
HIPAA & OPIOID RESPONSE

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HIPAA VOCABULARY

Protected health information

Individually identifiable information or records in any form (paper, electronic, spoken) that relates to any of the following:

- An individual's physical or mental health status or condition
- Provision of health care to an individual
- Payment for the provision of health care to an individual

Individual

A person who is the subject of PHI (also known as the patient or client)



DISCLOSURES ALLOWED BY HIPAA

HHS Guidance

- Disclosure to family members or others involved in an individual's care
- Disclosures to prevent or lessen a serious or imminent threat to health or safety
- Disclosures to an individual's personal representative

Other HIPAA Provisions

- Disclosure with written authorization
- Disclosure for public health purposes that are authorized by law
- Disclosures for treatment purposes

DISCLOSURES ADDRESSED IN HHS GUIDANCE

DISCLOSURES TO FAMILY OR OTHERS (45 CFR 164.510)

HIPAA Disclosure Rule

- A covered entity may disclose protected health information (PHI) to a family member or other person identified by the individual who is involved in the person's health care. The covered entity must do one of the following:
 - Obtain the individual's agreement,
 - Give the individual an opportunity to object, or
 - Reasonably infer from the circumstances that the individual does not object.
- A covered entity may disclose PHI to notify a family member or personal representative of an individual's location, general condition, or death.

HHS Guidance

Example – Provider may disclose:

- “A provider may use professional judgment to talk to the parents of someone incapacitated by an opioid overdose about the overdose and related medical information, but generally could not share medical information unrelated to the overdose without permission.”

Example – Provider may not disclose:

- “The provider is not permitted to share health information about patients who currently have the capacity to make their own health care decisions, and object to sharing the information (generally or with respect to specific people), *unless* there is a serious and imminent threat of harm to health ...”

SERIOUS OR IMMINENT THREAT (45 CFR 164.512(j))

HIPAA Disclosure Rule

- A covered entity may disclose PHI if it has a good faith belief that the disclosure is necessary to prevent or lessen a **serious and imminent threat** to the health or safety of a person or the public.
- Disclosure may be made to any person reasonably able to prevent or lessen threat.

HHS Guidance

- “A doctor whose patient has overdosed on opioids is presumed to have complied with HIPAA if the doctor informs family, friends, or caregivers of the opioid abuse after determining, based on the facts and circumstances, that the patient poses a serious and imminent threat to his or her health through continued opioid abuse upon discharge.”

PERSONAL REPRESENTATIVES (45 CFR 164.502(g))

HIPAA Rule

- A covered entity must treat a personal representative as the “individual” for purposes of the HIPAA Privacy Rule.
- In other words, when an individual has a personal representative, the personal representative is the person who:
 - Takes actions HIPAA assigns to the “individual,” such as signing authorization forms.
 - Exercises HIPAA’s individual rights, such as the right of access to the individual’s PHI.

HHS Guidance

- “Generally, HIPAA provides a patient’s personal representative the right to request and obtain any information about the patient that the patient could obtain, including a complete medical record.”
- “Personal representatives are persons who have health care decision making authority for the patient under state law.”

PERSONAL REPRESENTATIVES & NC LAW ON TREATMENT OF MINORS

PERSONAL REPRESENTATIVE

- A person who is legally authorized to make health care decisions for an individual who cannot make those decisions
- Examples (not an exhaustive list):
 - Parent of minor child (some exceptions)
 - Health care agent (person with health care power of attorney)
 - Legal guardian
 - Executor or next of kin of deceased person



TREATING MINORS (UNDER AGE 18)

Emergencies/Urgent Circumstances (GS 90-21.1)

- A health care provider may treat a minor without the prior consent of a parent, guardian, or person in loco parentis if any of the following apply:
 - Parent/guardian/PILP cannot be located or contacted with reasonable diligence during time treatment is needed
 - Minor's identity is unknown
 - Effort to obtain prior consent would delay treatment so long as to endanger minor's life or health
 - Effort to contact a parent/guardian/PILP would result in delay that would seriously worsen minor's physical condition
 - Parent has refused treatment and delay caused by attempt to obtain a court order would endanger the minor

Minor's Consent Law (GS 90-21.5)

