

YOU HAVE THE RIGHT TO REMAIN COMPLIANT:

CONSIDERATIONS FOR HANDLING REQUESTS FOR INFORMATION FROM LAW ENFORCEMENT

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2:15pm – 3:15pm Central

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Introductions

Ashley Huntington, JD, CHC
Privacy Officer
Cook County Health
ashley.huntington@cookcountyhhs.org

Catie Heindel, JD, CHC, CHPC, CHPS
Managing Senior Consultant
Strategic Management, LLC
cheindel@strategicm.com



COOK COUNTY
HEALTH



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- Public safety-net health system in Illinois
 - 2 acute care hospitals
 - 14 outpatient clinics throughout Cook County
 - CORE Center for HIV/AIDS
 - Correctional health services at Cook County Jail & Juvenile Temporary Detention Center
 - State-certified public health department
 - CountyCare Medicaid health plan

Presentation Overview

- When does HIPAA allow covered entities to share PHI with law enforcement? What about state law requirements?
- What are some examples/case studies of emerging issues and trends regarding release of information to law enforcement?
- What steps can an organization take to make sure that it is sharing information properly with law enforcement?

Survey Question

How often does your organization receive requests from law enforcement for access or disclosure of PHI?

- A. More than once a week
- B. Once a week
- C. Once a month
- D. Once a year
- E. Never
- F. I'm not sure

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THE RULES

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HIPAA Basics



- A HIPAA covered entity or their business associate (vendor, contractor, non-employed individual) can only use or disclose protected health information if:
 - The individual has authorized the use or disclosure in writing; or
 - The use or disclosure is for treatment, payment or healthcare operations (see 45 CFR §164.501, 45 CFR §164.506); or
 - An exception to the HIPAA rules applies (i.e., the use or disclosure is required or permissible).

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Protected Health Information (PHI)

PHI =

“Individually identifiable health information”
held or transmitted by a covered entity or its business
associate, in any form or media.

- “Individually identifiable health information”:
 - Information, including demographic data, that relates to: (1) the individual’s past, present or future physical or mental health or condition; (2) the provision of health care to the individual, or (3) the past, present, or future payment for the provision of health care to the individual; **AND**
 - Information that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.

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OCR's Point of View



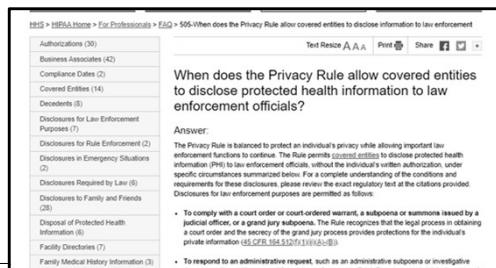
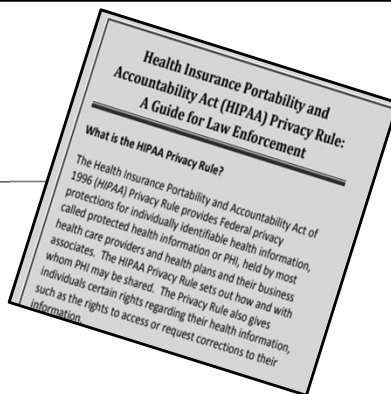
The Privacy Rule is balanced to protect an individual's privacy while allowing important law enforcement functions to continue.

FAQ #349 :
Will this HIPAA Privacy Rule make it easier for police and law enforcement agencies to get my medical information?

Answer: **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.

Where to start...

- HIPAA Regulations for permissive disclosures:
 - ✓ 45 CFR §164.510, 45 CFR §164.512
- OCR, HIPAA Privacy Rule: A Guide for Law Enforcement
- Always look at the OCR FAQs (FAQ #505 is a great summary)



Sharing with Law Enforcement per Authorization

- A covered entity may disclose PHI to law enforcement with an individual's signed HIPAA authorization.
- Keep in mind for authorizations:
 - ✓ Needs to be a valid authorization – it must contain all required elements and statements (see 45 CFR 164.508(c)(1)-(2)).
 - ✓ Should not be combined with other documentation.
 - ✓ Can only disclose the type and amount of information as noted in the authorization.
 - ✓ Watch out for expiration dates!

