

# State of California California Office of Health Information Integrity



## Release of Protected Health Information (PHI) during State of Emergency

February 14, 2017

The California Office of Health Information Integrity (CalOHII) is providing the following information to ensure Health Information Portability and Accountability Act (HIPAA) covered entities and their business associates are aware of the ways in which patient information may be shared under the HIPAA Privacy Rule (Privacy Rule) in an emergency situation, and to serve as a reminder that the protections of the Privacy Rule are not set aside during an emergency.

### During a "medical emergency".

When needed to assist medical emergency personnel - information may be disclosed about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention. See 42 CFR §§ 2.1(b)(2)(A), 2.2(b)(2)(A), and 2.51; CA Health and Safety Code § 11845.5(c)(2).

Under the Privacy Rule, covered entities may disclose, without a patient's authorization, protected health information about the patient as necessary to treat the patient or to treat a different patient. Treatment includes the coordination or management of health care and related services by one or more health care providers and others, consultation between providers, and the referral of patients for treatment. See 45 CFR §§ 164.502(a)(1)(ii), 164.506(c), and the definition of "treatment" at 164.501.

### During an "emergency".

If a state entity that is a covered health care provider is providing emergency health care in response to a medical emergency that is not on its own premises, then disclosure of health information is permitted to a law enforcement official if doing so appears necessary to alert the law enforcement official to:

- The commission and nature of a crime,
- The location of such crime or of the victim(s) of such crime, and
- The identity, description, and location of the perpetrator of such crime.

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If the state entity believes that the medical emergency is the result of abuse, neglect, or domestic violence of the patient in need of emergency health care, see [SHIPM](https://www.chhs.ca.gov/ohii/shipm) (<https://www.chhs.ca.gov/ohii/shipm>) Chapter 2, Victims of Abuse, Neglect or Domestic Violence. See 45 CFR §§ 164.512(f)(6)(i), and 164.512(f)(6)(ii).

### **Public Health.**

The Privacy Rule recognizes the legitimate need for public health authorities and others responsible for ensuring public health and safety to have access to protected health information that is necessary to carry out their public health mission. Therefore, the Privacy Rule permits covered entities to disclose needed protected health information without individual authorization:

- To a public health authority, such as the Centers for Disease Control and Prevention (CDC) or a state or local health department, that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability (See 45 CFR §§ 164.501 and 164.512(b)(1)(i)),
- At the direction of a public health authority, to a foreign government agency that is acting in collaboration with the public health authority (See 45 CFR § 164.512(b)(1)(i)), and
- To persons at risk of contracting or spreading a disease or condition if other law, such as state law, authorizes the covered entity to notify such persons as necessary to prevent or control the spread of the disease or otherwise to carry out public health interventions or investigations (See 45 CFR § 164.512(b)(1)(iv)).

### **Disclosures to Family, Friends, and Others Involved in an Individual's Care and for Notification.**

A covered entity may share protected health information with a patient's family members, relatives, friends, or other persons identified by the patient as involved in the patient's care. A covered entity also may share information about a patient as necessary to identify, locate, and notify family members, guardians, or anyone else responsible for the patient's care, of the patient's location, general condition, or death. This may include, where necessary to notify family members and others, the police, the press, or the public at large. See 45 CFR § 164.510(b).

- The covered entity should get verbal permission from individuals or otherwise be able to reasonably infer that the patient does not object, when possible; if the individual is incapacitated or not available, covered entities may share information for these purposes if, in their professional judgment, doing so is in the patient's best interest.
- In addition, a covered entity may share protected health information with disaster relief organizations that, like the American Red Cross, are authorized by law or by their

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charters to assist in disaster relief efforts, for the purpose of coordinating the notification of family members or other persons involved in the patient's care, of the patient's location, general condition, or death. It is unnecessary to obtain a patient's permission to share the information in this situation if doing so would interfere with the organization's ability to respond to the emergency.

**Imminent Danger.**

Health care providers may share patient information with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public – consistent with applicable law (such as state statutes, regulations, or case law) and the provider's standards of ethical conduct. See 45 CFR § 164.512(j).

