

## Duty to Warn

### Question

A patient confided in me that they would like to harm someone in their family. I am not certain they actually would follow through, but the threat seems credible. What should I do?

### Answer

The concept of “duty to warn” or “duty to protect” refers to healthcare providers’ responsibility to disclose information about a patient who is potentially violent or dangerous. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) supports “duty to warn” by permitting disclosure of certain limited information based on a reasonable belief that use or disclosure of the protected health information is necessary to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public, if disclosure is consistent with state law.<sup>1</sup>

In such situations, consider the following four-step algorithm.

1. Do you believe the individual poses a serious and imminent threat to the health or safety of a person or the public and has the ability to carry out the threat?
2. Are you basing this good faith belief on reliable information?
3. Do you believe that disclosing this threat (to the victim or law enforcement) will reasonably prevent or lessen the threat of harm?
4. If the answers to the above questions are “yes,” warn the victim and/or law enforcement and document this four-step algorithm in the patient’s health record.

Your state’s health regulations also might include a provision for involuntarily admitting the patient to a behavioral health facility.

Finally, it is important to note that proposed changes to the HIPAA Privacy Rule will likely occur in 2022. As part of these changes, the U.S. Department of Health and Human Services (HHS) is proposing to increase flexibility in relation to disclosing protected health information (PHI) to family, friends, and caregivers for the purposes of avoiding harm.

HHS acknowledges that determining with certainty whether a threat is “serious and imminent” — the current HIPAA language — may be impossible; thus, the Proposed Rule would permit disclosure of PHI when the threat to health and safety is “serious and reasonably foreseeable.” The proposed change would include a definition of “reasonably foreseeable” to help guide decision-making about disclosure.<sup>2</sup>

## Resources

- [AMA Journal of Ethics: How Should Physicians Make Decisions about Mandatory Reporting When a Patient Might Become Violent?](#)
- [American Psychological Association: Disclosing Confidential Information](#)
- [Centers for Disease Control and Prevention: Duty to Warn](#)
- [Journal of the American Academy of Psychiatry and the Law: Warning a Potential Victim of a Person’s Dangerousness: Clinician’s Duty or Victim’s Right?](#)
- [Medscape: Legal Obligations to the Dangerous Patient](#)
- [National Conference on State Legislatures: Mental Health Professionals’ Duty to Warn](#)
- [Society for the Advancement of Psychotherapy: Confidentiality and its Exceptions: The Case of Duty to Warn](#)
- [The New Social Worker: Duty to Warn, Duty to Protect](#)

## Endnotes

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<sup>1</sup> HIPAA Privacy and Security Rule, 45 C.F.R. § 164.512.

<sup>2</sup> Proposed Modifications to the HIPAA Privacy Rule To Support, and Remove Barriers to, Coordinated Care and Individual Engagement, 86 Fed. Reg. 6446 (Jan. 21, 2021) (to be codified at 45 CFR pts. 160 & 164).

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