
SUBJECT: EXTERNAL PARTIES

GENERAL STANDARDS (PRIVACY RULE SECTION 164.512(b), (d), (g), (h), (j), (k) and (l)):

AHS may use or disclose PHI under the Privacy Rule without obtaining a written authorization from an individual, and without providing the individual the opportunity to agree or object to the use or disclosure, in order to make disclosures: for public health activities, for health oversight activities, regarding decedents, regarding organ and tissue donation, to avert a serious threat to health or safety, for certain specialized government functions, and for workers' compensation purposes.

Prior to making such use or disclosure, AHS will take into account any state law issues that may require authorization or a court order before at least some of these disclosures can take place.

PRIVACY RULE:

I. Public Health Activities

A. A CE may disclose PHI for the public health activities and purposes described in this Paragraph I to:

1. A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
2. A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;
3. A person subject to the jurisdiction of the Food and Drug Administration ("FDA") with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:
 - a. To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or

- problems (including problems with the use or labeling of a product), or biological product deviations;
- b. To track FDA-regulated products;
 - c. To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or
 - d. To conduct post marketing surveillance.
4. A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the CE or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or
5. An employer, about an individual who is a member of the workforce of the employer, if:
- a. The CE is a covered health care provider who is a member of the workforce of such employer or who provides health care to the individual at the request of the employer:
 - i. To conduct an evaluation related to medical surveillance of the workplace; or
 - ii. To evaluate whether the individual has a work-related illness or injury.
 - b. The PHI that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
 - c. The employer needs such findings in order to comply with its obligations under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and
 - d. The covered health care provider provides written notice to the individual that PHI relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:

- i. By giving a copy of the notice to the individual at the time health care is provided; or
 - ii. If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.
- B. If the CE also is a public health authority, the CE is permitted to use PHI in all cases in which it is permitted to disclose such information for public health activities under Paragraph I. A.

II. Health Oversight Activities

- A. A CE may disclose PHI 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:
 1. The health care system;
 2. Government benefit programs for which health information is relevant to beneficiary eligibility;
 3. Entities subject to governmental regulatory programs for which health information is necessary for determining compliance with program standards; or
 4. Entities subject to civil rights laws for which health information is necessary for determining compliance.
- B. For the purpose of the disclosures permitted by Paragraph II. A above, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:
 1. The receipt of health care;
 2. A claim for public benefits related to health; or
 3. Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.
- C. Notwithstanding Paragraph II. B above, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint

activity or investigation is considered a health oversight activity for purposes of this Paragraph II.

- D. If a CE also is a health oversight agency, the CE may use PHI for health oversight activities as permitted by this Paragraph II.

III. Decedents/Donations

- A. A CE may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A CE that also performs the duties of a coroner or medical examiner may use PHI for the purpose described in this Paragraph III. A.
- B. A CE may disclose PHI to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the CE may disclose the PHI prior to, and in reasonable anticipation of, the individual's death.
- C. A CE may use or disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.

IV. Averting a Serious Threat to Health or Safety

- A. A CE may, consistent with applicable law and standards of ethical conduct, use or disclose PHI, if the CE, in good faith, believes the use or disclosure:
 - 1. Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
 - 2. Is necessary for law enforcement authorities to identify or apprehend an individual:
 - a. Because of a statement by an individual admitting participation in a violent crime that the CE reasonably believes may have caused serious physical harm to the victim; or
 - b. Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
- B. A use or disclosure pursuant to Paragraph IV. A. 2. a above may not be made if the information described in Paragraph IV. A. 2. a above is learned by the CE:

1. In the course of treatment to affect a propensity to commit the criminal conduct that is the basis for the disclosure under Paragraph IV. A. 2. a above, or counseling or therapy; or
 2. Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in Paragraph IV. B. 1 above.
- C. A disclosure made pursuant to Paragraph IV. A. 2. a above shall contain only the statement described in such Paragraph and the following PHI:
1. Name and address;
 2. Date and place of birth;
 3. Social security number;
 4. ABO blood type and rh factor;
 5. Type of injury;
 6. Date and time of treatment;
 7. Date and time of death, if applicable; and
 8. 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.
- D. A CE that uses or discloses PHI pursuant to Paragraph IV. A above is presumed to have acted in good faith with regard to a belief described in Paragraph IV. A. 1 or IV. A. 2 above, if the belief is based upon the CE's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

