

## **HIPAA Rules – Some Basics Ones**

### **Must all small health plans comply with the Privacy Rule?**

NO

According to HHS, certain health plans are excluded from having to comply with the HIPAA Privacy Rule, such as an employee welfare benefit plan that has less than 50 participants and is administered by the employer that establishes the plan is not a HIPAA covered entity.

### **Do the HIPAA Privacy Rule protections apply to the health information of deceased individuals?**

YES

Privacy Rule protections apply for a period of 50 years following a person's date of death. During those 50 years, the deceased individual's identifiable health information is protected under the Privacy Rule to the same extent of a living individual. However, in cases where a covered entity maintains a medical records archive or otherwise maintains health or medical records that contain identifiable health information on individuals who have been deceased for more than 50 years, such information is not considered protected health information and may be used or disclosed without regard to the Privacy Rule.

### **Is the HIPAA Privacy Rule suspended during a national or public health emergency?**

NO

The only time this can occur is if the Secretary of HHS waves certain provisions of the Rule under the Project Bioshield Act of 2004 and section 1135(b)(7) of the Social Security Act. Regardless of the activation of an emergency waiver, the HIPAA Privacy Rule permits disclosures for treatment purposes and certain disclosures to disaster relief organizations. For instance, the Privacy Rule allows covered entities to share patient information with the American Red Cross so it can notify family members of the patient's location. See 45 CFR 164.510(b)(4).

**Learn More:** See the [Hurricane Katrina Bulletin: HIPAA Privacy and Disclosures in Emergency Situations - PDF](#) for more about sharing information in emergency situations.

### **Is a health care provider permitted to disclose proof of a child's immunizations directly to a school without a HIPAA authorization?**

YES

According to HHS, health care providers are allowed to disclose proof of a child's immunization directly to a school, as long as the school is required by law to have proof of immunization in order to admit a child and a parent, guardian, or other person acting *in loco parentis* has agreed to the disclosure. See 45 CFR 164.512(b)(1)(vi). Where the individual who is a student or prospective student is an adult or emancipated minor, the provider may make the disclosure with the agreement of the student herself. In either case, the agreement may be obtained orally or in writing, but must be documented (e.g., by placing in the medical record a copy of a written request, or notation of an oral request, from a parent for the provider to disclose the proof of immunization to the school).

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**Does the HIPAA Privacy Rule require schools to maintain student immunization records?**

**NO**

However, State or other applicable laws may impose retention requirements for such records. Further, in most cases, the Privacy Rule will not provide protections to the immunization records maintained by a school because: (1) the school is not a HIPAA covered entity; or (2) the records are maintained by an educational institution or agency to which the Family Educational Rights and Privacy Act (FERPA) applies and, thus, are protected by FERPA and not HIPAA.

**Does the HIPAA Privacy Rule permit covered entities to disclose protected health information, without an individual's authorization, to public officials responding to a bioterrorism threat or other public health emergency?**

**YES**

The Privacy Rule recognizes various agencies and public officials will need protected health information to effectively deal with a bioterrorism threat or emergency.

**Does the Privacy Rule allow health care facilities to inform visitors or callers about a patient's location in the facility and general condition?**

**YES**

Covered health care providers are allowed to maintain certain information about patients in a directory, including name, location, health condition expressed in general terms and religious affiliation.

However, the patient must be informed about the information to be included in the directory and to whom the information may be released.

**Does the HIPAA Privacy Rule require covered entities to keep patients' medical records for any period of time?**

**NO**

State laws typically govern how long medical records must be retained, but the Privacy Rule requires that covered entities apply appropriate administrative, technical and physical safeguards to protect the privacy of medical records and other protected health information.

**Does the Privacy Rule allow health care providers to disclose protected health information (PHI) about a student to a school nurse or physician?**

**YES**

The Privacy Rule allows covered healthcare providers to disclose a student's PHI to school nurses or other health care providers for treatment purposes, even without the authorization of the student or student's parent.

**Can a covered entity disclose protected health information in response to a court order?**

**YES**

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A covered entity\* may disclose protected health information to comply with a court order, including an order of an administrative tribunal. Such disclosures must be limited to the protected health information expressly authorized by the order. See 45 CFR 164.512(e)(1)(i).

\*Covered Entity Defined: <https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-ACA/AreYouaCoveredEntity.html>

**Does HIPAA allow a doctor to contact a patient’s family or law enforcement if the doctor believes the patient might hurt themselves or someone else?**

YES

The Privacy Rule allows health care providers to disclose necessary information about a patient to law enforcement or family members when the provider thinks the patient presents a serious threat to themselves or others.

**Does the Security Rule apply to written and oral communications?**

NO

The Security Rule is specific to electronic protected health information (e-PHI). It should be noted however that e-PHI also includes telephone voice response and fax back systems because they can be used as input and output devices for electronic information systems. E-PHI does not include paper-to-paper faxes or video teleconferencing or messages left on voice mail, because the information being exchanged did not exist in electronic form before the transmission. In contrast, the requirements of the Privacy Rule apply to all forms of PHI, including written and oral.

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