



Legal Tips

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HIPAA Exceptions for Law Enforcement Inquiries

Pregnancy centers know that even if they receive an official-looking subpoena requesting a client/patient's records, they should contact legal counsel before releasing any records unless it includes an Authorization to Release Records signed by the client/patient. A signed authorization is the best way to protect your center and clients/patients. But what about when law enforcement comes knocking at your door looking for information on a client/patient who is the subject of an investigation?

Scenario 1: A police officer visits the center one day, flashes his badge, and requests information on a client/patient. He says she is a victim of a crime, and he is investigating and needs the records. What do you do?

- a. Escort him to a back office and hand him the entire patient file?
- b. Point to the exit and tell him he needs a court-ordered warrant?
- c. Kindly advise that you want to, of course, cooperate with law enforcement. Still, because of HIPAA, you need either 1) an Authorization to Release Records signed by the client/patient or 2) his request in writing on official letterhead or email, and it needs to detail what he needs and identify the exception to HIPAA it falls under.

The answer is C. This response usually does not make law enforcement very happy, but you must first protect your client/patients' health information. If the law enforcement officer balks, then B is the answer.

The general policy is that the center will not release any protected health information (PHI) whatsoever without a signed Authorization to Release Records by the client/patient. (Please note you can disclose medical records to another medical provider for the patient's treatment purposes without necessarily obtaining a signed authorization, but having a signed Authorization removes any questions.) PHI is health information created or received by a health care provider and relates to an individual's past, present, or future physical or mental health or condition and the provision of health care to an individual. It includes the demographic information gathered during the health visit that can be used to identify the individual.

HIPAA provides some [exceptions](#) to this general rule for law enforcement requests, but they apply to only specific circumstances. Even if a HIPAA exception allows disclosure, you generally may not disclose more than is minimally necessary to accomplish the purpose of the disclosure. It is strongly recommended that you confer with legal counsel before responding to any such request.

In the scenario above, where law enforcement is looking for information on a victim, you can only comply with the request if the victim agrees through a signed Authorization. If, because of an emergency or the person's incapacity, the individual cannot agree, the center may disclose

the PHI if law enforcement officials represent that the PHI is not intended to be used against the victim, it is needed to determine whether another person broke the law, the investigation would be materially and adversely affected by waiting until the victim could agree. The covered entity believes in its professional judgment that doing so is in the best interests of the individual whose information is requested (45 CFR 164.512(f)(3)).

Below are some additional scenarios that have occurred at pregnancy centers.

Scenario 2: Law enforcement comes by looking for a missing person, and they believe she was a client/patient at your center. Once you have their request in writing and they confirm which HIPAA exception allows you to provide the client/patient's information to them, you can provide some information limited to her identity. Still, you would not release her full medical record with the pregnancy testing results, ultrasound report, or labs. You can give her name, address, contact information, etc. but no medical reports.

Applicable HIPAA Exception: When law enforcement is trying to identify or locate a suspect, fugitive, material witness, or missing person; however, the covered entity must limit disclosures of PHI to name and address, date, and place of birth, social security number, ABO blood type and rh factor, type of injury, date and time of treatment, date and time of death, and a description of distinguishing physical characteristics. Other information related to the individual's DNA, dental records, body fluid or tissue typing, samples, or analysis cannot be disclosed under this provision. It may be disclosed in response to a court order, warrant, or written administrative request (45 CFR 164.512(f)(2)).

Scenario 3: You perform a scan on a woman whose boyfriend is pressuring her to have an abortion. She does not want the abortion, especially after seeing the baby on the ultrasound scan. That night she tells her boyfriend of her decision, and he goes into a rage and shoots her, and she and the baby die. During the investigation, they discovered she was at your center the day she was killed. The investigating officer contacted the center to obtain her record and get information. After he provides his request in official writing, you may respond with the minimal necessary as she was a victim of a crime and unable to agree under the circumstances, and they are trying to identify a suspect.

