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| Title: | DPH Privacy and Security Manual |
| Chapter: | II. Administrative Policies, Legal Occurrences |
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Purpose

The purpose of the Division of Public Health (DPH) legal occurrences policy is to set forth the requirements under the Health Insurance Portability and Accountability Act (HIPAA) for disclosing individually identifiable health information (IIHI) when responding to judicial and administrative proceedings, court orders (including protective orders), subpoenas, law enforcement, and other legal mandates. This policy is in compliance with the [DHHS Policy and Procedure Manual, Section VIII, Security and Privacy](#), that establishes the NC Department of Health and Human Services (DHHS) legal occurrences requirements.

Policy Scope: This policy and procedure applies to all DPH workgroups that serve clients, including:

HIPAA covered health care components

Internal Business Associates

Background

Health care organizations have a legal and ethical duty to protect the privacy of confidential health information maintained regarding their clients. Patient information that the Division accesses or maintains must be protected from unauthorized use and disclosure. Public health statutes provide for this protection. For example, NC General Statute 130A-12 states that “All records containing privileged patient medical information that are in the possession of the Department or local health departments shall be confidential and shall not be public records pursuant to General Statutes 132-1.”

In addition, North Carolina Communicable Disease statute, NC General Statutes 130A-143 states “All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article (communicable disease) shall be strictly confidential...” with only specific exceptions. Other state statutes guarantee patient confidentiality for specific program information, such as medical information associated with birth certificates, birth defects monitoring, the central cancer registry, and data within the State Center for Health Statistics.

There are situations however, when organizations are required to use and/or disclose IIHI, such as whenever state or federal law requires the use or disclosure of health information to specific entities, for specific purposes. Most public health reporting in North Carolina and is required by law stated explicitly in NC statute. Client authorization is not necessary for such use and disclosures. These situations shall be identified in this policy as “legal occurrences”. (Note that public health reporting that is not explicitly required by NC statute is still permitted without client authorization under HIPAA for public health activities).

Note: While North Carolina law requires the disclosure of confidential information or records to certain people upon their demand; there may be federal laws that supersede the state requirements, such as the federal Substance Abuse Regulations. As an example, IIHI contained in Infant Toddler Program patient records is protected by the Family Education Privacy Rights Act (FERPA) and cannot be released without written consent, with a few limited exceptions.

A partial list of individuals and groups who may need IIHI include:

- The chief medical examiner or a county medical examiner who is investigating a death
- The director of social services or designee who is investigating a case of known or suspected child abuse or neglect
- The guardian *ad litem* representing a child in a case of known or suspected child abuse or neglect
- A guardian *ad litem* representing a minor between the ages of 14 and 16 who wants to marry
- The N.C. State Child Fatality Prevention Team/the N.C. Child Fatality Task Force/a community or local child protection and review team that are involved in the review of a child’s death
- The N.C. Secretary of Health and Human Services when it has been determined that there is a “clear danger to public health”
- The state or local health director when pertaining to the diagnosis, treatment, or prevention of communicable disease.

See “[Disclosures of Protected Health Information \(PHI\) That Are Required by North Carolina Law](#),” Jill Moore, MPH, JD, UNC School of Government, October 2002.

HIPAA requires covered entities to verify the identity and authority of the individuals prior to releasing such information to them. For Division staff requesting information, a Division ID badge or a written request on Division letterhead is usually sufficient for verification.

North Carolina law also requires the reporting of specific information that involves the release of IIHI such as:

- Known or suspected child abuse or neglect, child dependency, and child deaths believed to be due to maltreatment
- Belief that a disabled adult is in need of protective services
- Known or suspected cases or outbreaks of communicable diseases
- Wounds and injuries caused by firearms
- Illnesses caused by poisoning
- Wounds or injuries caused by knives or other sharp instruments and a physician suspects a criminal act
- Any other wound, injury, or illness wherein a treating physician suspects criminal violence was involved
- Specific information to the central cancer registry
- Symptoms, diseases, conditions, trends in the utilization of health care services; or other health-related information that the State Health Director determines is needed to conduct a public health investigation of a possible terrorist incident.

Note: The above list is not inclusive.

Policy

Required by Law

The Division covered components shall use or disclose IIHI as “required by law” wherein a federal, state, tribal or local law compels an agency to make a use or disclosure of confidential information and that is enforceable in a court of law, such as:

- Court orders
- Court ordered warrants
- Subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information
- A civil or authorized investigative demand
- Medicare conditions of participation with respect to health care providers participating in the program
- Statutes or regulations that require the production of information (including those that require such information if payment is sought under a government program providing public benefits).

All uses and disclosures of confidential information that are required by law must comply with and be limited to the requirements of the applicable law.

