

## When Should a Local Health Department Disclose Protected Health Information to a Law Enforcement Official?

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### Yes

- **Patient authorization:** The patient authorizes the local health department (LHD) to disclose protected health information (PHI) to a law enforcement official or agency. The authorization form must comply with HIPAA and, if communicable disease information is to be disclosed, the authorization should specify as such.
- **Required by law:** A federal, state, or local statute or regulation requires the local health department (LHD) to disclose protected health information (PHI) to law enforcement officials. For example, G.S. 90-21.20 requires physicians to report to law enforcement officials certain types of injuries (e.g., gunshot wounds, poisoning, poisoning, and other instances where there is grave bodily harm or grave illness that appears to have resulted from a criminal act of violence).
- **Court order:** A law enforcement official presents the LHD with a court order requiring disclosure.\*
- **Search warrant:** A law enforcement official presents a search warrant demanding disclosure.\*
- **Missing person, suspect, or fugitive:** A law enforcement official requests information in order to identify or locate a suspect, fugitive, material witness, or missing person. Only limited information may be disclosed in this situation: name, address, date and place of birth, social security number, ABO blood type, rh factor, type of injury, date and time of treatment, date and time of death (if applicable), and a description of distinguishing physical characteristics (e.g., height, weight, gender, race, hair color, eye color, the presence or absence of facial hair, scars, and tattoos). Do not disclose DNA analyses, dental records, or typing, samples or analysis of body fluids or tissues. Do not disclose any information that may reveal that the person has or may have a reportable communicable disease.
- **Decedents:** If the LHD suspects that a death resulted from criminal conduct, the LHD may disclose some PHI to law enforcement officials. Limit the information disclosed to the minimum necessary to simply alert law enforcement officials of the death and the LHD's suspicions.\* Note that this disclosure is *not* contingent upon a law enforcement official's request.
- **Crime on premises:** If a crime is committed on the LHD premises, the LHD may disclose to law enforcement officials any PHI that the LHD, in good faith, believes constitutes *evidence* of the crime.\* Note that this disclosure is *not* contingent upon a law enforcement official's request.

*\* If the PHI includes information that identifies someone who has or may have a reportable communicable disease, inform the law enforcement official that the individual should be afforded the opportunity to request an in camera (private) review of the information by the judge.*

- **Crime victim:** A law enforcement official requests information about an individual who is or is suspected to be a victim of a crime (other than abuse, neglect or domestic violence). The LHD may disclose if the individual agrees to the disclosure (the individual need not agree in writing but the LHD should document the agreement). If the LHD is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, the LHD may still disclose PHI (other than information indicating that the person has or may have a reportable communicable disease) if all three of the following conditions are met:
  - The law enforcement official represents that the information is needed to determine whether there has been a violation of law by someone *other than* the victim, and the information is not intended to be used against the victim;
  - 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 available to agree to the disclosure; and
  - The LHD concludes, in the exercise of professional judgment, that disclosure is in the best interests of the individual.
  
- **Communicable disease information:** If the PHI includes information identifying a person who has or may have a reportable communicable disease, it should not be disclosed to a law enforcement official unless
  - The patient or the patient's representative authorizes the disclosure.
  - The LHD receives a court order or search warrant (see above).
  - The law enforcement official is involved in enforcing the communicable disease laws or investigating a terrorist incident using nuclear, biological, or chemical agents. The law imposes restrictions on the law enforcement officer's redisclosure of information received.
  - A federal or state law requires disclosure.

## Maybe

- **Serious and imminent threat:** If the LHD believes, in good faith, that disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, the LHD may disclose PHI to someone who may "reasonably be able to prevent or lessen the threat." Note that this disclosure is *not* contingent upon a law enforcement official's request. HIPAA allows this disclosure but it is not entirely clear whether state law expressly allows the disclosure.
  
- **Identify/apprehend:** If the LHD believes, in good faith, that disclosure is necessary for law enforcement authorities to identify or apprehend an individual because either (1) the individual admitted participation in a violent crime that may have caused serious physical harm to the victim or (2) it appears that the individual escaped from a correctional institution or from lawful custody. There are some limitations on this type of disclosure, but disclosure is *not* contingent upon a law enforcement official's request. HIPAA allows this disclosure but it is not entirely clear whether state law expressly allows the disclosure.
  
- **Lawful custody/correctional institutions:** The LHD may provide PHI about an inmate to a correctional institution or a law enforcement official who has lawful custody of the inmate if the institution or official represents that the information is necessary for (1) provision of care, (2) health and safety of the inmate, other inmates, officers, persons responsible for transporting inmates, and other employees, (3) law enforcement activities on the premises of the institution, or (4) administration of the correctional institution. HIPAA allows this disclosure but it is not entirely clear whether state law expressly allows the disclosure. At a minimum, a LHD may disclose PHI to health care providers in correctional institutions for treatment purposes.