Applicable HIPAA Exceptions: To respond to a request for PHI about a victim of a crime, and the victim agrees. If, because of an emergency or the person's incapacity, the individual cannot agree, the covered entity may disclose the PHI if law enforcement officials represent that the PHI is not intended to be used against the victim, is needed to determine whether another person broke the law, the investigation would be materially and adversely affected by waiting until the victim could agree, and the covered entity believes in its professional judgment that doing so is in the best interests of the individual whose information is requested (45 CFR 164.512(f)(3)). To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness, or missing person, the covered entity must limit disclosures (45 CFR 164.512(f)(2)).

Scenario 4: A pregnant minor comes to the center, and you discover her partner is 25 years old. Under your state law, you must report this to child protective services. They requested a copy of the minor's entire record during their investigation.

Applicable HIPAA Exception: Child abuse or neglect may be reported to any law enforcement official authorized by law to receive such reports, and the agreement of the individual is not required (45 CFR 164.512(b)(1)(ii)). If the investigator needs the entire record for his investigation, it can be provided. When reasonable to do so, the covered entity may rely upon the representations of the law enforcement official (as a public officer) as to what information is the minimum necessary for their lawful purpose (45 CFR 164.514(d)(3)(iii)(A))

Scenario 5: A couple comes in for services. While there, the boyfriend is caught snooping around in the administrative offices. Later it is discovered that the wallet of one of your staff members is missing and they suspect the boyfriend took it. May she call the police, report the crime, and identify the boyfriend? Yes, but limit the information to his contact information and do not include detailed reasons they were there, or the information gathered during the visit.

Applicable HIPAA Exception: Limited information may be reported to law enforcement about a suspected perpetrator of a crime when the report is made by the victim who is a member of the covered entity's workforce (45 CFR 164.502(j)(2)), and to report PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the covered entity's premises (45 CFR 164.512(f)(5)).

Scenario 6: An 18-year woman comes in with a man for an ultrasound. The man seems very aggressive and pushy. When you question her alone about it, she is very evasive. You suspect she may be a victim of sex trafficking and offer to help her. She declines. Meanwhile, he is making a scene in the waiting room as he wants to come back with her. Can you call this to the authorities without her permission? Probably not, unless state law permits, but you should teach her that there is help. Normally sex trafficking and domestic abuse of adult client/patients cannot be reported unless state law provides otherwise.

Applicable HIPAA exception: Adult abuse, neglect, or domestic violence may be reported to a law enforcement official authorized by law to receive such reports (45 CFR 164.512(c)):

- If the individual agrees,
- If the report is required by law, or
- If expressly authorized by law and based on the exercise of professional judgment, the report is necessary to prevent serious harm to the individual or others or in certain other emergencies (see 45 CFR 164.512(c)(1)(iii)(B)).
- Notice to the individual of the report may be required (see 45 CFR 164.512(c)(2)).

Requests Must be in Writing: If law enforcement requests PHI for a criminal investigation, the request must be in writing with a citation to the requestor's source of statutory authority under state and/or federal law. An official email or letterhead is acceptable. An oral request is not enough unless state law says otherwise. Always double-check the officer's name with the agency's directory to confirm they are who they say they are.

Often law enforcement officials do not understand HIPAA. They are not subject to HIPAA, and it's their job to get the information from you, not to comply with HIPAA, so they may unintentionally tell you things that are not accurate. You must be diligent in verifying the request's legitimacy and that it truly falls under a HIPAA exception. You must consult with an attorney before complying with any request. If you do not have local counsel, please contact NIFLA for our assistance.

In summary, when law enforcement seeks information on clients/patients, you should:

1. Have an attitude of cooperation but be guarded by your duty to protect PHI.
2. Ask for an Authorization to Release Records signed by the client/patient.
3. Absent a signed authorization, ask for the request in writing detailing what information they are requesting and identifying the HIPAA exception which applies.
4. Consult with legal counsel before releasing any information.

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