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Responding to Legal Requests and Demands for Protected Health Information

What is the HIPAA?

- Health Insurance Portability and Accountability Act of 1996.
- The primary goal of the law is to make it easier for people to keep health insurance, **to protect the confidentiality and security of healthcare information**, and to help the healthcare industry control administrative costs.

HIPAA: What is PHI?

- “Protected Health Information” (PHI) is the traditional medical record BUT includes more . . . (45 C.F.R 160.103).
- PHI is individually identifiable health information, including demographic data that relates to:
 - The individuals past, present or future physical or mental health or condition
 - The provision of health care to the individual, or
 - The past, present, or future payment for the provision of health care to the individual
- And that identifies the individual or reasonable basis to believe it can be used to identify the individual.
- **HITECH**: Now excludes “records of a person who has been deceased for more than 50 years.”

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What are appropriate disclosures?
Court Orders, Warrants, Subpoenas,
Administrative Demands

Question 1

- Are you a party to the lawsuit or subject of the investigation?
- If yes – get legal counsel
- If no – proceed to Question 2

Question 2

- Does the subpoena, court order, warrant, or administrative demand have jurisdiction?
- Example – I can't subpoena medical records from Cleveland Clinic in WV med mal case
- If no jurisdiction, then not obligated to respond
- If there is a question – get legal counsel

Question 3

- What kind of request/demand is it?
 - Authorization?
 - Court Order?
 - Warrant?
 - Subpoena?
 - Administrative Demand?

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AUTHORIZATIONS

Authorization

- Is it a valid authorization?
 - 45 CFR 164.508(c)
 - Description of the information
 - Who is asking for it and who gets it
 - Purpose of the request
 - Expiration date
 - Signature
 - Proper Notice

Authorization – Cont.

- Who signed it?
 - Patient
 - Personal Representative
 - Must have a description of such representative's authority to act for the individual

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ORDERS AND WARRANTS

Orders – Court/Administrative Tribunal

- 45 CFR § 164.512(e) (see also 164.512(f)(1)(ii)(A))
- “A covered entity may disclose protected health information in the course of any judicial or administrative proceeding...in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the PHI expressly authorized by such order.”
- **STRICTLY COMPLY WITH THE ORDER – PROVIDE ONLY WHAT IS ASKED FOR**

[REDACTED]



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

In Re: [REDACTED]

Civil Action No. [REDACTED]

Judge [REDACTED]

THIS DOCUMENT APPLIES TO:

[REDACTED]

v. Plaintiff,

Civil Action No. [REDACTED]

[REDACTED]

Defendants.

Granted [REDACTED]

MEDICAL COURT ORDER

TO: [REDACTED]
Attn: Risk Management Department
[REDACTED]

FROM: The Circuit Court of Kanawha County, West Virginia

Re: [REDACTED]
DOB: [REDACTED]
DOD: [REDACTED]
SSN: [REDACTED]

This is to affirm that [REDACTED] (hereinafter referred to as the 'facility'), has been requested to supply all pathology to the firm of [REDACTED] [REDACTED] (hereinafter referred to as [REDACTED])

the "firm"). The pathology specimens are to be provided for the purpose of review in connection with the firm's representation of [REDACTED] in the above-referenced civil action.

The facility is hereby ORDERED to provide the material as described below to the firm [REDACTED] within 48 (forty-eight) hours:

All original cytology and pathology specimens numbered [REDACTED] and [REDACTED] relating to the [REDACTED].

It is stipulated that the material is being provided for pathological review; therefore, once the facility has placed the requested material in custody of common carrier to be specified by the firm and at the firm's expense, in appropriate packaging, the facility will thenceforth be released from all responsibility pertaining to the location and security of the provided material, and shall also be immune from liability resulting from any action or claim relating to or arising from the absence of the original slides and block from the facility's files. The immunity from liability shall be in force until such time as the slides and block are returned to the facility, and shall be permanent if the slides and block are lost or destroyed.

ENTERED, this _____ day of [REDACTED], 20[REDACTED]

Hon. [REDACTED]

Granted
[REDACTED]

Warrants

- Signed by Judge or Magistrate?
- If so, “A covered entity may disclose PHI...in compliance with and as limited by the relevant requirements of...a court order or **court-ordered warrant**, or a subpoena or summons issued by a judicial officer.” 164.512(f)(1)(ii)(A)
- Don’t interfere and CALL LEGAL COUNSEL

SEARCH WARRANT

STATE OF WEST VIRGINIA,

COUNTY OF _____, TO-WIT:

TO THE SHERIFF OR ANY DEPUTY SHERIFF OF THE COUNTY, TO ANY MEMBER OF THE DEPARTMENT OF PUBLIC SAFETY, OR TO ANY POLICE OFFICER AUTHORIZED BY LAW TO EXECUTE SEARCH WARRANTS.