Preemption of State Laws

The Division is required to complete a review of other state and federal laws with which the Division must comply to determine if any provision of state law is contrary to a requirement of the HIPAA Privacy Rule. Such review is entitled “preemption analysis” and shall be conducted on a provision-by-provision basis of each state and federal law. If a state law relating to the privacy of IIHI is more stringent than a federal privacy regulation, state law shall not be preempted, thus providing greater privacy protections for a client.

Legal Disclosures Requiring Authorization

As a rule, Division covered components shall not disclose IIHI without first obtaining written authorization from the client who is the subject of the request or the client’s personal representative, unless there is a court order that requires disclosure of confidential information. This rule applies when responding to:

- Requests presented by way of judicial or administrative proceedings;
- Subpoenas
- Law enforcement officials (apart from when reporting a crime on the premises, such as ‘escapees’ or ‘missing children’)
- Warrants.

Any administrative investigator or prosecutor, including investigators of Medicaid fraud that are not expressly authorized by federal or state law, must present a court order before the Division may disclose IIHI.

Legal Disclosures Not Requiring Authorization

There are various legal occurrences when Division covered components may disclose IIHI without authorization. These instances include:

- Responding to court orders (including protective orders)
- Requests specifically authorized by state or federal law (as may be the case for certain auditing, licensing and disciplinary actions)
- Responding to law enforcement officials when reporting a crime, so long as federal or state requirements do not forbid or limit the disclosure.

Implementation

Applicability of Legal Occurrences within the Division of Public Health

The following describes the applicability of the Legal Occurrences Privacy Policy within the Division:

As the only designated covered health care provider within the Division, the State Laboratory for Public Health is required by HIPAA to follow the Legal Occurrences Privacy Policy. However, health information maintained by the State Lab is governed by the Clinical Laboratory Improvements Amendment (CLIA), by NC public health statutes, and by NC Administrative Rule and in most cases will prevail over this policy.

As an internal business associate, the HSIS Business Liaison is governed by Business Associate Agreements between the local health departments, contract addenda with the community-based organizations, and procedures developed between the Division of Information Management Resources (DIRM), CDSAs, and the State Laboratory. The HSIS Business Liaison will follow NC public health statutes and Administrative Rule, other federal requirements, and any requirements regarding legal occurrences covered under these memoranda.

As an internal business associate, Children's Special Health Services is governed by a Memorandum of Understanding among the Division of Public Health, Office of the Controller, Purchase of Medical Care Services, and the Division of Medical Assistance. CSHS will follow NC public health statutes and Administrative Rule, other federal requirements, and any requirements regarding legal occurrences covered under these memoranda.

As an internal business associate, State Center for Health Statistics (SCHS) is governed by an MOU between DPH and DMA for specific activities. The SCHS is also governed by NC public health statutes.

For all other DPH program areas and workgroups, all requirements regarding legal occurrences are governed by specific program rules and procedures as defined by federal and state laws, NC public health statutes and NC Administrative Rule, and program requirements.

DPH Preemption Analysis

The Division has identified the state and federal laws and regulations that apply to that Division's covered components and has completed a preliminary review of the requirements for using and disclosing PHI. In addition, the State Law Focus Group of the North Carolina Healthcare Information and Communications Alliance, Inc. (NCHICA) (NCHICA), has prepared a preliminary public health preemption analysis of the relevant NC statutes: "[Analysis of the HIPAA Privacy Rule and Selected North Carolina Statutes](#)," Prepared by the NCHICA State Law Work Group, Privacy and Confidentiality Focus Groups, Approved for Public Distribution December 11, 2001.

In addition to the above preemption analysis, the Division has referenced the following: "[Interpreting and Applying Preemption Provision to the State Privacy Law](#)," Aimee N. Wall, October 2002, and "[Interaction Between the HIPAA Privacy Regulation](#) and Other State and Federal

Laws,” Aimee Wall, July 2002, Institute of Government, School of Government, The University of North Carolina at Chapel Hill.

The HIPAA Privacy Regulation contains significant provisions regarding public health reporting regarding the use and disclosure of IIHI to public health authorities, and the use of IIHI by public health authorities. The Privacy Regulation excepts from preemption existing state public health laws pertaining to the “reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention.” In most cases, disclosures by and to the Division are permitted under HIPAA because they are explicitly required by NC law or permitted for public health activities and program oversight purposes under 45 CFR Part 164.512.

The specific HIPAA Privacy Regulation provision related to the public health preemption exception and to the permitted public health disclosures are included in this policy.