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Permissible Disclosures – No Authorization Needed

As required by law	To comply with a court order, court-ordered warrant, subpoena, or summons issued by a judicial officer	To respond to an administrative request	Limited information for identification and location purposes	
Victims of a crime	To report abuse, neglect or domestic violence	Decedents	Crime on premises	
Reporting crime in emergencies	To avert serious harm	To prevent or lessen a serious and imminent threat to the health or safety of an individual or the public	For specialized governmental law enforcement purposes	

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When Required by Law

PHI can be shared with law enforcement *without* the individual's signed authorization **when required by law**.

- Includes state, county and local laws.
- Information shared must be limited to the relevant requirements of the law.
- Examples: Reporting of gunshot/stab wounds or other violent injuries, births and deaths, or theft of controlled substances.
- See 45 CFR 164.512(a); 45 CFR 164.512(f)(1)(i).

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Court Order, Warrant, Subpoena, Summons or Administrative Request

PHI may be shared with law enforcement *without* the individual's signed authorization to comply with a **court order or court-ordered warrant, a subpoena or summons issued by a judicial officer or an administrative request from a law enforcement official**.

- Comply with strict terms of the subpoena, order, summons, etc.
- Administrative requests (usually an administrative subpoena or summons, or civil/authorized investigative demand) must include a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used.
- See 45 CFR 164.512(f)(1)(ii).

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Identification and Location Purposes

Organizations may share limited PHI with law enforcement, *without* the individual's signed authorization, for **purposes of identifying or locating a suspect, fugitive, material witness or missing person.**

- Information shared must be limited to eight (8) categories of basic demographic and health information about the person.
- May not share PHI related to DNA, DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.
- Law enforcement still needs to submit a request for the information.
- See 45 CFR 164.512(f)(2).

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Victims of a Crime

PHI may be shared with law enforcement in response to a request for information about an individual who is (or is suspected to be) a **victim of a crime** if:

- The individual agrees to the disclosure;
- OR
- The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that certain other requirements are met.
 - If child abuse victims or adult victims of abuse, neglect or domestic violence are concerned, other provisions of HIPAA also apply.
 - See 45 CFR 164.512(f)(3), 45 CFR 164.512(b)(1)(ii) and 45 CFR 164.512(c)

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Decedents and Crime on Premise

Organizations may share PHI with law enforcement *without* the individual's signed authorization:

- To alert law enforcement **to the death of the individual**, when there is a suspicion that death resulted from criminal conduct. See 45 CFR 164.512(f)(4)).
- To report PHI that the covered entity in good faith believes to be **evidence of a crime** that occurred on the covered entity's premises. See 45 CFR 164.512(f)(5)).

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Reporting Crime in Emergencies

Health care providers **responding to a medical emergency at an off-site location** may share limited PHI with law enforcement *without* the individual's signed authorization.

- The disclosure must be made to alert law enforcement of: (1) the commission and nature of a crime; (2) the location of such crime or of the victims of such crime; and/or (3) the identity, description and location of the perpetrator of the crime.
- If the crime involves abuse, neglect or domestic violence, other related HIPAA requirements also apply.
- See 45 CFR 164.512(f)(6)).

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Other Exceptions

Organizations may also share PHI *without* an individual's signed authorization in other types of instances, including:

- To report PHI to a law enforcement official reasonably able to **prevent or lessen a serious and imminent threat** to the health or safety of an individual or the public. See 45 CFR 164.512(j)(1)(i).
- To **identify or apprehend an individual who has escaped from lawful custody**. See 45 CFR 164.512(j)(1)(ii).
- For **specialized governmental law enforcement purposes**. See 45 CFR 164.512(k).

Helpful OCR FAQs



Disclosures for Law Enforcement Purposes

[Does the HIPAA Privacy Rule require my doctor to send my medical records to the government?](#)

[Why would HIPAA Privacy Rule require covered entities to turn over anybody's personal health information as part of a government enforcement process?](#)

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

[Does the HIPAA Privacy Rule permit covered entities to disclose protected health information, without individuals' authorization, to public officials responding to a bioterrorism threat or other public health emergency?](#)

[When does the Privacy Rule allow covered entities to disclose protected health information to law enforcement officials?](#)

[State public records laws, also known as open records or freedom of information laws, all provide for certain public access to government records. How does the HIPAA Privacy Rule relate to these state laws?](#)

[May a health plan disclose protected health information to a state child support enforcement \(IV-D\) agency in response to a National Medical Support Notice?](#)