- A minor may consent to medical health services for the prevention, diagnosis, or treatment of:
 - Sexually transmitted infections or other reportable communicable diseases
 - Pregnancy (but not abortion or medical sterilization)
 - Emotional disturbance (but not admission to a 24-hour facility, except in emergencies)
 - Abuse of controlled substances or alcohol (but not admission to a 24-hour facility, except in emergencies)

INFORMING PARENTS ABOUT MINOR'S TREATMENT

Emergencies/Urgent Circumstances (GS 90-21.1)

- Parent, guardian, or PILP **is** personal representative for care provided under this section and may receive information about the treatment.
- Example: Overdose reversal
 - Likely falls under this section rather than minor's consent, because minor is incapacitated and unable to give consent
 - Personal representative ordinarily would be informed (limited exceptions related to abuse/endangerment)

Minor's Consent (GS 90-21.5)

- Parent, guardian, or PILP **is not** personal representative for care provided under this section and may receive information about treatment only if:
 - Minor gives permission, or
 - Provider determines notification is essential to the life or health of the minor (G.S. 90-21.4(b)).
- Example: Minor treated in STD clinic requests information about services for opioid users

OTHER PERMISSIBLE DISCLOSURES NOT ADDRESSED IN HHS GUIDANCE

AUTHORIZATION (45 CFR 164.508)

HIPAA Disclosure Rule

A covered entity may disclose information with the individual's authorization, which must be in writing and include:

- Description of PHI to be used or disclosed
- Name of person requesting use or disclosure
- Name/identification of recipient of PHI
- Description of purpose of use or disclosure
- Expiration date or event
- Specific required statements regarding individual's right to revoke authorization, whether covered entity is permitted to condition treatment or benefits on individual's agreement to sign authorization, and notice that authorization does not protect against redisclosure by recipient
- Signature of individual (or personal representative)

Examples

- An authorization form may be used to obtain an individual's permission for disclosure of information to an overdose response program.
- An authorization form must be used if no other authority for a disclosure exists.

PUBLIC HEALTH PURPOSES (45 CFR 164.512(b))

HIPAA Disclosure Rule

- A covered entity may use or disclose PHI for specific public health purposes that are described in the HIPAA Privacy Rule, including disclosures to public health officials authorized by law to collect or receive the information for public health surveillance, or to prevent or control disease or injury.
- HIPAA does not require the individual's permission for these disclosures.

Examples

- Hospital emergency departments disclose information about opioid poisonings to NC DETECT for public health surveillance in accordance with GS 130A-480 and 10A NCAC 41A .0105.
- Physicians and others report communicable diseases and conditions to public health officials in accordance with GS 130A-135 through 130A-142 and 10A NCAC 41A .0101-.0102.

TREATMENT (45 CFR 164.506)

HIPAA Disclosure Rule

- Treatment means the provision, coordination, or management of health care related services by one or more health care providers. It includes consultation between providers and referrals.
- A covered entity may:
 - Use or disclose PHI for its own treatment purposes.
 - Disclose PHI to another health care provider for that provider's treatment activities.
- HIPAA does not require the individual's permission for these disclosures, but permission may be needed if:
 - Another law requires it, or
 - The provider chooses to obtain permission.

Examples

- A maternal health clinic may refer a client to a substance abuse program for pregnant women.
- A local health department may disclose PHI about a client who is a student to a school nurse if the purpose of the disclosure is to coordinate or manage the student's health care related services.

HHS RESOURCES ON HIPAA

Substance Use Disorders & Opioids

- Information Related to Mental and Behavioral Health, including Opioid Overdose: <https://www.hhs.gov/hipaa/for-professionals/special-topics/mental-health/index.html>
- How HIPAA Allows Doctors to Respond to the Opioid Crisis (provided in course materials): <https://www.hhs.gov/sites/default/files/hipaa-opioid-crisis.pdf>

General

- Fast Facts for Covered Entities: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/fast-facts/index.html>
- HIPAA for Professionals: <https://www.hhs.gov/hipaa/for-professionals/index.html>
- Complete HIPAA Regulation Text: <https://www.hhs.gov/sites/default/files/hipaa-simplification-201303.pdf>