



## Disclosures to Law Enforcement

45 CFR 164.512(f)

The HIPAA Privacy Rule provides patients with rights that permit them to control certain uses and disclosures of their protected health information. There may be times when City, State or Federal Law Enforcement agents may seek access to a patient or to patient information and you will need to know what you can and cannot disclose.

*Protected Health Information means all information about the patient, including name, medical record number, condition, dates of treatment, physician name, diagnosis, medication, and other treatment information*

As a rule, the HIPAA Privacy Rule generally **prohibits** the disclosure of protected health information to law enforcement **unless** the patient has provided written consent or other specific conditions are met. Before providing information to the police, probation/parole officer, detective, or other agent, follow these steps:

### **1. Verify the Identity of the Police Officer or other agent.**

- If law enforcement agent appears in person, verify the officer's name, badge number or other agency identification, credentials or proof of government status.
- If you receive a request from a law enforcement officer or agency in writing, verify that the request is on the appropriate letterhead.

### **2. Identify What Law Enforcement Wants and the Purpose For the Request.**

- Identify the reason that the agent or officer is requesting the information.

### **3. Provide PHI Only as Follows -- and Only Provide the Minimum Amount of Information Necessary for the Purpose.**

**General Statement:** A healthcare provider may share patient information with law enforcement agents with the **written consent** of the patient or the patient's legal representative (for example, the parent, spouse, child, or guardian). Document the patient's consent and the information provided in the patient's medical record. In addition, there are occasions when the law permits or requires you to share patient information with law enforcement **without an authorization**. These occasions and the steps for you to take are described in the next section.

# Exceptions for Law Enforcement Access to PHI

## Without an Authorization

- **As Required by Law:** including laws that require the reporting of certain types of wounds or other physical injuries.
  - **Victims of abuse, neglect or domestic violence:** Missouri statute requires health care providers to report cases of suspected abuse and neglect. Protected health information may be disclosed without the individual's authorization to the appropriate government agency in response to questions that are related to the investigation of abuse and/or neglect.
  
- **Victim of Crime:** If the patient is a victim of a crime, then the patient's protected health information may be shared only upon the patient's written permission unless the following conditions are met:
  - If the patient's permission is not obtainable, then upon written confirmation that the patient information is needed immediately by law enforcement, a healthcare provider may provide the patient information needed to meet the officer's needs. The healthcare provider must document in the medical record the following elements:
    - The healthcare provider cannot obtain the patient's consent because of incapacity or other emergency circumstances; and
    - The officer represents that the patient information is needed to determine whether a violation of law by a person other than the victim has occurred and information is not intended to be used against the victim; and
    - The officer represents that immediate law enforcement activity that depends on the disclosure would be materially and adversely affected by waiting until the patient is capable of giving consent; and
    - Disclosure is determined by professional judgment to be in the best interest of the patient.
    - Disclosure is about an individual who has died for the purpose of alerting law enforcement of the death of the individual if we have a suspicion that death may have resulted from criminal conduct.

- **Alleged Perpetrator of a Crime:** If law enforcement is seeking the information of a patient who is an alleged perpetrator of a crime to identify or locate the suspect, patient information may be shared but only the amount necessary for the investigation. Information disclosed should be limited to the following:
  - **Name and address**
  - **Date and place of birth**
  - **Social Security number**
  - **Blood type**
  - **Type of injury**
  - **Date and time of treatment**
  - **Date and time of death, if applicable**
  - **Description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, presence/absence of facial hair, scars, and tattoo**
  
- **Crime on Washington University or Washington University Clinical Associate Premises:** You may disclose to the law enforcement official protected health information that you believe in good faith constitutes evidence of criminal conduct that occurred on our premises.
  
- **Court Order, Administrative Tribunal or Subpoena:** You may provide patient information in response to a valid court order or administrative tribunal after receiving advice and direction from the HIPAA Privacy Office, Office of General Counsel, or Risk Management. A subpoena must be accompanied by the patient's written authorization in order for WU to disclose PHI.
  
- **Jails, prisons, law enforcement custody:** You may provide correctional institutions and law enforcement officials protected health information of individuals in their lawful custody without an authorization if the protected health information is necessary:
  - To provide care to the individual.
  - To protect the health and safety of the individual other inmates,
  - To protect the health and safety of officers, employees or others at the correctional facility, or those involved in the transfer/transport of the individual
  - **Reminder Note:** This exception *does not apply* to individuals on probation, parole, supervised release, or otherwise is no longer in lawful custody.

If a patient comes in under law enforcement authority, law enforcement is responsible for the monitoring of the patient. While law enforcement may be exposed to patient information while monitoring the patient, no additional patient information should be given unless it falls within one of the areas listed above.