REPORTING HUMAN TRAFFICKING VICTIMS TO DSS OR LAW ENFORCEMENT

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If a health care provider has cause to suspect that a patient is a victim of human trafficking, must the provider make a report to law enforcement? When should a provider report to the department of social services (DSS) instead? When should a provider report to both DSS and law enforcement?

HIPAA and confidentiality laws expressly allow reports to DSS or law enforcement in some circumstances. Indeed, health care providers are sometimes *required* to make a report to DSS, law enforcement, or both. However, because health care providers also have a legal duty of confidentiality to their patients, it is important to proceed with caution, disclosing information only as required or allowed by law. This document provides a very brief summary of the laws that address reports to DSS or law enforcement. In making a decision about reporting a particular case, refer directly to the relevant statutes and HIPAA provisions that are cited, and be aware that many of the terms used in these laws have specific legal definitions that must be taken into account.

Reports to DSS

A health care provider who suspects a patient has been trafficked must make a report to DSS if:

- The patient is a minor (under the age of 18). Any person who has cause to suspect a child is abused, neglected, or dependent must make a report to the county department of social services. G.S. 7B-301.[1] When DSS receives a report that a minor is a suspected trafficking victim, DSS will refer the case to law enforcement. G.S. 7B-307.

- The patient is a disabled adult (age 18 or older or a lawfully emancipated minor, and disabled as defined in state law) who is need of protective services.[2] Any person who has reasonable cause to believe that a disabled adult is in need of protective services must make a report to the county department of social services. G.S. 108A-102.[3]

[1] The definitions of "abused juvenile," "neglected juvenile," and "dependent juvenile" are in G.S. 7B-101. While not every case of harm to a child is reportable under these definitions, it is difficult to imagine a situation in which a trafficked child would not fall under one or more of the definitions. A health care provider who, acting in good faith, suspects a child or adolescent under age 18 has been trafficked should make a report. When a report is required under G.S. 7B-301, disclosure of the information necessary to make the report does not violate HIPAA. 45 CFR 164.512(b)(ii).

[2] The term disabled adult is defined as a person who is physically or mentally incapacitated due to certain physical or mental conditions, developmental disabilities, or substance abuse. A disabled adult is in need of protective services if he or she is unable to perform or obtain essential services due to his or her physical or mental incapacity. G.S. 108-101.

[3] A report that is required under this section is subject to a provision of HIPAA that both allows the disclosure and requires the provider to notify the individual of the report, unless there are particular circumstances in which notification would create a risk of harm to the individual. It is important to consult the HIPAA regulation to

Reports to law enforcement

Should a health care provider who is required to report to DSS under one of the above provisions also report the case directly to law enforcement? If the provider is not required to report to DSS, should the provider report to law enforcement instead?

As noted previously, health care providers may not disclose information to law enforcement unless the disclosure is allowed by HIPAA and any other confidentiality laws that apply to the provider's services. Most of the confidentiality laws that apply to health department services[4] allow providers to disclose protected health information (PHI) to law enforcement in several limited circumstances, some of which may apply to a patient who has been trafficked. Whether a particular case requires or allows a direct report to law enforcement may vary, so decisions should be made on a case-by-case basis.

Reports to law enforcement are ***required*** when a patient has certain injuries or illnesses

Health care providers are required to make a report to law enforcement when a patient has particular injuries or illnesses. G.S. 90-21.20. This law applies to all patients, not just those suspected of being trafficked.

A health care provider is required to make a report to local law enforcement when the provider treats a patient *of any age* who has suffered any of the following (G.S. 90-21.20(b)):

- a gunshot wound or other injury caused by the discharge of a firearm
- an illness caused by poisoning
- a wound or injury caused by a knife or other sharp instrument if it appears a criminal act was involved
- grave bodily harm or grave illness that appears to have been caused by a criminal act of violence

A health care provider is also required to make a report to law enforcement when a patient *under the age of 18* has a serious physical injury or recurrent illness caused by non-accidental trauma. G.S. 90-21.20(c). A report to law enforcement under this provision must be made in addition to any report that is made to DSS.

When a report is required under either provision of G.S. 90-21.20, disclosure of the information necessary to make the report does not violate HIPAA. 45 CFR 164.512(f)(1)(i).

determine whether an exception to the individual notification requirement applies in a given case. 45 CFR 164.512(c).

[4] A health department that provides behavioral health and/or substance abuse services is subject to additional laws and should seek further information and advice before making a disclosure to law enforcement.

Reports to law enforcement are ***required*** when a child under age 16 has disappeared and is in danger (Caylee's law)

Caylee's law requires any person "who reasonably suspects the disappearance of a child and who reasonably suspects the child may be in danger" to report those suspicions to law enforcement. G.S. 14-318.5. For purposes of this law, child is defined as a person under the age of 16. "Disappearance of a child" means that the parent or other person responsible for supervising the child does not know the child's location and has not had contact with the child for a 24-hour period. A report to law enforcement under this provision must be made in addition to any report that is made to DSS. When a report is required under this law, disclosure of the information necessary to make the report does not violate HIPAA. 45 CFR 164.512(f)(1)(i).

Disclosing information to law enforcement in other circumstances

In the absence of a circumstance that requires a report to law enforcement, a disclosure of information about a trafficking victim to law enforcement may still be allowed, depending on the circumstances.

Disclosures made with the individual's written authorization

A health care provider may disclose an individual's protected health information to law enforcement if the individual gives written authorization for the disclosure. Under HIPAA, written authorization must be on a form containing certain elements. Health care providers should have the appropriate form. 45 CFR 164.508.

Disclosures made in response to an officer's request for information about a crime victim

Trafficked individuals are, by definition, crime victims. Information about a patient who is a crime victim may be provided to a law enforcement officer who requests the information, if the patient agrees to the disclosure. If the patient cannot agree to the disclosure due to incapacity or other emergency circumstance, the information may be provided only if all of the following three conditions are met:

1) the law enforcement officer represents that the information is needed to determine if a violation of law by someone other than the victim has occurred, and is not intended to be used against the victim;
2) the law enforcement officer represents that immediate law enforcement activity that depends on the disclosure will be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
3) the provider, in the exercise of professional judgment, determines that the disclosure is in the individual's best interest.

45 CFR 164.512(f)(3).

Disclosures made to avert a serious and imminent threat

A HIPAA provision allows certain disclosures to be made when the disclosure is necessary to avert a serious and imminent threat to health or safety. 45 CFR 164.512(j). The provision applies to any patient, potentially including trafficking victims.

1. Disclosures that are necessary to prevent or lessen a serious and imminent threat to health or safety of the person or the public

A health care provider may disclose protected health information if the provider 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. The disclosure must be consistent with any applicable laws or standards of ethical conduct that apply to the provider. A disclosure under this provision may be made to any person or persons reasonably able to prevent or lessen the threat, which could include law enforcement. 45 CFR 164.512(j)(1)(i).

2. Disclosures that are necessary for law enforcement to identify or apprehend an individual involved in a violent crime causing serious physical harm

A health care provider may make a disclosure to law enforcement when an individual admits participation in a violent crime that the provider reasonably believes may have caused serious physical harm to the victim. 45 CFR 164.512(j)(1)(ii). However, information may <u>not</u> be disclosed if the individual made the statement in the course of treatment for the individual's propensity to commit the crime, or if the statement was made as part of a request for such treatment. In addition, there are limitations to the specific information that may be disclosed. 45 CFR 164.512(j)(2). A provider should consult the health department's attorney before making a disclosure under this section.