

Who's on First?: the Interplay of HIPAA's "Required by Law" Exception and State Law

Save to myBoK

by Joy Pritts, JD

You receive a request for medical information from a third party. Generally HIPAA would prohibit releasing the information, but would allow disclosure when “required by law.” State law, however, generally requires disclosing the information, unless disclosure is prohibited by another law.

Trying to figure out which law applies can leave you feeling like you’re trapped in Abbott and Costello’s “Who’s on First?” routine. Which law should you follow? A recent decision by the Ohio Supreme Court, *State ex. rel Cincinnati Enquirer v. Daniels*, Ohio St.3d 518 (2006), sheds some light on how to approach this situation.

The Case: State Law v. HIPAA

The *Cincinnati Enquirer* requested a decade’s worth of lead citation notices issued by the Cincinnati Health Department under Ohio’s Public Records Act. The citations notified property owners that their units had been reported as the residences of children whose blood tests showed elevated lead levels. The health department refused to release the records, claiming that the references to specific addresses could be used to identify the affected children and that the release of such information was prohibited under HIPAA. The newspaper sued, asking the state court to issue an order compelling the health department to release the records under Ohio law.

The case was first heard by the Hamilton County Court of Appeals. The court determined that the citations documented the activities and decisions of a state agency and generally would be subject to disclosure under the Ohio Public Records Act. However, the court concluded that the records were exempt from disclosure under state law because they contained specific addresses of children with elevated levels of lead in their blood. The court therefore held that the health department was not required to disclose the records. The newspaper appealed the lower court’s decision to the Ohio Supreme Court.

The Ohio Supreme Court reversed the decision and held that the health department was required to turn over the records. The court determined that the citations did not come within any exception to the Ohio Public Records Act. It also determined that the citations did not contain protected health information under HIPAA. In the alternative, the court determined that even if the citations contained protected health information under HIPAA their release was permitted under HIPAA’s “required by law” exception.

In analyzing the situation, the court recognized that it needed to reconcile Ohio’s Public Records Act with HIPAA. On the one hand, the Ohio Public Records Act requires disclosure of public records upon request. The act also contains an exception for “records the release of which is prohibited by state or federal law.” On the other hand, HIPAA generally prohibits the disclosure of protected health information (i.e., health information that is held by a covered entity that identifies or reasonably could be used to identify the subject of the information). HIPAA, however, contains an exception that permits the disclosure of information to the extent it is “required by law.” As the court noted, it was “confronted with a problem of circular reference because the Ohio Public Records Act requires disclosure of information unless prohibited by federal law, while federal law allows disclosure of protected information if required by state law.”

To resolve the issue, the court looked to the Department of Health and Human Services’ intent when it first issued HIPAA in 2000. The court noted that the department stated in the preamble to the final rule that it intended to preserve access to information important enough by state or federal authorities to require its disclosure by law and “to avoid any obstruction of the health plan or covered healthcare provider’s ability to comply with its existing legal obligations.” In light of this intent, the court reasoned that “an entity like the Cincinnati Health Department, faced with an Ohio Public Records Act request need only determine whether the requested disclosure is required by Ohio law to avoid violating HIPAA’s privacy rule.” In essence, the

court said that if a disclosure is required by Ohio state law, it is permitted by HIPAA's "required by law" exception and no further analysis is required.

Analyzing the Ruling

Although the court's decision is binding only with respect to the interaction of HIPAA and the Ohio Public Records Act, the court's reasoning may be helpful in analyzing other circumstances where a disclosure appears to be required by state law. Under the court's approach, the first step is to ask "Is this disclosure required by state law?" If the disclosure is required by state law, then disclosing the information is permitted under HIPAA's "required by law" exception.

Of course, determining whether a disclosure is required by state law is often a difficult exercise. It calls for careful review of the state law language, relevant regulations, prior court decisions, and attorney general opinions. But even these steps do not guarantee a clear answer. Here, the county court, looking at prior cases, concluded that the disclosure was not required under state law because the records came within one of the exceptions to the state Public Records Act, while the state supreme court, looking at the same facts and cases, reached the opposite conclusion. When it is not crystal clear that disclosure is required, it may be best to follow the example of the Cincinnati Health Department and err on the side of caution.

The court's decision also presents a good example of how not to analyze the interaction of state and federal law. One of the issues the court considered was whether the citations contained protected health information under HIPAA. In addressing this issue, the court fell into its own version of "Who's on First?" confusedly applying state law definitions to federal law. Rather than relying on HIPAA's broad definition of "protected health information," the court employed the narrower state law definition of "public records."

This approach resulted in the court's erroneous conclusion that the health department's citations did not contain protected health information under HIPAA even though they contained information (a specific address) that reasonably could be used to identify the subject of the health information (an elevated level of lead in the blood). This analysis, while confusing, did not affect the ultimate decision that the health department was required to disclose the records, since the court set forth alternate grounds—that even if the citations contained protected health information their release was permitted by HIPAA's "required by law" exception.

Devil in the Definitions

When you are struggling to determine whether state or federal law applies you should avoid the same trap. As a general rule, when interpreting state law, use terms as they are defined in state law including state statutes, regulations, and case law. When interpreting HIPAA, use terms as they are defined in the federal rule, explained in guidance from the Department of Health and Human Services and frequently asked questions and interpreted by the federal courts. Needless to say, there are exceptions to these general rules. (For example, HIPAA does not define an "emancipated minor"; state law is used to define the term.)

Key Questions to Consider

The recent Ohio Supreme Court case presents a few key questions to consider when a third party asserts that state law requires the disclosure of information that appears to be covered by HIPAA:

- Is the information protected health information under HIPAA? If the information is not, you need only analyze state law. Be sure to use the definition of protected health information contained in HIPAA.
- Is the information subject to disclosure under the state law? Make sure you use the terms as they are defined in state law. For example, Ohio's Public Records Act only applies to records that document the activities or operations of a government office or agency.
- Does the record come within any exception to the state requirements for disclosure? Many state laws have provisions that except medical information or records from mandatory disclosure. Again, make sure you use the state law definitions.
- Does the state law at issue permit or require disclosure?

- If the state law only permits disclosure (i.e., disclosure is discretionary), you have the option of not disclosing the information. Moreover, the “required by law” exception of HIPAA does not apply.
- If the state law requires disclosure, you may be compelled to release the information.
- If the disclosure of the information is required by state law, then its release is permitted by HIPAA’s “required by law” exception.

Deciphering the interaction of HIPAA and state health privacy laws may be confusing, but it is no laughing matter. Answering these questions may help you determine who’s on first-state or federal law.

Joy Pritts (jlp@georgetown.edu) is a research associate professor at Georgetown University’s Health Policy Institute in Washington, DC.

Article citation:

Pritts, Joy. "Who's on First?: the Interplay of HIPAA's "Required by Law" Exception and State Law." *Journal of AHIMA* 77, no.8 (September 2006): 68-69,74.

Driving the Power of Knowledge

Copyright 2022 by The American Health Information Management Association. All Rights Reserved.