NC and Federal laws that provide greater privacy protections (e.g., NC Communicable Disease statute) and broader client access rights (more stringent as defined by HIPAA), prevail when using and disclosing IIHI. In addition, NC and Federal laws that;

- Prohibit or restrict a use or disclosure when the privacy regulation would permit it
- Provide clients with greater rights of access or amendment to their health information
- Require covered health care components to provide clients with more information about uses, disclosures, rights, and remedies
- Require express legal permission from a client that is more limiting in scope or reduces the effect of the permission
- Require covered health care components to retain or report information for the accounting of disclosures that is more detailed or is for a longer duration
- Provide greater privacy protection for the client.

Legal Proceedings

There may be instances where a client may be involved in a legal proceeding, either conducted by a court of law or a government agency. In such proceedings attorneys, judges and others involved with the proceeding may contact the Division to access a client’s IIHI.

Important: All requests for client information involved in legal proceedings should be reviewed with the Division’s representative in the NC Office of the Attorney General. Do not respond without guidance from the Office of the Attorney General.

- Subpoenas

When the Division receives a subpoena for IIHI, it must be determined whether the subpoena resulted from a judicial or administrative order. If a court or administrative tribunal issues the subpoena, confidential information may be disclosed without authorization, after consulting with the Office of the Attorney General.

A subpoena received from any other entity must be accompanied by an authorization from the client whose IIHI is being requested or a court order to release such information.

The following contains guidance for local health department officials regarding subpoenas: "[Responding to Subpoenas for Health Information: Guidance for Local Health Departments](#)," Jill D. Moore, MPH, JD, October 2002, Institute of Government, UNC-CH.

- **Court Order**
An order issued by a judge that specifically identifies the IIHI to be disclosed. The Division must comply with court orders, after consulting with the Office of the Attorney General.
- **Reporting Child Abuse or Neglect**
The Division is required to report child abuse and neglect. When reporting child abuse or neglect cases, demographic data and information relative to the suspected abuse or neglect may be reported without authorization to the Department of Social Services.

(The federal substance abuse regulations exception allowing programs to comply with mandatory child abuse reporting requirements under state law applies only to the initial reports of child abuse or neglect, and to a written confirmation of that initial report. All other reporting requires authorization from the client or the client's personal representative.)

Reporting Adult Abuse or Neglect

The Division is required to report adult abuse and neglect. When reporting adult abuse or neglect cases, demographic data and information relative to the suspected abuse or neglect may be reported without authorization. (The federal substance abuse regulations do not address adult abuse or neglect.)

Legal Disclosures

DHHS agencies may receive requests for IIHI that are legally allowed in specific situations.

- **Specialized Government Functions** (i.e., Law Enforcement/Secret Service/FBI)
Agencies may disclose confidential information to agents representing specialized government functions as long as the request is reasonable and the identity of the requestor is verified.

Provide only the following protected health care information (PHI) when assisting law enforcement officials for the purposes of identification and location: name and address; date and place of birth, social security number; ABO blood type and Rh factor; type of injury; date and time of treatment; date and time of death (as applicable); a description of distinguishing physical characteristics (e.g., height, weight, gender, race, hair and eye color, presence or absence of beard or mustache, scars, and tattoos).

- **Next of Kin**

The Division *may* disclose the fact of admission or discharge of a client to the client's next of kin whenever the responsible professional determines that the disclosure is in the best interest of the client; provided however, if the individual is present or available and capable, the agency may not make such disclosure unless the client agrees, is provided an opportunity to object but expresses no objection, or the agency reasonably infers from the circumstances that the client does not object.

Accounting of Disclosures

In accordance with DHHS and [DPH Privacy Policies, Accounting of Disclosures](#), DPH covered components are required to keep a record of any paper, electronic or verbal disclosure of IHI made in response to the legal occurrences as specified in this policy.

For relevant documents:

These documents can be accessed on the DPH HIPAA web site at <http://www.schs.state.nc.us/hipaa/>.

References: DHHS Directive Number III-11; DHHS Policy and Procedure Manual, Section VIII, Security and Privacy, DPH HIPAA Compliance Statement, 45 CFR 160.103, 42 CFR 164.512, N.C.G.S. 7B-301, 7B-302, 7B-601, 7B-1413, 8-53, 51-2A, 90-21.20, 108-A-102, 130A-5, 130A-12, 130A-90-123, 130A-209, 130A-130A-135-144, 130A-153, 130A-212, 130A-309, 130A-373-374, 130A-385, 130A-456, 130A-456-458, 130A-476, 122C-53, 54, NCAC 41A0.0101, NCAC 41C 0.702.

For questions or clarification on any of the information contained in this policy, please contact the DPH Privacy Office at <mailto:HIPAA.DPH@ncmail.net>.