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FAQs

What You Can Disclose To Law Enforcement & When:

1. **A covered entity must disclose information to law enforcement or governmental agencies when such disclosure is required by state law. Unless otherwise specified by state law, such disclosures are limited to "minimum necessary."**
    a. **What situations typically require disclosure under state law?**
        i. A valid warrant, subpoena, or court order
        ii. In response to a request by an agency that has oversight authority, e.g. CMS, TJC, state/local Dept of Health
            1. Note: Investigations by licensing agencies, e.g. Medical or Nursing Board, typically require the patient's authorization or an administrative subpoena
        iii. In fulfillment of mandatory reporting requirements and subsequent investigations
            1. Disclosure may be limited by state law, e.g. information relevant to the report
        iv. Reporting of gunshots, stab wounds, other violent injuries
        v. Reporting of certain communicable diseases to local health department
        vi. Disclosure to a Coroner or Medical Examiner when a death meets reporting criteria
        vii. Disclosure to corrections officers or law enforcement having custody of a patient
            1. Limited to information necessary for officers to carry out their official duties
        viii. Reporting of specific threats against an identified individual
            1. May require provider to have reasonable basis to believe that the patient has the means, ability, and intent to carry out the threat.
2. **A covered entity may disclosure information to law enforcement or governmental agencies in other situations permitted by HIPAA where such disclosure is not prohibited by state law or where state law is silent on the issue.**
    a. What are situations in which covered entities may be permitted to disclose information to law enforcement or other governmental agencies?
        i. For purposes of identifying or locating a missing persons, suspect, fugitive, or material witness

1. Type of information that may be disclosed is limited, see 45 CFR 164.512(f)(2).

ii. Request for information about a victim of crime when the victim consents
    1. If the victim is unable to consent, minimal necessary PHI may be disclosed if law enforcement officials represent that the PHI will not be used against the victim, is needed to determine if another person committed a crime, the investigation would be materially and adversely affected by waiting, and the covered entity believes in its professional judgment that doing so is in the best interests of the individual whose information is requested. See 45 CFR 164.512(f)(3) for further guidance.

iii. Information about a suspected perpetrator of a crime when the report is made by the victim who is a member of the covered entity's workforce

iv. To identify or apprehend an individual who has admitted participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to a victim, provided that the admission was not made in the course of or based on the individual's request for therapy, counseling, or treatment related to the propensity to commit this type of violent act
    1. Consult with outside counsel as many states prohibit or limit information that may be disclosed in these situations

v. Adult abuse, neglect, or domestic violence that does not fall within mandated reporting requirement where the victim consents or in certain situations where, based on the exercise of professional judgment, the report is necessary to prevent serious harm to the individual or others, or in certain other emergency situations
    1. Consult with outside counsel when a report is not mandated by state law and the victim does not consent

vi. Report of a death resulting from criminal conduct

vii. Disclosure of PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the covered entity's premises

viii. When responding to an off-site medical emergency, as necessary to alert law enforcement about criminal activity, specifically, the commission and nature of the crime, the location of the crime or any victims, and the identity, description, and location of the perpetrator of the crime

ix. When consistent with applicable law and ethical standards:
    1. To a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public; or

2. To identify or apprehend an individual who appears to have escaped from lawful custody

x. To federal officials authorized to conduct intelligence, counter-intelligence, and other national security activities under the National Security Act or to provide protective services to the President and others and conduct related investigations