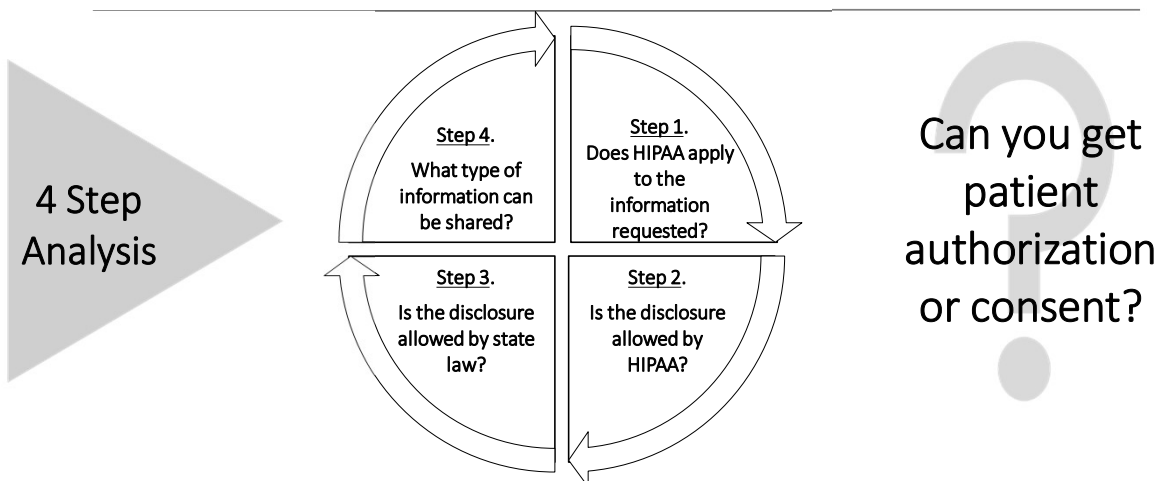
State Law Considerations

- State and local laws and regulations may differ from HIPAA regarding the following:
 - ✓ Subpoena/court order content or requirements
 - ✓ Administrative order content or requirements
 - ✓ Definition of “law enforcement”
 - ✓ Additional protections on “sensitive” information – i.e., mental health records, substance use disorder records
- Best practices to have an idea of whether your state law is more or less restrictive than HIPAA – called “pre-emption analysis”.

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When receiving a request



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Verify Authority of Law Enforcement

- Before disclosing information:
 - ✓ Verify the identity and the authority of the law enforcement officer making the request (e.g. check badge or papers).
 - ✓ Be sure to ask for any documented representations or statements required by the disclosure exception.



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Consequences of Sharing Information Inappropriately

- Corrective action within the organization (i.e., sanctions against workforce members who made the disclosure).
- Breach notification – self reporting and notices to the individual and HHS OCR.
- OCR enforcement - potential HIPAA civil and criminal penalties.
- Enforcement by local state Attorney General.
- Legal action by the individual impacted.
- Reputational harm to organization.

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CASE STUDIES & TRENDS

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Case Study #1 – Patient Identification

Non-verbal patient presents in the middle of the night to ED after allegedly ingesting a toxic substance. Patient unable to provide details about their identity. Clinical staff decide to admit patient. Through limited written communication, staff learns that patient states they were abused in a group home. Staff calls local police to help identify the patient.

Local police arrive to the hospital and proceed immediately to the patient's room. Police take fingerprints and a photo of the patient to assist with identification. This is done while unsupervised by hospital staff. The photo is later posted in a newspaper asking the public to help identify the individual. No reference is made to the patient's location at the hospital or their health condition.

- Should hospital staff have called local police to help with patient identification?
- Should the police be allowed into the hospital and into a patient room unaccompanied?
- Should the patient's picture have been published in a newspaper without the patient's authorization?

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Case Study #2: Security Camera Footage

Hospital has multiple security cameras located across its premises. A crime takes place in the hospital's parking garage. Hospital police receive a phone call from local police asking for surveillance footage for the entire day that the crime took place.

Parking garage is used by both patients and employees and is clear enough to see facial details.

- Is a phone call from local police sufficient?
- What documentation should be filled out and who is responsible for it?
- Who should be involved in the review process prior to releasing the footage to the police?

