

HIPAA and Public Health

What about sharing protected health information (PHI) with public health authorities?

The Privacy Rule allows for the existing practice of sharing PHI with public health authorities that are authorized by law to collect or receive such information to aid them in their mission of protecting the health of the public. This practice is described in the preamble to the actual Rule:

“The final rule continues to permit covered entities to disclose protected health information without individual authorization directly to public health authorities, such as...the Centers for Disease Control and Prevention as well as state and local public health departments, for public health purposes as specified in the NPRM [Notice of Proposed Rulemaking for the Privacy Rule].” (65 F. R. p. 82526)

Which provision of the Privacy Rule addresses the sharing of PHI with public health authorities?

Sharing of PHI with public health authorities is addressed in §164.512, “Uses and disclosures for which consent, an authorization, or an opportunity to agree or object is not required.”

§164.512(a) permits disclosures that are required by law, which may be applicable to certain public health activities. **§164.512(b)** explicitly permits disclosures to public health authorities for public health activities:

“(1) *Permitted disclosures.* A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph [§164.512(b)(1)] to:

- (i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
- (ii) A public health authority... authorized by law to receive reports of child abuse or neglect;...
- (iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such a person as necessary in the conduct of a public health intervention or investigation; or...” (See §164.512(b)(1), 65 F. R. p. 82813-82814 for complete requirements.)

How is a public health authority defined?

“*Public health authority* means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.” (§164.501, 65 F. R. p. 82805)

The preamble to the Rule further describes the rationale behind the definition of public health authority:

“*Public Health Authority*...In response to comments arguing that the provision is too broad, we note that section 1178(b) of the Act [Social Security Act], as explained in the NPRM, explicitly carves out protection for state public health laws. This provision states that: ‘[N]othing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention.’ In light of this broad Congressional mandate not to interfere with current public health practices, we believe the broad definition of ‘public health authority’ is appropriate to achieve that end.” (65 F. R. pp. 82623-82624)

How much information may be used, requested, or shared?

The Privacy Rule generally requires covered entities to take reasonable steps to limit the use or disclosure of, and requests for PHI to the minimum necessary to accomplish the intended purpose. (See §164.514(d) for specific requirements.)

References:

HIPAA Privacy Rule: Provisions Relevant to Public Health Practice, CDC website: <http://www.cdc.gov/nip/registry/hipaa7.htm>
Complete HIPAA Privacy Regulations, Office of Civil Rights, Dept. of Health and Human Services: <http://www.hhs.gov/ocr/hipaa>