Whereas, _____ has this day made complaint on oath before the undersigned, Magistrate of said County, that on the _____ day of _____, 20____ and prior to the issuance of this warrant, in the said County of _____, _____ did lawfully * (and feloniously) _____

(State the Offense)

And that the complainant has cause to believe and does believe that property,

- *a) (Stolen) (Embezzled) (Obtained by false pretenses)
- *b) (Designed and intended for use) (which is and has been used) as a means of committing such criminal offense
- *c) (Manufactured) (sold) (kept) (concealed) (possessed) (controlled) (designed and intended for use) (which is and has been used) in violation of the criminal laws of the state.
- *d) (Evidence of a crime)

Namely, _____ (State property to be seized)

is concealed in _____ (Describe premises)

And that the grounds for probable cause for the issuance of this warrant are as follows: _____

(State facts for belief)

that the name of the person whose affidavit has been taken in support of the issuance of this warrant is _____

(Type name on the line)

You are therefore, commanded in the name of the State of West Virginia to search forthwith the premises above described and all appurtenances appertaining thereto for the property above specified, to seize such property and bring the same before me to be dealt with according to law.

Given under my hand this the _____ day of _____, 20____

*Strike out inapplicable words.

Magistrate

NOTE: WV Code 62-1A-4 provides specifically that a warrant may be executed and returned only within 10 days after its date.

PROPERTY RECEIPT

I, the undersigned, did execute the within warrant, on the _____ day of _____, 20_____.

Time: _____ A.M. – P.M., by searching the premises therein described.

The following is an inventory of the property seized, hereby received:

Dated this _____ day of _____, 20_____.

(Officer)

Receipt of a copy of the within warrant is hereby acknowledged along with the inventory of the property taken as above listed.

Date this the _____ day of _____, 20_____ Time: _____ A.M. – P.M.

(Person from whose premises the property was taken)

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

)
)
)
)
)

Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search
of the following person or property located in the District of
(identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property
described above, and that such search will reveal (identify the person or describe the property to be seized):

YOU ARE COMMANDED to execute this warrant on or before (not to exceed 14 days)
in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the
person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the
property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory
as required by law and promptly return this warrant and inventory to (United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C.
§ 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose
property, will be searched or seized (check the appropriate box)

for days (not to exceed 30) until, the facts justifying, the later specific date of

Date and time issued: Judge's signature

City and state: Printed name and title

Return		
Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of :		
Inventory of the property taken and name of any person(s) seized:		
Certification		
<p>I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.</p>		
Date:	
	<i>Executing officer's signature</i>	
	
	<i>Printed name and title</i>	



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SUBPOENAS

Grand Jury Subpoenas

- 164.512(f)(1)(ii)(B): “A covered entity may disclose protected health information...in compliance with and as limited by the relevant requirements of...a grand jury subpoena...”
- Call Legal Counsel

UNITED STATES DISTRICT COURT
for the

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To:

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place:		Date and Time:	
--------	--	----------------	--

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

SEE ATTACHMENT

In lieu of appearing before the Grand Jury, compliance with this subpoena can be made by furnishing the information requested.

It is requested that you not notify anyone that the above information has been requested. Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Date:

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

[REDACTED]

Provide a complete patient file for [REDACTED]
(including, but not limited to progress notes, examination notes, prescriptions issued, payment records,
insurance information, and test results) from [REDACTED]

CAUTION!

- Each state is different!
- Certain state laws are actually more stringent with regard to privacy and must be followed over HIPAA
- <http://www.privacy.wv.gov/Pages/default.aspx>
- Cleveland Clinic case
 - Turned over records in response to a grand jury subpoena
 - Sued because Ohio's state law did not permit disclosure of patient records pursuant to a grand jury subpoena without patient authorization

Subpoenas - General

- 164.512(e)(1)(ii) – A covered entity may disclose PHI in the course of any judicial or administrative proceeding...in response to a **subpoena**, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if one of two conditions is made
 1. The covered entity receives “satisfactory assurance” ...from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request.

Satisfactory Assurances #1

- Written statement and accompanying documentation that:
 - The requesting party has made a good faith attempt to provide written notice of the individual;
 - The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; AND
 - The time for the individual to raise objections to the court or administrative tribunal has elapsed, and: no objections were filed or any objection has been resolved and the disclosure is consistent with that resolution.

IN THE CIRCUIT COURT OF [REDACTED] COUNTY, WEST VIRGINIA

[REDACTED]
Plaintiff,

v.