3. **How should staff respond when law enforcement asks if a patient is here?**
   A patient's presence can be confirmed unless the patient has stated they do not want their information disclosed.
   a. **What if the officer does not know the patient's name but only has a general description?**
      This involves a judgement call to determine if the officer has enough information to definitively identify a patient. If there is a question, the matter should be escalated to your Privacy or Compliance Officer or legal counsel.
4. **What information can we provide to law enforcement when they ask about a patient's condition?**
   Unless the patient has stated they do not wish to have their information disclosed, the patient's presence can be confirmed and a general condition statement can be provided, e.g. stable, serious, critical, treated & released, treated & transferred, undetermined, deceased.
   a. **Can we give law enforcement the name or MRN of a patient?**
      Some states permits disclosure of ***non-medical*** information, e.g. name, MRN, DOB, to law enforcement when a patient is a potential suspect, victim or witness. In addition, we can provide general condition information (unless patient has expressed they do not want their information disclosed). This general condition information includes: *Fair, Serious, Critical, Treated and Released, Treated and Transferred, Undetermined, and, Deceased*.[i]
   b. **When can we disclose medical information to law enforcement?**
      Medical information other than general condition as above, such as diagnosis, prognosis, anticipated length of stay, discharge, etc., can be disclosed when the patient or patient's legal representative consents or pursuant to a valid court order, such as a warrant or subpoena.
5. **What if we are working with Law Enforcement to identify a patient/locate next of kin?**
   In most situations, the disclosure of minimum necessary information for purposes of identifying the patient or locating their next of kin is permissible. Such information may include, among other things, physical description, the circumstances under which the patient was brought in, contents of wallet or purse, any med-i-alert the patient is wearing, scars/tattoos/piercings, etc.

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Mandatory Reporting Obligation Trigger:

6. **Do these restrictions apply to situations which trigger mandated reporting (such as child abuse dependent adult/elder abuse or report of injury from firearm or abusive conduct)?**
   No. Mandated reporting is an exception to both Federal and State privacy laws. Some states limit the type and amount of information that may be disclosed to law enforcement officials or agencies investigating the mandated report, e.g. minimum necessary, information relevant to the report.

   Absent a report having been made, providers should defer to the general information that may be released to law enforcement absent patient authorization or a valid search warrant or court order.

   Certain states require reporting incidents of physical injury where the injury is by means of a firearm or the result of assaultive or abusive conduct. The reporting provider is usually required to have a "reasonable suspicion" as to the cause of the injury.

What/Who Law Enforcement Can Access:

7. **When are law enforcement permitted access to patients?**
   Unless a patient is in custody or pursuant to a valid arrest warrant, a law enforcement officer typically has no more legal right to access a patient than anyone else. HIPAA does not provide law enforcement blanket access to a patient or their records, unless such access is required based upon a specific state law. Healthcare providers have an affirmative obligation under Federal, and most State, laws to protect a patient's privacy. Competent patients therefore generally have the right to consent or refuse to be interviewed by law enforcement officials. Even where a patient consents, the patient's treating physician should be notified to determine if such interview/interrogation will interfere with necessary care and treatment or be detrimental to the patient's medical condition. If the patient refuses or if the physician determines that the interview/interrogation would be detrimental to the patient's care, then the law enforcement officer should be informed, and this should be documented in the patient's record.

   Under no circumstances should physicians or staff ever attempt to interfere with a law enforcement officer who determines that s/he is going to proceed with the

interview/interrogation despite being informed of patient refusal or risk of harm. Under those circumstances, the law enforcement officer's name and badge number should be obtained, the incident should be documented in the medical record and the situation escalated to internal Security, Administration, Risk Management, and Legal Counsel.

Access to ED/Patient Care Areas

8. **Under what circumstances does law enforcement have the right to access the Emergency Department or other patient care areas of the Medical Center?**
   When a patient is in custody, law enforcement officers may accompany the patient to any part of the Emergency Department or Medical Center without an escort.

   - If officers present with a valid arrest or search warrant, they have the right to access the areas indicated on the warrant. If this occurs, staff should immediately notify internal Security, Administration, Risk Management, and Legal Counsel, in order to facilitate execution of the warrant with minimum disruption to patient care and business operations.
     a. The individual with management authority over the area or unit should be notified that law enforcement officers are present and the purpose of their visit. The individual with management authority over the area or unit should determine if access is appropriate based on the patient's condition and should escalate the situation up the chain-of-command if needed.

Body Cameras in Patient Care Areas

9. **What about body cams?**
   Law enforcement officers are obligated to comply with their department's rules and regulations governing the use of body cams. These rules and regulations typically specify those circumstances under which an officer's body cam may be turned off. If staff in a patient care area is aware that an officer's body cam is "on", the officer should be informed that Federal, and most State, privacy laws prohibit recording patients without their consent. *However, healthcare providers cannot require the officer to turn the body cam off as they must comply with their Department regulations.* In those situations, an incident report should be made including the date, time, location, the officer's name, badge number, and department, and the potential list of patients who may have been recorded.

