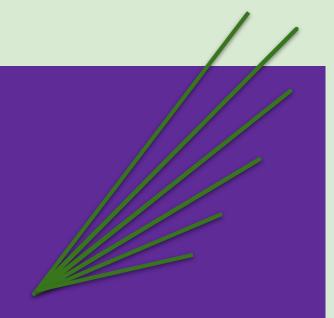
The (Largely) Unknown HIPAA Provision Used to Expand Care Coordination and Speed Access to Social Services

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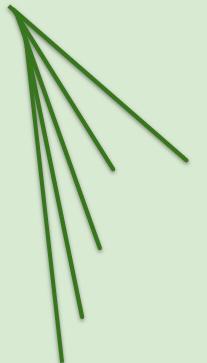


A little about my work...

- Attorney for 29 years, focused on health data sharing for last 6
- Provide training on HIPAA and 42 CFR Part 2
- Present at NIHB, CSTE, APHA and other national conferences on health data sharing legal topics
- Current work is helping Tribal Epidemiology Centers/Tribes and States "get to 'yes'" on sharing health data for public health
- Prior to consulting work, was a Deputy Director at the Network for Public Health Law and a HIPAA Privacy Officer

Not Legal Advice

Nothing offered in this presentation is legal advice, should be treated as legal advice, should be relied upon as legal advice, or even smells like legal advice. When the history of legal advice is written, what you hear today will not appear, as it is not legal advice. When your mother asks you tonight what you learned at work today, the proper answer will be "not legal advice, Mom!", followed by whatever recounting of the following information you wish to give, which, while instructive and hopefully relevant and helpful to your work, is, nonetheless, not legal advice.

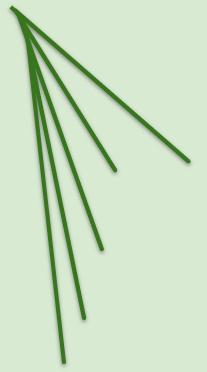


POLL

What do you fear?

- 1. A bear with cubs
- 2. The November presidential election
- 3. Your teenage daughter's mood swings
- 4. Violating HIPAA

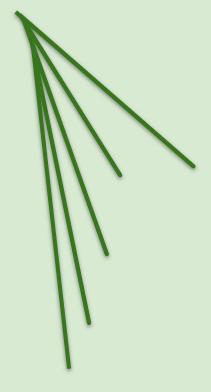
Select all that apply.



POLL

Which one category describes your job best?

- 1. Health care provider
- 2. Community Health Worker
- 3. Management
- 4. Compliance



The Problem:

Not enough resources to coordinate patient care, reach patients for post-visit follow-up, or to provide support to get them to follow-up care.

The Question:

Does HIPAA allow a HIPAA covered entity to share Protected Health Information with community-based organizations to address social service needs and/or support clinical follow-up?

Health privacy laws are designed to balance



the sharing of health information

with

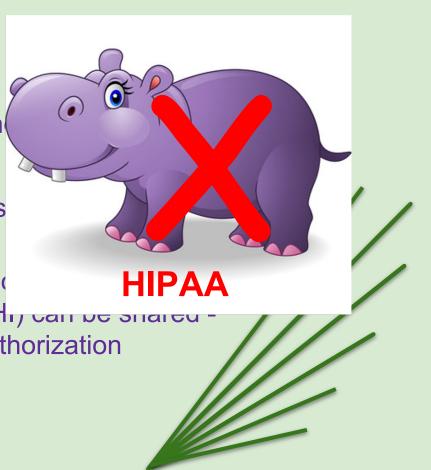
of the person whose health information it is

HIPAA Big Picture

Health Information Portability an

Federal law with 2 primary goals

HIPAA Privacy Rule regulates he HIPAA protected health information (PH) can be snared with and without our express authorization



You are a HIPAA "Covered Entity" if you are a:

- Health care provider
- Health (insurance) plan*
- Health care clearinghouse (ex., health information exchange)

Or

Business Associate of a covered entity providing a service that handles the covered entity's patients' Protected Health Information

Or

Subcontractor of a Business Associate and you also handle the covered entity's patients' PHI

What is Protected Health Information?

"Individually identifiable health information" is information, including demographic data, **that relates to**:

- the individual's past, present or future physical or mental health or condition,
- the provision of health care to the individual, or
- the past, present, or future payment for the provision of health care to the individual,

and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.

