



Data Driven Justice: HIPAA Guidance

Health Information Privacy Division

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Scope of OCR's Guidance

Key question: May a covered entity collect, use, and disclose criminal justice data under HIPAA?

- 7 sub-questions and answers provided
- The guidance addresses the limits and circumstances under which individually identifiable health information that includes criminal justice data may be shared among several types of entities.
- HIPAA protections are limited to actions taken by health care entities (*e.g.*, “covered entities”).



OCR's New Guidance Online

Available at: <http://www.hhs.gov/hipaa/for-professionals/faq/2073/may-covered-entity-collect-use-disclose-criminal-data-under-hipaa.html>



What is Criminal Justice Data?

- We did not create a new definition, but addressed the use and disclosure of individually identifiable information about an individual's involvement with public health and safety officials, such as police, courts, and first responders.
- For purposes of this guidance, we included data on arrests, jail days, and utilization of 911 services as examples.



Key Points

- HIPAA does not limit the types of data that health providers may *seek* or *obtain* for treatment purposes, including care coordination.
- Once a covered entity obtains criminal justice data about an individual it becomes protected health information (PHI).
- HIPAA protections apply to PHI that includes criminal justice data and is created, received, maintained or transmitted by a HIPAA covered entity.



Sharing PHI Among Providers

- PHI that includes criminal justice data may be used and shared by and between HIPAA covered entities (*e.g.*, health providers) for all the purposes permitted by HIPAA.
- HIPAA permits providers to disclose PHI to third party vendors (contractors) to perform functions on behalf of one or more providers. These vendors are HIPAA “business associates” subject to certain requirements.



Sharing PHI with Law Enforcement

- OCR's existing guidance on disclosures to law enforcement applies.
- New FAQ Response: A covered entity is permitted to disclose PHI in response to a request by a law enforcement official having lawful custody of an individual if the official represents that such PHI is needed to provide health care to the individual or for the health and safety of the individual.



Disclosures by Law Enforcement

- Law enforcement agencies are not generally subject to HIPAA, since they are not health providers, so HIPAA protections do not apply to disclosures of health data made by law enforcement.
- Other Federal or State laws may apply.



Disclosures to Social Agencies

Health care entities may share PHI that includes criminal justice data for treatment or care coordination of an individual to social services agencies with or without a signed authorization, subject to the minimum necessary requirement.





Additional HIPAA Resources

Guidance on Disclosures for Treatment and Health Care Operations:

- www.healthit.gov/sites/default/files/exchange_treatment.pdf
- https://www.healthit.gov/sites/default/files/exchange_health_care_ops.pdf

Guidance on Disclosures to Law Enforcement:

- <http://www.hhs.gov/hipaa/for-professionals/faq/505/what-does-the-privacy-rule-allow-covered-entities-to-disclose-to-law-enforcement-officials/index.html>
- http://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf



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