V. Specialized Government Functions

- A. Military and veterans activities:
1. A CE may use and disclose the PHI of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:
 - a. Appropriate military command authorities; and

- b. The purposes for which the PHI may be used or disclosed;
2. A CE that is a component of the Departments of Defense or Transportation may disclose to the Department of Veterans Affairs (“DVA”) the PHI of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual’s eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.
 3. A CE that is a component of the DVA may use and disclose PHI to components of the DVA that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.
 4. A CE may use and disclose the PHI of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to Paragraph V. A. 1 above.
- B. A CE may disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401 *et seq.*) and implementing authority (e.g., Executive Order 12333).
- C. A CE may disclose PHI to authorized federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879.
- D. A CE that is a component of the Department of State may use PHI to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:
1. For the purpose of a required security clearance pursuant to Executive Orders 10450 and 12698;
 2. As necessary to determine worldwide availability or availability for mandatory service abroad under sections 101(a)(4) and 504 of the Foreign Service Act; or
 3. For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.

E. Correctional institutions and other law enforcement custodial situations:

1. A CE may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about such inmate or individual, if the correctional institution or such law enforcement official represents that such PHI is necessary for:
 - a. The provision of health care to such individuals;
 - b. The health and safety of such individual or other inmates;
 - c. The health and safety of the officers or employees of or others at the correctional institution;
 - d. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
 - e. Law enforcement on the premises of the correctional institution; and
 - f. The administration and maintenance of the safety, security, and good order of the correctional institution.
2. A CE that is a correctional institution may use PHI of individuals who are inmates for any purpose for which such PHI may be disclosed.
3. For purposes of this Paragraph V. E, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

F. CEs that are government programs providing public benefits:

1. A health plan that is a government program providing public benefits may disclose PHI relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.
2. A CE that is a government agency administering a government program providing public benefits may disclose PHI relating to the program to another CE that is a government agency administering a government program providing public benefits if the programs serve the same or

similar populations and the disclosure of PHI is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

- VI. Workers' Compensation.** A CE may disclose PHI as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.
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GUIDELINES:

1. The uses and disclosures of PHI permitted by the Privacy Rule in the areas identified above can be extremely complex, and often contain important exceptions that must be followed. Consequently, the major theme of these Guidelines is that AHS workforce must involve their legal counsel in any such use or disclosure, so that AHS can be assured of compliance with the Privacy Rule.
2. In addition, many of the uses and disclosures permitted by these Privacy Rule provisions are potentially restricted by Vermont law (e.g., the Vermont Patient Privilege Statute, 12 VSA 1612 and the Vermont Mental Health laws, 18 VSA 7103). AHS Rule 96-23 may also, depending on the circumstances, impact a potential disclosure of PHI under the scenarios identified above.
3. AHS may make a disclosure of PHI for an activity identified below, if the disclosure is compelled by an applicable provision of state or federal law, the individual at issue has signed an authorization permitting the disclosure, or legal counsel is consulted, and after consideration, determines that the disclosure can be made. Otherwise, AHS will not make any such disclosures of PHI:
 - A. for any public health activity;
 - B. for any health oversight activity;
 - C. to a coroner or medical examiner, funeral director, or organ procurement organization (or other entity engaged in the procurement, banking or transplantation of cadaveric organs, eyes, or tissues);
 - D. to avert a serious threat to health or safety;
 - E. for specialized government functions; or
 - F. for a workers compensation purpose.
4. There may be occasions where a disclosure to avert a serious threat to health or safety must be made immediately, and review by legal counsel may not be possible. In such

events, AHS workforce will review the issue with the Privacy Official, and as soon as possible, notify legal counsel of the situation.

5. The provisions identified above regarding government programs providing public benefits are important to AHS, though do not seem to neatly or perfectly fit within the AHS organizational structure. However, and at least as it concerns the second subsection of those provisions, it seems clear, at least by implication, that AHS should have the right to use, within the agency, PHI relating to government programs, if those programs serve the same or similar populations and the use of the PHI is necessary to coordinate those programs or to improve administration and management relating to those programs. This implication seems “clear” because this specific provision permits the disclosure of PHI from one covered entity to another for these purposes – intuitively, if it is appropriate to *disclose* PHI for those purposes, it should also be acceptable to *use* PHI for those same purposes, at least within a single covered entity agency.

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