Access to Visitors

10. **What about law enforcement access to patient visitors or family members present in the hospital?**

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In general, federal and state laws safeguarding a patient's right to privacy does not extend to non-patient individuals on the premises. If the non-patient individual sought is in a patient's room, law enforcement should be asked to wait outside, and staff should inform the non-patient individual of the request by law enforcement. Under no circumstances should physicians or staff ever attempt to interfere with a law enforcement officer who determines that s/he is going to proceed with the interview/interrogation despite being informed of non-patient individual's refusal.

Facilities should have a process in place to facilitate law enforcement activities which are legally permissible, such as executing a valid search or arrest warrant, or interviewing a victim or suspect.

Patients Who Are Under Law Enforcement Custody:

11. What about patients who are in custody?

Law enforcement officers have the right to accompany a patient who is in custody to any part of the facility. There may be restrictions on the circumstances under which a law enforcement officer is permitted to be present in an operating room or during a sterile procedure, or where there is an environmental hazard to the officer, such as radiation therapy.

a. What does "in custody" mean?

Law enforcement officers must be present and the law enforcement agency must take responsibility for the patient in order for the patient to be "in custody". If the officers leave, the patient is no longer in custody. Healthcare personnel are not responsible for maintaining the "custody" of the patient and should not act as an agent for, or on behalf of, a law enforcement agency or personnel.

b. What information can we give to law enforcement when a patient is in custody?

Minimum necessary information may be provided to the officers to ensure the safety of the patient, staff, other patients, visitors and law enforcements personnel. This may include, among other things, planned treatments, procedures, transfers, discharge.

c. May officer be present during examination and/or discussion of medical condition with patient?

If the safety of staff, other patients, visitors and law enforcement personnel require that the officer be continually present at the bedside, then examination, treatment and/or discussion may occur in their presence. However, sensitive

information, HIV status, mental health issues, etc., should not be disclosed without the patient's explicit consent. In any event, if the patient objects to discussing their information in front of the officer, then the discussion should be delayed. This does not prevent physicians or staff from disclosing minimum necessary, such as a planned off-unit procedure, to ensure safety.

In-Custody Patients Who Lack Capacity:

d. Can law enforcement make decisions regarding healthcare for patients who lack capacity?

Generally speaking, law enforcement never has the right to make healthcare decisions for a patient whether that patient is in custody or not. There are limited exceptions to this when the patient is a ward of the State or the respective Department of Corrections. Patients retain the right to make their own healthcare decisions, even when in custody. If the patient lack capacity, the patient's agent, surrogate or next of kin may be consulted for purposes of healthcare decision making. However, if there is a reasonable basis to conclude that communicating with the patient's next of kin or surrogate decision-maker would present a safety risk, the patient may be treated as an unrepresented patient, in accordance with state laws and the facility policy.

i. Does this mean the decision-maker can visit patient?

No. Patients who are in custody do not have the right to have visitors unless law enforcement consents. This is for the safety of the patient, staff and law enforcement personnel.

Patient Discharge into Law Enforcement Custody:

e. What about aftercare instructions and prescriptions?

If the patient is being discharged into the custody of law enforcement, the minimum necessary information may be provided to ensure that the patient receives the appropriate ongoing care and treatment. In those circumstances, law enforcement will be responsible for ensuring that the patient has access to the appropriate follow up care and medications. A "handoff" can be done to healthcare personnel at the medical ward of the jail/prison as they are deemed healthcare providers under Federal and State law.

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[i] Per American Hospital Association guidelines:
Undetermined: Patient awaiting physician assessment.
Good: Vital signs are stable and within normal limits. Patient is conscious and comfortable. Indicators are excellent.
Fair: Vital signs are stable and within normal limits. Patient is conscious but may be uncomfortable. Indicators are favorable.
Serious: Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.
Critical: Vital signs are unstable and not within normal limits. Patient may be unconscious. Indicators are unfavorable.
Treated and Released: Received treatment but not admitted.
Treated and Transferred: Received treatment. Transferred to a different facility.
Deceased.