

Responding to Requests from Law Enforcement Officials for Release of PHI

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By Dana DeMasters, MN, RN, CHPS

A police officer arrives in the emergency department of a hospital at 2 a.m. seeking information about a patient who was recently admitted following a motor vehicle accident. The officer suspects the patient was intoxicated while driving and assertively asks the nurse to tell him the results of the patient's urine drug screen. What would you tell your staff to do?

HIPAA allows covered entities (CEs) to release limited protected health information (PHI) to a law enforcement official without patient authorization under certain circumstances. HIPAA defines a law enforcement official as any governmental agency or official authorized to investigate, prosecute, or conduct an inquiry into a potential violation of law.^{1,2}

An authority figure such as police officer or state trooper requesting patient information—in uniform with a badge and gun—can be an intimidating experience for staff. An officer may pressure staff to release the PHI, informing them they may be obstructing an investigation if they do not cooperate. It is important for staff to know how to manage these requests and know who to contact to help them make decisions about whether to release the information.

The purpose of this article is to assist CEs in responding to requests from law enforcement officials and to provide a tool for managing and approving these requests.

Competing Mandates of ROI

CEs do not want to interfere with important law enforcement functions. However, they are also obligated by law to prevent unauthorized disclosures of patient information. For the scenario above, the officer would need to follow a legal process and provide a document, such as a court order, before this information could be released.³

Although the HIPAA standards provide specifics concerning what can be released to law enforcement officials and when, implementing these standards can be complex because of the varied scenarios that may occur. One officer may request a drug screen result; another might be investigating a child abuse case or victim of a crime; a detective may wish to interview staff about a suspect who is a patient; a police department could request to be informed when a patient is discharged, and so on. There is also the challenge of state laws, which might be stricter and could preempt HIPAA.

Figure 1: Request from Law Enforcement for Release of Protected Health Information (PHI)

Request from Law Enforcement for Release of Protected Health Information (PHI)

(Print all information except signature)

Patient's Name (if known): _____	Date: _____	Time: _____
Requester's Name: _____	Title: _____	
Agency: _____	Phone Number: _____	
Agency Address: _____		
Agency Assigned Number _____		
(The assigned agency case number, warrant number, or related incident report number)		
Requested Information Related to an Active Law Enforcement Investigation: _____		
Signature of Requester/Officer: _____		Officer ID: _____

Please check the appropriate legal exception that will allow the requested information to be released:

- ☐ **Suspect, Fugitive, Material Witness, or Missing Person.** I certify that the information about the above named patient is needed to assist in attempting to identify or locate a suspect, fugitive, material witness, or missing person. I understand that the information I can obtain is limited under federal law. (45 CFR 164.512(f)(2).)
- ☐ **Victim of Crime.** The information sought concerns a possible victim of a crime in a situation not otherwise covered by other categories on this form. Either the suspected victim's written agreement to the disclosure is attached to this form, or I request that appropriate personnel seek the victim's agreement to the disclosure. If the victim's agreement cannot be obtained due to incapacity or other emergency circumstance, I certify that the information is needed to determine whether a violation of law by someone other than the victim has occurred, that the information is not intended to be used against the victim, and that the investigation would be materially and adversely affected by waiting until the patient is able to agree to the disclosure. I understand that the disclosure is subject to a determination of what is in the best interests of the patient in the exercise of professional judgment by medical professionals. (45 CFR 164.512(f)(3).)
- ☐ **Legal Process.** A court order, judicial subpoena, warrant, summons, grand jury subpoena or other legal process seeking the requested information has been issued and is attached to this form (45 CFR 164.512(f)(1)(ii)(A) and (B).)
- ☐ **Patient in Custody.** I certify that the above named patient is in lawful custody of the correctional facility or agency listed above, and the requested information is needed for the healthcare of the patient, the safety of the patient, other inmates, officers of the facility or transporting the patient, or for the administration of the safety, security, and order of the facility as allowed under 45 CFR 164.512(k)(5)(i).
- ☐ **Other.** If no category on this form describes your request, please describe here: _____

Medical Record Number: _____		Account Number: _____	
Requester Identity Verified?	List reason if unable to obtain requester's signature: _____	Information Released By:	
<input type="checkbox"/> Yes <input type="checkbox"/> No		Name: _____	
Date Information Released: _____		Title: _____	
		Dept: _____ Phone#: _____	

Reference: Law Enforcement and Criminal Investigations policy

Patient Label:

Used with permission from Barb Beckett, RHIT, CHPS, system privacy officer at Saint Luke's Health System, based in Kansas City, MO.

Use Form for Release Evaluation

The use of a tool such as the "Request from Law Enforcement for Release of PHI" form (see Figure 1 on page 45) can be helpful in responding to these requests. Implementing a form and having expert resources readily available, such as a privacy officer or legal counsel with a thorough understanding of HIPAA regulations and respective state laws, is recommended. This will help ensure that the request process goes smoothly, the law enforcement official obtains the information if allowed, and the covered entity remains HIPAA-compliant concerning disclosures of PHI.

The Request from Law Enforcement for Release of PHI form provides the following assistance with these requests:

- Guides staff in obtaining the needed information from the law enforcement official
- Verifies the officer's identity and obtains the officer's signature
- Requires the officer to list the specific information needed
- Confirms that a case number, warrant number, or incident report is associated with the request
- Requires the officer to read and select the appropriate legal exception and certify that the information requested is needed for this legal exception
- Assists the privacy officer or designee in determining if release is allowed by specifically referencing the HIPAA standard and listing the HIPAA legal exception
- Provides a document for accounting of disclosures

The officer will complete the upper portion of the form, check the appropriate legal exception, and sign the form. The privacy officer or designee would then review the request to ensure it aligns with what may be released. If approved, the individual who releases the information to the officer signs the form and places it in the patient's record. An associated policy that lists the regulations in detail and notes what limited information may be released should also be in place.

It's important to note that staff must understand that the form is used to gather information to evaluate whether PHI may be released. An officer merely completing and signing the form does not equate to an immediate release and/or release of all requested information.

Prepare for Requests in Advance

Navigating complex situations and requests from law enforcement officials can be a daunting task. Providing staff education, implementing the Request from Law Enforcement for Release of PHI form and policy, and consulting the CE's privacy officer or legal counsel will help ensure that the patient's privacy is protected, investigations will not be impeded, and disclosures are compliant with HIPAA standards.

Notes

1. United States Department of Health and Human Services. "HIPAA Privacy Rule, 164.512(f); 164.501." June 5, 2013. www.hhs.gov/ocr/privacy/hipaa/understanding/special/research/.
2. United States Department of Health and Human Services. "Frequently Asked Questions." August 8, 2005. www.hhs.gov/ocr/privacy/hipaa/faq/disclosures_for_law_enforcement_purposes/505.html.
3. United States Department of Health and Human Services. "HIPAA Privacy Rule, 45 CFR 164.512(f)(1)(ii) (A) and (B)." June 5, 2013. www.hhs.gov/ocr/privacy/hipaa/understanding/special/research/.

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