

Verifying the Identity and Authority of a Person to Whom Protected Health Information is Disclosed

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Part 1. Introduction

General Rule

The HIPAA Privacy Rule requires covered entities to verify the identity of a person to whom protected health information (PHI) is to be disclosed, as well as the person's legal authority to receive the PHI. 45 CFR 164.514(h). In most circumstances this means a covered entity must do three things before disclosing PHI:

1. Verify the identity of the person requesting PHI (if it is not already known to the covered entity);
2. Verify the person's authority to have access to PHI (if it is not already known to the covered entity); and
3. Determine which provision of the privacy rule applies to the particular disclosure, and obtain any documentation, statements, or representations that are required by that particular provision from the person requesting the PHI.

Exceptions

A covered entity is not required to verify a person's identity or authority in the following circumstances:

- When the disclosure is of PHI from a facility directory, such as a hospital's directory of patient names and room numbers, and is limited to what is authorized by the facility directory provisions in 45 CFR 164.510(a).
- When the disclosure is to a person who is involved in an individual's health care, such as a friend or family member, and the disclosure is made in accordance with the provisions of 45 CFR 164.510(b).
- When the disclosure is for the purpose of notifying a person responsible for an individual's care of the individual's location, condition, or death, and the notification is made in accordance with 45 CFR 164.510(b).
- When the disclosure is made in order to avert a serious threat to the health or safety of a person or the public and the covered entity complies with the provisions of 45 CFR 164.512(j) in making the disclosure.

Part 2. Verifying the Identity and Authority of Public Officials Who Request PHI

It is not unusual for a public official to request the disclosure of PHI. For example, the department of social services may request information as part of an investigation of a report of child neglect, or a law enforcement officer may request information to help

locate a missing person. When such requests are made, the covered entity must verify the identity and authority of the public official before making the disclosure, unless it is already known to the covered entity. Verifying the official's identity includes asking for evidence that the person is in fact a public official. Verifying the official's authority includes verifying that the requested disclosure is authorized by the HIPAA Privacy Rule. It may also include verifying the official's authority to obtain the information under other laws, such as state laws.

The HIPAA Privacy Rule specifies methods a covered entity may use to verify the identity and authority of public officials who request PHI. A covered entity is not required to use the methods in the rule, nor are those the only methods of verifying authority that may be acceptable to HIPAA enforcement authorities. However, the methods provide a "safe harbor" for covered entities—if they are used, the covered entity may safely assume it is in compliance with the rule.

Identity of public officials

A covered entity may rely on any of the following to verify identity when the disclosure of PHI is to a public official or a person acting on behalf of the public official:

- If the request is made in person, the person presents an agency identification badge, other official credentials, or other proof of government status.
- If the request is in writing, the request is on the appropriate government letterhead.
- If the person is acting on behalf of a public official, the person presents either of the following:
 - a written statement on appropriate government letterhead that states the person is acting under the government's authority, or
 - other evidence or documentation that establishes that the person is acting on behalf of the public official, such as a contract for services, a memorandum of understanding, or purchase order.

Authority of public officials

A covered entity may rely on a written statement of the legal authority under which the information is requested, or if a written statement would be impracticable, an oral statement of the legal authority. For example, a public official might provide a citation to or copy of a law that authorizes him or her to obtain PHI.

Sometimes a public official requests PHI pursuant to a warrant, subpoena, order, or other legal process that has been issued by a grand jury or a judicial or administrative tribunal. The presentation of such a document is sufficient to verify the official's legal authority for purposes of the HIPAA Privacy Rule. However, the covered entity must still ensure that disclosure of the PHI requested is permitted under all applicable laws. For example, if the document presented is a subpoena for information that is privileged under North Carolina laws, a covered entity in North Carolina would need to ensure compliance with the state's privilege laws before disclosing the PHI.