



HIPAA DISCLOSURE

LAW ENFORCEMENT RELEASE(S)

HIPAA permits the disclosure of Protected Health Information (“PHI”) to law enforcement officials in specified circumstances:

- Pursuant to legal process and as otherwise required by law;
- To a limited degree, for purposes of identifying and locating certain classes of persons;
- As necessary to alert law enforcement to the commission and circumstances of a crime.

“Law enforcement” is broadly conceived by HIPAA. It includes any governmental agency or official authorized to investigate, prosecute or conduct an inquiry into a potential violation of law.

NOTE about the relationship of HIPAA and state law: HIPAA does not require the disclosure of PHI without an individual’s consent or authorization in any circumstance. Rather, HIPAA permits nonconsensual or unauthorized disclosures in specified circumstances.

Legal Process: In the law enforcement context, “legal process” means a formal written demand or request from a judicial or enforcement agency. Disclosure must be strictly limited to the scope of the request. Legal process involves documents like:

- A court order;
- A court-ordered warrant;
- A subpoena or summons issued by a judicial officer (*e.g.*, a tribal inspector general)
- A grand jury subpoena; and
- An administrative subpoena, summons, or investigative demand.

“Legal process” in the law enforcement context does not mean a subpoena from a lawyer.

Required by Law: HIPAA accommodates state and federal laws that compel the disclosure of PHI to assist law enforcement. HIPAA does not permit disclosure of PHI to law enforcement officials when such disclosures are discretionary. HIPAA’s relationship to mandatory reporting for public health purposes, including reports of abuse or neglect, is discussed in the Consent section and the Mandatory and Discretionary Releases section of these guidelines.

Example: Intoxicated Drivers. Some laws permit, but does not require, reports to law enforcement agencies when, following a motor vehicle accident, health care facility personnel have blood test results indicating that an intoxicated person was driving an involved vehicle. Because the report is discretionary, the requirement of individual authorization would not be waived by HIPAA, and a voluntary disclosure by facility personnel would be illegal under the privacy rules.

Example: Suspicious Wounds or Injuries. Physicians, including residents and interns, are required by law to report to the appropriate Medical Examiner injuries apparently made by a deadly weapon. In these circumstances state law requires disclosure, and therefore HIPAA permits it.

Identification and Location. HIPAA permits disclosure of limited identifying information in response to a request from law enforcement for assistance in identifying or locating fugitives, suspects, witnesses, or missing persons. This exception requires a request from law enforcement; it does not authorize self-initiated disclosures. Unless PHI is within the definition of “limited identifying information,” a covered entity may not disclose an individual’s DNA or a DNA analysis, dental records, or typing, samples or analysis of body fluids or tissues.

“Limited identifying information” is specifically defined as:

- 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; and
- Description of distinguishing characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos.

Example: Blood type. Even though an individual's blood type is learned through "typing" the individual's bodily fluids, the definition of "limited identifying information" specifically includes blood type information. An individual's blood type therefore may be disclosed in response to a law enforcement request for PHI to identify or locate a suspect, fugitive, witness or missing person.

Implementation Tip: Get it in writing; documentation. HIPAA generally does not require law enforcement officials to make requests or representations in writing. However, it is in the covered entity's interest to obtain written law enforcement requests and representations about requests in writing. At a minimum, requests and representations should be documented by the covered entity.

Implementation Tip: Verify credentials, really. The covered entity must establish the bona fides of law enforcement officials before disclosing PHI for any reason. HIPAA permits reasonable reliance on agency ID badges or other official credentials when requests are made in person. If, however, the covered entity has no knowledge of what such credentials look like, then further steps to verify identity should be pursued. Similarly, written requests should be on official governmental letterhead and substantiate reasonable reliance.

Crime Victims. A covered entity may disclose PHI concerning an actual or suspected victim of a crime in response to a law enforcement request in two circumstances. Either:

- the individual agrees to the disclosure; or
- the individual's agreement cannot be obtained due to incapacity or emergency circumstances, and a law enforcement official represents that:
 - the information is needed to determine if someone other than the individual has committed a crime, and such information will not be used against the individual; and
- the need for the information is acute and without it law enforcement efforts will be adversely affected; and
- the covered entity determines in the exercise of professional judgment that disclosure is in the best interests of the individual.

Note that disclosures regarding crime victims may be made only in response to a law enforcement request, unless otherwise required by law. Note also that disclosures concerning victims of abuse, neglect or domestic violence are governed by different provisions of the HIPAA rules, which are discussed in the Consent section and the Mandatory and Discretionary Releases section of these guidelines.

Implementation Tip. Again, ideally law enforcement representations about the need for and use of PHI should be made in writing. At a minimum, the covered entity should document them. In addition, the factual basis and rationale for a professional judgment that disclosure is in the individual's best interests also should be documented.

Decedents. A covered entity may contact law enforcement officials about the death of an individual, and provide PHI concerning such individual, if it suspects death may have resulted from criminal conduct. In addition to homicide, criminal conduct potentially includes negligent homicides and deaths from overdoses of narcotics or illegal drugs. It would not include suicides absent suspicions of foul play or, in the case of physician-assisted suicide, violation of applicable state law. Self-initiated disclosures are permitted in this instance; no request from law enforcement is necessary.

Crime on the Premises. A covered entity may disclose to law enforcement PHI that it believes in good faith to be evidence of a crime committed on its premises. Self-initiated disclosures are permitted in this instance; no request from law enforcement is necessary.

Off-site Emergencies. If a health care provider is rendering emergency services off its premises, then it may disclose PHI to the extent necessary to alert law enforcement to the commission, nature, or location of a crime or a crime victim, and the identity, description and location of the perpetrator. If, however, the provider believes the emergency is the result of abuse, neglect or domestic violence, then disclosure is permitted only in accordance with the rules specifically applicable to those situations. See Mandatory and Discretionary Releases section of these guidelines.