
  - Increased Public Expectations
  - Increased accessibility of PHI

- When?
  - To comply
  - To challenge a request
  - To challenge an order
  - To contact the patient

Terrorism, Bioterrorism and HIPAA

- 164.512(g) To avert a serious threat to health or safety (consistent with applicable law); and (h) Specialized government functions (armed forces, national security and intelligence, government programs providing public benefits, etc.).
- and (f)(6) Reporting crime in emergencies:

  (i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

  (A) The commission and nature of a crime;

  (B) The location of such crime or of the victim(s) of such crime; and

  (C) The identity, description, and location of the perpetrator of such crime.

  (ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.
- The HIPAA Privacy Rule and Bioterrorism Planning, Prevention and Response, Biosecurity and Bioterrorism Volume 2, Number 2, 2004 © Mary Ann Liebert, Inc.

Sample Letter to Patient

- April 6, 2004
-
-
-
- Kathy R. Patient
- 11223 Main Street
- Any City , MI 99999
-
- Dear Ms. Patient :
-
- We have been asked to release to the County Friend of the Court information about your health care coverage. HMO. Please confirm your authorization for release of your personal health information to the Wayne County Friend of the Court by signing and returning the enclosed authorization for release of information. Thank you for your attention to this matter.
-
- Sincerely,
-
-
-
- Cynthia F. Wisner
- General Counsel
-
-

Sample Letter to Court

April 6, 2004

FOC Medical Enforcement
Any City, MI 99999

Re: Court Order Number: 9999999 Kathy R. Patient

Dear Sir or Madam:

We received your request for coverage and eligibility enrollment information. We sent a request to the individual for consent to release the information to me. Unfortunately, the individual named in the request has declined to consent to our release of information. We cannot release information about this individual without either 1) consent from the individual or 2) a subpoena issued by the court that overrides the individual's state and federal (HIPAA) privacy rights. For your background information, I am enclosing a copy of an article from the Employer's Guide to the Health Insurance Portability and Accountability Act that describes the limitations on a group health plan's release of information.

For your reference enclosed is a copy of the information request. Please note that this information is available by Michigan law from the individual's employer. If you choose to obtain a subpoena from the court, please arrange for service directly upon me, the General Counsel for Care Choices HMO.

Sincerely,

Cynthia F. Wisner
General Counsel

Sample Hospital Reporting Grid

Legal Disclaimer: While information on this grid is believed to be correct at the time of update, this information is for education and reference purposes only and does not constitute the rendering of legal, financial or other professional advice or recommendations by Trinity Health. If you require legal advice, please consult with your Member Organization's legal counsel. Compliance is based on a host of complex factors (e.g., facts and circumstances) unique to each situation / organization.

PROTECTED HEALTH INFORMATION (PHI)
MANDATORY / PERMITTED / PROHIBITED
HOSPITAL REPORTING TO 3RD PARTIES
FOR THE STATE OF MICHIGAN & FEDERAL REGULATIONS
(Updated as of January 29, 2004)

Abuse – Child Protective Services	Mandatory Reporting / Required Disclosure to Family Indep. Agency / Child Protective Services	Providers of health care, educational, social, or mental health services are required to report immediately suspected child abuse or neglect to the Family Independence Agency (FIA), Child Protective Services division.	For purposes of this act, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse and neglect have occurred.		MCL 722.623(1)(a) 5815 Op. Attorney Gen. 1075 (1980) 42 UC §290dd-2(e)

Sample Hospital Reporting Grid

Legal Disclaimer: While information on this grid is believed to be correct at the time of update, this information is for education and reference purposes only and does not constitute the rendering of legal, financial or other professional advice or recommendations by Trinity Health. If you require legal advice, please consult with your Member Organization's legal counsel. Compliance is based on a host of complex factors (e.g., facts and circumstances) unique to each situation / organization.

PROHIBITED DISCLOSURES:

- Union Arbitration / Grievance Process
- Non-Complaint Authorization (Autos, Property Insurance)
- Independent Medical Examination
- Capturing Patients on Videos

DISCLOSURES COVERED BY POLICY:

- Immigration and Naturalization Service (INS) – Human Trafficking.
- Child Endangerment
- Secretary of State / Dept. of Motor Vehicles Regarding Impaired Drivers
- Identity Theft (e.g. Reporting a Crime)
- Provider Shopping / Frequent Fliers

Sample Hospital Reporting Grid

Legal Disclaimer: While information on this grid is believed to be correct at the time of update, this information is for education and reference purposes only and does not constitute the rendering of legal, financial or other professional advice or recommendations by Trinity Health. If you require legal advice, please consult with your Member Organization's legal counsel. Compliance is based on a host of complex factors (e.g., facts and circumstances) unique to each situation / organization.