**Disclosures to the Media or Others Not Involved in the Care of the Patient/Notification.**

Upon request for information about a particular patient by name, a hospital or other health care facility may release limited facility directory information to acknowledge an individual is a patient at the facility and provide basic information about the patient's condition in general terms (e.g., critical or stable, deceased, or treated and released) if the patient has not objected to or restricted the release of such information or, if the patient is incapacitated, if the disclosure is believed to be in the best interest of the patient and is consistent with any prior expressed preferences of the patient. See 45 CFR § 164.510(a). In general, except in the limited circumstances described elsewhere in this notice, affirmative reporting to the media or the public at large about an identifiable patient, or the disclosure to the public or media of specific information about treatment of an identifiable patient, such as specific tests, test results or details of a patient's illness, may not be done without the patient's written authorization (or the written authorization of a personal representative who is a person legally authorized to make health care decisions for the patient). See 45 CFR § 164.508 for the requirements for a HIPAA authorization.

**Minimum Necessary.**

For most disclosures, a covered entity must make reasonable efforts to limit the information disclosed to that which is the "minimum necessary" to accomplish the purpose. (Minimum necessary requirements do not apply to disclosures to health care providers for treatment purposes.) Covered entities may rely on representations from a public health authority or other public official that the requested information is the minimum necessary for the purpose. Internally, covered entities should continue to apply their role-based access policies to limit access to protected health information to only those workforce members who need it to carry out their duties. See 45 CFR §§ 164.502(b), 164.514(d).

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### **Business Associates.**

A business associate of a covered entity (including a business associate that is a subcontractor) may make disclosures permitted by the Privacy Rule, such as to a public health authority, on behalf of a covered entity or another business associate to the extent authorized by its business associate agreement.

### **Safeguarding Patient Information in an Emergency Situation.**

Covered entities must continue to implement reasonable safeguards to protect patient information against intentional or unintentional impermissible uses and disclosures. This includes safeguarding electronic protected health information by covered entities and their business associates by applying the administrative, physical, and technical safeguards of the HIPAA Security Rule.

### **Other Information:**

#### **Limited Waiver.**

The Privacy Rule is not suspended during a public health or other emergency; however, the federal Secretary of the Health and Human Services (HHS) may waive certain provisions of the Privacy Rule under the Project Bioshield Act of 2004 (PL 108-276) and § 1135(b)(7) of the Social Security Act. If the President declares an emergency or disaster and the Secretary declares a public health emergency, the Secretary may waive sanctions and penalties against a covered hospital that does not comply with the following provisions of the Privacy Rule:

- The requirements to obtain a patient's agreement to speak with family members or friends involved in the patient's care. See 45 CFR § 164.510(b).
- The requirement to honor a request to opt out of the facility directory. See 45 CFR § 164.510(a).
- The requirement to distribute a notice of privacy practices. See 45 CFR § 164.520.
- The patient's right to request privacy restrictions. See 45 CFR § 164.522(a).
- The patient's right to request confidential communications. See 45 CFR § 164.522(b).

If the HHS Secretary issues such a waiver, it only applies: (1) in the emergency area and for the emergency period identified in the public health emergency declaration; (2) to hospitals that have instituted a disaster protocol; and (3) for up to 72 hours from the time the hospital implements its disaster protocol. When the Presidential or Secretarial declaration terminates, a hospital must then comply with all the requirements of the Privacy Rule for any patient still under its care, even if 72 hours has not elapsed since implementation of its disaster protocol.

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## HIPAA Applies Only to Covered Entities and Business Associates.

The Privacy Rule applies to disclosures made by employees, volunteers, and other members of a covered entity's or business associate's workforce. Covered entities are health plans, health care clearinghouses, and those health care providers that conduct one or more covered health care transactions electronically, such as transmitting health care claims to a health plan.

Business associates generally are persons or entities (other than members of the workforce of a covered entity) that perform functions or activities on behalf of, or provide certain services to, a covered entity that involve creating, receiving, maintaining, or transmitting protected health information. Business associates also include subcontractors that create, receive, maintain, or transmit protected health information on behalf of another business associate. The Privacy Rule does not apply to disclosures made by entities or other persons who are not covered entities or business associates. There may be other state or federal rules that apply. Always consult with your legal counsel.

### Other Resources:

HHS provides additional information on their website for the following topics:

- [HIPAA and Public Health](http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/publichealth/index.html)  
(<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/publichealth/index.html>)
- [HIPAA and Emergency Preparedness and Response](http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/emergency/index.html)  
(<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/emergency/index.html>)
- [General information on understanding the HIPAA Privacy Rule](http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html)  
(<http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>)

Additionally, the Office of Civil Rights published a bulletin (2014) on uses and disclosure of health information during emergency situations (the basis for this memo). The bulletin can be found on the [OCR website](https://www.hhs.gov/sites/default/files/emergencysituations.pdf) (<https://www.hhs.gov/sites/default/files/emergencysituations.pdf>).

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