

## HIPAA Q & A

1) **Question** - What is HIPAA meant to do?

**Answer** - In part, HIPAA is meant to protect all of us from having personal information about our health shared without our permission. The privacy requirements of HIPAA went into effect on April 14<sup>th</sup>, 2003.

2) **Question** - Does HIPAA apply to everyone?

**Answer** - No. The privacy provisions apply only to covered entities.

3) **Question** - What are covered entities?

**Answer** - Health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction that is subject to federal HIPAA requirement, as defined and used in 45 CFR, parts 160 and 164.

Generally speaking, covered entities will include doctors' offices, hospitals, pharmacies, laboratories, public health organizations, health clinics in schools, research labs, clinical trials, imaging centers, complementary medicine practitioners, and organizations such as the Association for Retarded Citizens, American Cancer Society, etc. Covered entities also include mental health and alcohol and drug treatment providers.

4) **Question:** Is DHS a covered entity?

**Answer** - Yes, including central office and all field offices.

5) **Question** - What if I work for AAA?

**Answer** - The AAAs are business partners of DHS and so operate to the standard of covered entities as well.

6) **Question** - Does HIPAA apply to all information about clients?

**Answer** - Although HIPAA applies to individually identifiable PHI, DHS privacy policies address the need to protect all client information.

7) **Question** - What is PHI?

**Answer** - PHI is protected health information. PHI is any individually identifiable health information, whether oral or recorded in any form or medium that is created or received by a covered entity and relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present or future payment for the provision of healthcare to an individual.

8) **Question** - What are examples of PHI?

**Answer** - PHI includes any data transmitted or maintained in any other form or medium by covered entities, including paper records, fax documents, and all oral communications, or any other form, i.e., screen prints of eligibility information, printed e-mails that have identified individual's health information, claim or billing information, hard copy birth or death certificates.

Additional records we keep on clients may not be PHI but are also protected by our policies.

9) **Question** - Does this mean that I won't be able to get health information as part of an APS investigation?

**Answer** - No. Non-covered entities can continue to do business as usual because they are not included in HIPAA.

The privacy standard is that that client should authorize release of information about a client. HIPAA makes specific exceptions in 164.512. Uses and disclosures for which an authorization or opportunity to agree or object is not required, and this includes protective service situations.

Covered entities can disclose PHI about a person whom they reasonably believe to be a victim of abuse, neglect, or domestic violence to a protective services agency in three ways: legal requirement; permission; or statutory or regulatory authorization.

10) **Question** - What is the legal requirement under which a covered entity can release PHI in an APS investigation?

**Answer** - HIPAA allows a covered entity to reveal this information to the extent that the disclosure is required by law, and the disclosure complies with and is limited to the relevant requirements of such law.

11) **Question** - What is the permissive way a covered entity can share PHI with APS staff?

**Answer** - The covered entity can disclose the information if the individual agrees to the disclosure. It is up to the covered entity to use a HIPAA - approved format. DHS and its business partners should use the DHS 2099.

12) **Question** - What is the statutory or regulatory authorization that a covered entity can release PHI?

**Answer** - To the extent that the disclosure is expressly authorized by statute or regulation, a covered entity can disclose PHI if:

1) in the exercise of its professional judgment it believes the disclosure is necessary to prevent serious harm to the individual or other potential victims

OR

2) the victim is incapacitated, the information won't be used against the victim, and waiting for capacity would adversely affect an immediate enforcement activity that depends on the information.

OAR 411-020-0020(2) expressly authorizes reporting, as follows: "Reporting of instances involving abuse and/or neglect of adults is highly encouraged for non-mandatory reporters."

13) **Question** - Does HIPAA change how much information I should ask for?

**Answer** - It clarifies what is already best practice: you should only ask for the minimum amount of PHI that is necessary to accomplish your investigation and intervention. Rather than going on a broad fishing expedition, confine your inquiries to the PHI that is directly relevant to proving or disproving the allegation(s) at hand.