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Case Study #3: Law Enforcement Authority?

Hospital receives a written request for surveillance footage of registration and patient care areas from a civilian police accountability organization. The request was made after a patient filed a complaint that a hospital police officer used excessive force in removing their family member from the premises. The request cites HIPAA's law enforcement exception.

- What does state law say about a civilian police accountability organization?
- Does a statute grant any law enforcement authority?

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Other Emerging Trends

- Requests from probation officers, specifically for urine and toxicology screenings
- Subpoenas without appropriate documentation of either:
 - Reasonable effort to notify the subject of the PHI so that they have the opportunity to object, or
 - A qualified protective order from the court
- Staff confusion on how to handle law enforcement officers presenting onsite and requesting PHI

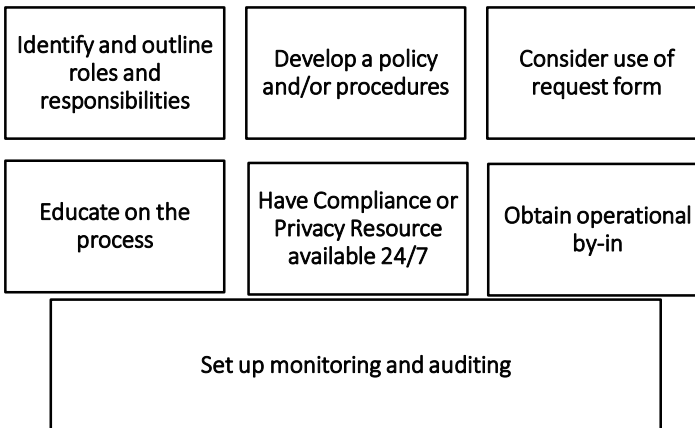
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STEPS TO TAKE

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Framework for Proper Release of PHI



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Who is responsible?



- Where do these types of requests come in?
- Who is documenting requests for disclosure of PHI?
- Who should approve requests for disclosure of PHI for law enforcement purposes?
- Who are your partners to make sure it happens?
- Who is available if questions arise?

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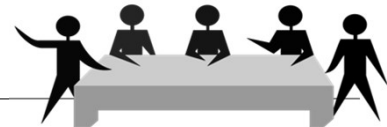
Policies, Procedures, Forms

- Consider developing a policy and/or procedures around the process for accepting, reviewing and granting or denying requests from law enforcement for access to PHI.
- Post policies/procedures in an area/on a resource that is easy to find.
- Consider the use of a “Request Form” for all law enforcement requests to ensure requests are handled uniformly.
- Be sure to include contact information for the Privacy Office within the policy in case there are questions.

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Train Your Workforce



- Train, train, train!
- Access to up-to-date policy and/or procedures and guidance is key!
- Figure out how to ensure training understanding.
- Try and utilize multiple modalities – online training, town halls, rounding meetings, tip sheet, etc.
- Reminders are always a good idea.
- Consider providing training resources to local law enforcement as well regarding when disclose is/is not allowable.

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Operational Support in Key Areas

- Reception Areas
- Clinical Staff
- Health Information Management
- Building Security
- Legal
- Executive Management



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Auditing and Monitoring

- How do you know your process is working?
- What benchmarks or effectiveness metrics can you can monitor?
- Track approval or guidance requests related to law enforcement disclosures
- Engage and ask questions!
- Audit the process. If problems persist, find the weak links and mitigate until solved.



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References

- HIPAA Privacy Rule – 45 CFR 164, Subpart E
<https://www.ecfr.gov/cgi-bin/text-idx?SID=d18b50d6d1255e2d8bd872080e8f8f9c&mc=true&node=sp45.2.164.e&rgn=div6>
- OCR Privacy Rule Summary and Guidance
<https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>
- OCR, HIPAA Privacy Rule: A Guide for Law Enforcement
https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf
- OCR FAQs – Law Enforcement
<https://www.hhs.gov/hipaa/for-professionals/faq/disclosures-for-law-enforcement-purposes/index.html>

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WRAP UP & QUESTIONS

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Contact Information

Ashley Huntington, JD, CHC
Privacy Officer
Cook County Health
ashley.huntington@cookcountyhhs.org

Catie Heindel, JD, CHC, CHPC, CHPS
Managing Senior Consultant
Strategic Management, LLC
cheindel@strategicm.com



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