
SUBJECT: LEGAL REQUIREMENTS

GENERAL STANDARD (PRIVACY RULE SECTION 164.512(a), (c), (e) and (f)):

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 required by law, pursuant to an order, subpoena, discovery request or other lawful process in judicial or administrative proceedings, for certain law enforcement purposes and to report victims of abuse, neglect or domestic violence.

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

PRIVACY RULE:

I. Uses and Disclosures Required by Law. A CE may use or disclose PHI to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law, and is in accordance with the requirements of Paragraphs II, III and IV below.

II. Judicial and Administrative Proceedings. A CE may disclose PHI in the course of any judicial or administrative proceeding:

- A. In response to an order of a court or administrative tribunal, provided that the CE discloses only the PHI expressly authorized by such order; or
- B. In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:
 - 1. The CE receives satisfactory assurance (as described in Paragraph II. C below) from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request; or
 - 2. The CE receives satisfactory assurance (as described in Paragraph II. D below) from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of Paragraph II. E below.

- C. For purposes of Paragraph II. B. 1 above, a CE receives satisfactory assurances from a party seeking PHI if the CE receives from such party a written statement and accompanying documentation demonstrating that:
1. The party requesting such information has 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);
 2. The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; and
 3. The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
 - a. No objections were filed; or
 - b. All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- D. For purposes of Paragraph II. B. 2 above, a CE receives satisfactory assurances from a party seeking PHI, if the CE receives from such party a written statement and accompanying documentation demonstrating that:
1. The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
 2. The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.
- E. For purposes of this Paragraph II, a *qualified protective order* means, with respect to PHI requested under Paragraph II. B, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
1. Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and
 2. Requires the return to the CE or destruction of the PHI (including all copies made) at the end of the litigation or proceeding.

- F. Notwithstanding Paragraph II. B, a CE may disclose PHI in response to a lawful process described in Paragraph II. B without receiving satisfactory assurance as set forth in Paragraphs II. B. 1 or II. B. 2, if the CE makes reasonable efforts to:
1. Provide notice to the individual sufficient to meet the requirements of Paragraph II. C; or
 2. Seek a qualified protective order sufficient to meet the requirements of Paragraph II. D.

III. Law Enforcement Purposes. A CE may disclose PHI for a law enforcement purpose to a law enforcement official if the conditions in Paragraphs III. A through III. F are met, as applicable.

- A. A CE may disclose PHI:
1. As required by law, including laws that require the reporting of certain types of wounds or other physical injuries, except for laws regarding child abuse or neglect or victims of abuse, neglect or domestic violence.
 2. In compliance with and as limited by relevant requirements of:
 - a. A court order, court-ordered warrant, or a subpoena or summons issued by a judicial officer;
 - b. A grand jury subpoena; or
 - c. An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law provided that:
 - i. The information sought is relevant and material to a legitimate law enforcement inquiry;
 - ii. 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
 - iii. De-identified information could not reasonably be used.
- B. Except for disclosures required by law as permitted by Paragraph III. A above, a CE may disclose PHI in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness or missing person, provided that:
1. The CE may disclose only the following information:

- a. Name and address;
 - b. Date and place of birth;
 - c. Social security number;
 - d. ABO blood type and rh factor;
 - e. Type of injury;
 - f. Date and time of treatment;
 - g. Date and time of death, if applicable; and
 - h. 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.
2. Except as permitted by Paragraph III. B. 1 above, the CE may not disclose for the purposes of identification or location under this Paragraph III. B any PHI related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.
- C. Except for disclosures required by law as permitted by Paragraph III. A above, a CE may disclose PHI in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to rules regarding the disclosure of PHI for public health activities or about victims of abuse, neglect, or domestic violence, if:
1. The individual agrees to the disclosure; or
 2. The CE is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:
 - a. 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;
 - b. 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

- c. The disclosure is in the best interests of the individual as determined by the CE, in the exercise of professional judgment.
- D. A CE may disclose PHI about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the CE has a suspicion that such death may have resulted from criminal conduct.
- E. A CE may disclose to a law enforcement official PHI that the CE believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the CE.
- F. 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 PHI to a law enforcement official if such disclosure appears 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.

If a covered health care provider believes that the medical emergency described above is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, then this Paragraph III. F does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to Paragraph IV below.

IV. Victims of Abuse, Neglect or Domestic Violence

- A. Except for reports of child abuse or neglect permitted in the context of disclosures for public health activities, a CE may disclose PHI about an individual whom the CE reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:
 - 1. To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
 - 2. If the individual agrees to the disclosure; or
 - 3. To the extent the disclosure is expressly authorized by statute or regulation; and

- a. The CE, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
 - b. If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the PHI for which the disclosure is sought is not intended to be used against the individual and that an immediate 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.
- B. A CE that makes a disclosure permitted by Paragraph IV. A above must promptly inform an individual that such a report has been or will be made, except if:
1. The CE, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
 2. The CE would be informing a personal representative, and the CE reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the CE, in the exercise of professional judgment.

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 workforce members have been instructed to send any:
 - A. order of a court or administrative tribunal;
 - B. subpoena (including a grand jury subpoena);
 - C. discovery request;

- D. warrant;
- E. summons;
- F. administrative request (including an administrative subpoena or summons);
- G. civil or authorized investigative demand; or
- H. other similar demand for PHI by a law enforcement official,

to their legal counsel, who will be responsible for determining an appropriate response.

4. AHS workforce members have also been instructed to notify their legal counsel about any verbal demand for PHI from a law enforcement official, and to work with legal counsel on an appropriate response.
5. AHS will comply with any applicable state or federal reporting law. For example, AHS will comply with communicable disease, tuberculosis, child abuse, and vulnerable adult abuse reporting laws. In this context, AHS will only disclose the PHI specifically required by these laws.
6. AHS workforce members have been instructed to not “voluntarily share” any PHI with a law enforcement official without the prior involvement and approval of appropriate counsel. In this context, “voluntarily share” means to notify a law enforcement official, and provide PHI to that official, without first receiving a demand or request from the official.
7. AHS workforce members have been instructed to not disclose to any third party PHI about an individual whom AHS believes to be a victim of abuse, neglect, or domestic violence, for the purpose of reporting such abuse, neglect, or domestic violence, without the prior involvement and approval of the appropriate legal counsel, and such counsel will work with the AHS personnel at issue to determine how to appropriately address the situation, including whether notification to the individual at issue is required by the Privacy Rule (please note that applicable state law regarding the abuse or neglect of vulnerable adults (33 VSA 6901-6911) does not require such notification, and this is an example of a situation where the Privacy Rule is arguably more protective of privacy than state law).