Disclosures to Law Enforcement

The HIPAA Privacy Regulations includes exceptions that permit disclosures of protected health information (“PHI”) to law enforcement. These exceptions are intentionally narrow and attempt to strike a balance between protecting the privacy of the patient and the function of law enforcement. The exceptions address 6 specific situations for which we have provided a more detailed explanation below. The exceptions are:

1. Disclosures pursuant to process or as required by law;
2. Disclosures to Identify and locate a fugitive;
3. Disclosures to locate a victim of a crime;
4. Disclosures about decedents if there is suspicion that death was result of criminal conduct;
5. Disclosures to report a crime on the premises; and
6. Disclosures to report crime in a medical emergency.

As with any disclosure pursuant to an exception, only the minimum amount of PHI necessary to accomplish the purpose may be disclosed.

1. Disclosures Pursuant to Process or as Required by Law

The first component of this exception is where disclosure of PHI is required or permitted by state law. Put another way, if the state legislature has determined that the public interest in reporting the information exceeds the personal right of privacy, then a covered entity must report, or is permitted to report, the information. Examples of reporting statutes include doctor shopping laws, child abuse reporting statutes, and gunshot wounds. Be sure to check the statute to determine whether reporting is a mandatory, i.e., must report, or a permissive, i.e., may report.

The second component of this exception is in response to a court order, warrant, summons or a subpoena or summons by a judicial officer. Note that this only permits disclosure of PHI in response to a subpoena issued by a judicial officer and not a general subpoena that is covered under exceptions for judicial proceedings (45 C.F.R. 164.512(e)). The rationale for this exception is that the court is an independent third party that can evaluate whether the information sought is relevant to the criminal investigation. For that reason, the HIPAA Privacy Regulations give deference to orders issued by a court.

The third component of this exception applies to law enforcement administrative proceedings, subpoenas and investigative demands. This exception permits law enforcement to obtain PHI in a manner that will not impede their investigation. In order to receive PHI pursuant to an investigative demand, law enforcement must attest that following is true:

1. The information sought is relevant and material to a legitimate law enforcement inquiry;
2. 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
3. De-identified information could not reasonably be used.

The investigative demand should be signed by the law enforcement officer requesting the information. Once signed, PHI can be disclosed without violating the HIPAA Privacy Regulations. Even with an investigative demand, you should only provide the PHI that is minimally necessary to the investigation. Do not provide the complete patient file.

2. Identify and locate a fugitive
PHI may be provided to law enforcement to identify or locate a fugitive, missing person, or material witness. This is a permissive exception meaning that PHI may be disclosed but is not required to be disclosed. The PHI that may be disclosed is limited to general identification factors such as name, address, SSN, identifying features, etc. However, any information based on DNA, tissue typing or analysis, or similar characteristics may not be disclosed.

3. Disclosures related to victims of a crime
PHI may be disclosed to law enforcement if requested by a law enforcement official related to a suspected victim of a crime. The PHI may only be disclosed if the individual agrees to the disclosure, meaning that you ask your patient if you may disclose the information to law enforcement. However, there is an exception that permits you to disclose the PHI without your patient’s agreement if you are unable to obtain agreement from the patient due to incapacity or other emergency circumstance if the following conditions are satisfied:

1. 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;
2. 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 individual is able to agree to the disclosure; and
3. The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

As with other disclosures to law enforcement, only the PHI that is the minimum necessary for law enforcement to perform its investigation should be disclosed.

4. Decedents – if suspicion that death was result of criminal conduct
The HIPAA Privacy Regulations permit disclosure of PHI to law enforcement about decedents when there is suspicion that the death was the result of criminal conduct. The purpose of this exception is for alerting or notifying law enforcement of the suspicious death. This exception should not be used for providing PHI to law enforcement to investigate the death.

5. Crime on the premises
PHI may be reported if it is needed to report a crime that occurs on the premises. This exception was created so as not to prevent a covered entity from calling law
enforcement to report a crime solely because some PHI could be disclosed. The language of the exception permits entities to provide PHI to law enforcement to report a crime that occurs on the premises. The PHI disclosed must relate to the crime and must be necessary to permit law enforcement to respond to the reported crime. In other words, if PHI is not necessary for law enforcement to respond to the report of a crime, then it cannot be disclosed. The definition of “premises” should be narrowly construed to the area owned or operated by the covered entity and under its control. For example, a patient selling your prescription in the parking lot next door to your office would not be considered your “premises.”

Note: Remember from the module about identifying PHI that merely identifying a patient by disclosing their name, date of birth, race, height, weight, eye color, clothing description and/or vehicle description (without disclosing what the patient was treated for and/or what treatment the patient is receiving) would not constitute “providing protected health information”.

6. Report crime in an emergency

This exception to the Privacy Regulations permits a covered health care provider to disclose PHI to law enforcement in the event of an emergency. However, the exception is very limited and should only be used during an emergency response outside of the premises of the health care provider. In such a situation, PHI may be disclosed if the health care provider believes that the PHI is necessary to alert law enforcement to:

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

For example, if you happen upon an emergency situation where a person is injured, you treat the person and you become aware that the injury the person suffered resulted from criminal activity, you may contact law enforcement to alert it of the criminal activity, including any PHI related to the treatment.

45 C.F.R. 164.512(f)