HIPAA IDENTIFIERS:*

Name

Address

Birthdate, admission date, discharge date, date of death, and exact age if over 89

Telephone numbers

Fax number

Email address

Social Security Number

Medical record number

Health plan beneficiary number

Account number

Certificate or license number

Vehicle identifiers

Device identifiers Web URL

Internet Protocol (IP) Address

Finger or voice print

Photographic image

Any other characteristic that could uniquely identify the individual



HIPAA Privacy Rule

General requirement: Patient's consent needed before his/her/their PHI can be used or shared by HIPAA covered entities

Exceptions:

- For treatment, payment, or operations
- For public health activities

Treatment means

- consultation between health care providers relating to a patient,
- the **referral of a patient** for health care from one health care provider to another, or
- the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party.







See? OCR really means it!

Proposed amendment to HIPAA to reinforce:

A covered entity may disclose an individual's PHI to

- a social services agency
- community-based organization
- home and community-based services provider, or
- similar third party

that provides health or human services to specific individuals for individual-level care coordination and case management activities.

Examples of care management and coordination

A provider calls a social service agency to locate housing for a patient, who is currently homeless and has meds he needs to keep refrigerated.

To help a diabetic patient maintain healthy blood sugar levels, a provider contacts the local food bank

A provider asks a community health worker to locate a pregnant patient who cannot be contacted by phone and needs treatment for recently diagnosed case of syphilis.

How much PHI can be shared with the third party?

"Minimum Necessary" standard - limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request

WHAT PHI can be shared?

- HIPAA doesn't limit the type of PHI to be shared, except for psychotherapy notes
- State law or other federal law may, though, like "Part 2"



Applies to:

An individual or entity that holds itself out as providing SUD treatment, diagnosis or referral (also applies to an identified unit in a general medical care facility that provides those services)

or

Medical personnel or staff in a general medical facility whose primary function is the provision of such services and who are identified as SUD providers;

AND

that is federally "assisted", e.g., receive federal funds or were granted tax-exempt, non-profit status by the IRS.

What information is covered by Part 2?

Information, whether recorded or not, that:

- Would identify a patient as an SUD patient, either directly or indirectly
- Was created, received, or acquired by a Part 2 Program for the purpose of treating alcohol or drug misuse, making a diagnosis for treatment, or making a referral for that treatment.

Note: generally, the Part 2 protections travel with the information wherever it goes.

Unlike HIPAA, under Part 2

consent <u>is</u> needed to share PHI for treatment, payment and health care operations







Documentation of disclosures

With some exceptions, for each disclosure you need:

- (i) The date of the disclosure;
- (ii) The name of the entity or person who received the protected health information and, if known, the address of such entity or person;
- (iii) A brief description of the protected health information disclosed; and
- (iv) A brief statement of the purpose of the disclosure

IHS Email on TPO and sample logsheet, sent 5/28/2024

Dear IHS Area Office and HQ Colleagues,

We're reaching out to clarify a patient data disclosure policy that can improve case management for your patients and encourage treatment collaboration with key partners. The main takeaway is that the disclosure of certain patient data is allowable under the Treatment, Payment, and Operations rule.

As defined by the Privacy Rule at 45 CFR 164.501, "treatment" generally means:

The provision, coordination, or management of health care and related services among health care providers or by a health care provider with a third party; Consultation between health care providers regarding a patient; or The referral of a patient from one healthcare provider to another.

This policy, which was highly useful to IHS providers during COVID-19, can also be applied to our IHS *syphilis response* or other priority health conditions. Best of all, it allows the sharing of *minimum essential* personal health information (PHI) to link patients to care.

IHS clinical staff *can* share information with a partner health program (such as community health workers, CHRs, peer navigators, social service organizations, etc.). For example, the IHS Senior Official for Privacy, Heather McClane, says, "A provider can share minimum necessary patient demographics for successful follow-ups such as names and phone numbers. CHRs could then reach out to the patient to remind them of an appointment and provide transport or other support as appropriate."

Like the COVID response, the data disclosures must be documented and regularly shared with the local Health Information Management (HIM) officer. I've attached an example of a log sheet IHS providers used during the COVID response. This log sheet is acceptable for our current syphilis response.

IHS-505 (3/92)

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Public Health Service Indian Health Service

DISCLOSURE ACCOUNTING RECORD

DATE RECEIVED	RELEASED TO (Name and Address)	PURPOSE/USE (Number(s) Below)	INFORMATION FURNISHED	DATE RELEASED
Chart#	Person information disclosed to	Tx/Tracing	Demographic Information for patient	Date
505606	Tribal PHN	Treatment	Susie Sample DOB 5/5/1975	5/10/24

Q & A

