



NATIONAL ADULT PROTECTIVE SERVICES ASSOCIATION

HIPAA* As It Applies to Adult Protective Services (APS)

“Covered Entities” (CE) are defined to include all healthcare providers and suppliers, government healthcare programs, and insurance plans. See 45 CFR § 160.103 for full list.

APS typically is NOT a covered entity. Consult your agency counsel.

- CE must obtain patient’s consent before making disclosure, unless otherwise permitted. § 164.508
- CE must provide “notice of privacy practice” regarding all intended uses and disclosures. § 164.520
- CE must track disclosures of protected health information and make accounting of disclosures upon a patient’s request.

“Business Associates” of Covered Entities

Business Associates are defined as all persons or entities who “assist in the performance of, or perform on behalf of, a function or activity” for an agency, insurance plan or medical provider, including lawyers and consultants. § 160.103

If disclosure is between two government agencies, business associate agreement may not be required. § 164.504 (e)(3)(i)(A)

Obtaining Records: Two exceptions to needing patients’ consent may apply to APS:

1. Victims of abuse, neglect, domestic violence § 164.512(c)

- (i) If disclosure is *required* by law (statute, court order, or subpoena), or
- (ii) If the individual has agreed to the disclosure, or
- (iii) If disclosure is expressly *authorized* by law and is necessary to prevent serious harm, or
- (iv) If patient is not able to consent, disclosure is authorized by law, the law enforcement agency represents that the information will not be used against the individual, and law enforcement activity depends on the disclosure and would be materially and adversely affected by waiting until the individual is able to agree. § 164.512(1)

CE making a disclosure must promptly inform the individual that a report has been or will be made, except if:

- (i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
- (ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment. § 164.512(c)(2)

2. Health Oversight Investigations (§ 164.501) defined as:

- (i) Investigations of the health care system;
- (ii) Government benefit programs for which health information is relevant to beneficiary eligibility;
- (iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
- (iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

Want to stop a provider from telling patients that you have their medical information?

1. *Make an oral request that the provider not disclose;*
2. *Follow up with a written request within 30 days. Show your identification; make written requests on official letterhead.*

*Health Insurance Portability and Accountability Act [Public Law 104-191]; full text can be found at:
<http://www.cms.hhs.gov/HIPAAGenInfo/Downloads/HIPAAALaw.pdf>

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