MANDATORY / REQUIRED REPORTING:

Abortion
Abuse - Adults
Abuse -Children
Abuse (Criminal) – Mental Health Professionals
Abuse – Transfer from Nursing Home to Hospital
AIDS / HIV
Birth
Birth Defects
Cancer Registry
Crippled Child
Death of Child (under age of 2)
New Born Child – Mental Health
Communicable & Non-Communicable Diseases - Infections / Critical Problems / Unusual Occurrences
Crimes
Death – Asphyxia / Drowning
Death – Expired Suddenly, Accidentally, Suspiciously, or Violently
Death Certificate
Death – Fetus
Death – Mental Health Facility
Discipline of Health Professional – Criminal Conviction or Discipline in Another State
Discipline of Health Professional – Action taken Against License, Surrender of Privileges Litigation – Professional Liability Claim Patient's Request for Medical Records
Occupational Disease
Victim of Crimes
Prosecutor – Under the Influence
Subpoenaed Employees
Medicare / Medicaid (CMS) Patients – Quality Improvement
Occupational Safety and Health Administration (OSHA)
Michigan Occupational Safety and Health Administration (MIOSHA)
Bureau of Workers Compensation
Environmental Protection Agency (EPA)

Sample Hospital Reporting Grid

Legal Disclaimer: While information on this grid is believed to be correct at the time of update, this information is for education and reference purposes only and does not constitute the rendering of legal, financial or other professional advice or recommendations by Trinity Health. If you require legal advice, please consult with your Member Organization's legal counsel. Compliance is based on a host of complex factors (e.g., facts and circumstances) unique to each situation / organization.

PERMITTED REPORTING:

Abuse and Neglect of Child – Psychologists
Minors Request – Access to Designed Record Set
Informing Parents Regarding Mental Health Services
Informing Parents (assuming Minor acting alone does not legal capacity)
Newborn / Child – Substance Abuse
Communicable Diseases Related to Pregnant Woman
Medical Emergencies – Substance Abuse
Medical Emergencies – Not Involving Substance Abuse
Medical Treatment (Not involving an Emergency)
Litigations – Depositions Prisoners
Mental Health – Duty to Warn Substance Abuse to Medical Personnel
Secretary of State / Dept. of Motor Vehicles Regarding Impaired Drivers
Michigan Licensing Board – Whistleblowers Immunity
Third Party Administrator (TPA)
Law Enforcement Regarding Identity Theft
Research Groups
Ambulance Services
Animal Control
Heirs at Law – Life Insurance
Scared Straight Tours (Court Approved Programs)
Litigation – Legal Defense
Litigation – Court Reporters & Expert Witnesses
Hospital – General Liability Insurance
Food and Drug Administration (FDA)
Immigration and Naturalization Service (INS) – Human Trafficking
Medicare Fraud
Nuclear Regulatory Commission (NRC).
Insurance Fraud.
Undocumented Aliens – Emergency Health Services

Sample Policy Information

Secretary of State / Depart. of Motor Vehicles Regarding Impaired Drivers	Permitted Disclosure to Mich. Depart. Of Secretary of State in very LIMITED circumstances. DISCLOSURE IS RECOMMENDED only after all other means have been exhausted (e.g., talking with patient, family and friends) and an immediate threat exists	Michigan does not have a mandatory reporting statute regarding driver impairment. One exception for mental health professionals would be if the patient has threatened physical violence to an identifiable third party (e.g. affirmative duty to warn - Tarasoff law Cal. 1976 - rare instance).	This type of disclosure creates a concern because it clearly requires patient-identifiable information / PHI to be disclosed on the Michigan's Secretary of State "Request for Driver Evaluation" form. One could argue that public policy may favor reporting under the theory of averting a serious threat to health / safety. For example, if the patient is not being properly treated for his condition (e.g., Seeking treatment? On medications? Compliant with Treatment, etc.). ***Recommendation:*** In these types of situations, assuming the patient has not objected to sharing PHI with family, we recommend communicating the issue to other family members. Only after all other means have been exhausted (e.g., talking with patient, family and friends) and an immediate threat exists, we recommend reporting to the Secretary of State.		MCL 330.1946 HIPAA §164.512(j)

Process for Permitted Disclosures