14) **Question** - How can we reassure a covered entity that it's appropriate to release PHI to adult protective services?

**Answer** - We suggest you use the Authorization to Review form, which summarizes the covered entity's ability to disclose PHI.

15) **Question** - If a covered entity makes a disclosure under these exceptions, does it have to notify the individual?

**Answer** - Yes, except under two circumstances:

- 1) If the notification would place the individual at risk of serious harm  
OR
- 2) If they would be notifying the individual's personal representative who is believed to be responsible for the abuse, neglect or harm and that would not be in the best interests of the individual.

16) **Question** - Can the APS worker perform this notification function instead?

**Answer** - Yes. Because APS is often in the best position to assess potential risk and provide immediate protection if needed, we suggest that you be the one to notify the victim that a referral has been made. The attached sheet includes a clause assuring the covered entity that APS will complete this function and will become a part of their record.

17) **Question** - If I have reason to believe a crime has occurred, can I share this PHI with law enforcement?

**Answer** - Yes. A covered entity may disclose PHI for a law enforcement purpose to a law enforcement officer if certain conditions are met:

- 1) The disclosure is required by law or is in compliance with (and limited by the relevant requirements of) a court ordered warrant, subpoena or summons; a grand jury subpoena or summons; a grand jury subpoena or summons; a civil or investigative demand or similar process under law, and the information sought is relevant and material, the request is specific and limited in scope, and de-identified information could not reasonably be used.

- 2) Except as required by law, only specific limited information can be disclosed for identification and location of a suspect, fugitive, material witness or missing person.
- 3) Except as required by law, you may only release PHI of a person who is or is suspected to be a victim of a crime (a) if the person agrees to the disclosure, or (b) if permission cannot be obtained due to incapacity or other emergency circumstance, as long as the information is not to be used against the victim, immediate law enforcement activity depends on the disclosure, and the disclosure is in the best interests of the victim.
- 4) PHI about a person who has died may be disclosed to a law enforcement official if you have a suspicion that the death may have resulted from criminal conduct.
- 5) If you believe in good faith that the PHI constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

18) **Question** - Does HIPAA change how APS reports are written?

**Answer** - Not specifically, but as a matter of preferred practice, you should do the following:

- 1) Make every reasonable effort to de-identify all protected health information in your report. This may be more than not using names or gender-specific pronouns, depending on the circumstances.
- 2) Only include the necessary amount of PHI in your reports. There is no reason to include all of the victim's diagnoses or to quote extensively from medical records where the information is not directly relevant to proving or disproving the allegation. When there are relevant factors, again try to include the minimum necessary relevant information (e.g., "due to a medical condition, AV is unable to recall the incident" rather than "AV is diagnosed with multi-infarct dementia.")

19) **Question** - Does HIPAA impact report distribution?

**Answer** - Not in general. Public, non-confidential copies will, at this point, be distributed as usual, and do not include any additional documentation. Confidential material can still be subpoenaed. Some issues may arise with people

wishing to see their own community reports. Please consult the following resources on a case-by-case basis as this arises.

20) **Question** – Do I have to keep a record of any disclosures I make of protected health information?

**Answer** – Yes. Disclosures of PHI (other than TPO [treatment, payment, or operation] or authorized releases) should be documented on a DHS 2097 and kept with the client’s file or protective service file. See the directions on the back of the form for further specific information.

21) **Question** – Now what?

**Answer** – Try to relax, acquaint yourself with the basic requirements and use good common sense. We will continue to receive and share additional guidance as we have more experience implementing the HIPAA and DHS privacy requirements.

22) **Question** – Where can I turn for help or further information?

**Answer** – Local management, central office program staff and privacy officers are all available to provide assistance. The DHS privacy officers are all available to provide assistance. The DHS privacy guidelines are available on line at <http://www.dhs.state.or.us/admin/hipaa>