Civil Action No. [REDACTED]

[REDACTED]
Defendants.

**NOTICE OF INTENT TO SUBPOENA MEDICAL RECORDS VIA
SUBPOENA DUCES TECUM**

In accordance with the Health Information Portability and Accountability Act (HIPAA) Privacy Regulations, 45 CFR §164.512(e), please take notice that the following medical records regarding [REDACTED] will be requested via subpoena duces tecum:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

This request includes all medical records and any and all other records or documentation with regard to medical treatment rendered to [REDACTED]. Copies of the subpoenas are attached hereto as Exhibit A.

Please take notice that the parties have until the close of business on [REDACTED] to file an objection with the Court or otherwise notify the undersigned counsel of its objection to this Notice of Intent. If the undersigned counsel is not notified by the above date, the undersigned will move forward and subpoena [REDACTED] medical records from the above listed provider. A copy of this Notice will be sent to each provider along with the subpoena as satisfactory assurance that all parties have been placed on notice and afforded an opportunity to object to the subpoenas. Should an objection be made, the party making the objection is requested to send that objection directly to the provider listed above with a copy to all counsel of record.

[REDACTED]

IN THE CIRCUIT COURT OF ██████████ COUNTY, WEST VIRGINIA
CIVIL CASE SUBPOENA DUCES TECUM

██████████

Plaintiff,

v.

Civil Action No. ██████████

██████████

Defendants.

TO:

██████████

YOU ARE HEREBY COMMANDED to appear in the Circuit Court ██████████ County, at the place, date and time specified below to:
testify in the taking of a deposition in the abovescaptioned case.
testify in a hearing in the abovestyled case
testify in the trial of the abovestyled case

YOU ARE COMMANDED to produce a copy of the complete medical chart of ██████████ specifically this means all medical records, reports, summaries, notes, test and laboratory results, MRI films, CT scans, all radiological films with accompanying reports, pharmacy records, bills and charges, or any other information regarding the examination, evaluation, care, and treatment ██████████

Place:

██████████

Date:

██████████

Time:

██████████

Issued by:

██████████

Signature:

Counsel for Defendant

Date:

W. Va. R. Civ. P. 45(c). Place of the examination. - A deponent may be required to attend an examination only in the county in which the deponent resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court.

W. Va. R. Civ. P. 45(d). Protection of persons subject to subpoenas. - (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court on behalf of which the subpoena was issued may enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings, and a reasonable attorney's fee. (2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. (B) Subject to paragraph (e)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded. (3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires a person to travel for a deposition to a place other than the county in which that person resides or is employed or transacts business in person or at a place fixed by order of the court; (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) subjects a person to undue burden. (B) If a subpoena (i) requires disclosure of a trade secret or other confidential research development, or commercial information, or (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

W. Va. R. Civ. P. 45(e). Duties in responding to subpoena. - (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them in categories in the demand. (2) When information subject to a subpoena is withheld on a claim that it falls within the protection as trial preparation materials, the claim shall be made expressly and shall be supported by affidavit of the documents, communications, or things not produced that is sufficient to enable the demanding party to



Subpoenas - General

- 164.512(e)(1)(ii) – A covered entity may disclose PHI in the course of any judicial or administrative proceeding...in response to a **subpoena**, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if one of two conditions is made
 2. The covered entity receives “satisfactory assurance” ...from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of HIPAA

Satisfactory Assurances #2

- Written statement and accompanying documentation that:
 - The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
 - The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

Qualified Protective Order

- An order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
 - Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and
 - Requires the return to the covered entity or destruction of the PHI (including all copies made) at the end of the litigation or proceeding.

Subpoenas - General

- Absent those “satisfactory assurances” can’t disclose without:
 - Authorization
 - Provider, itself, providing the notice from #1 or seeking a qualified protective order.

Subpoenas - General

- No mental health records via subpoena from attorney
- W.Va. Code § 27-3-1 and 27-3-2- has to be by an order of a court based on a finding the that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining confidentiality.

Subpoenas – General

W.Va. Code § 57-5-4b, 4c, and 4d

- If receive a subpoena for hospital records and conditions have been met and the hospital is not a party nor the place where any cause of action is alleged to have arisen, hospital can comply with the subpoena by supplying a sealed copy of the records.
 - Exceptions
 - Subpoena states: “The Procedure authorized pursuant to section four-b of this article will not be deemed sufficient compliance with this subpoena.” 57-5-4g
 - Subpoena states: “Original records are required, and the procedure authorized pursuant to section four-b, article five, chapter fifty-seven of this code, will not be deemed sufficient compliance with this subpoena.” 57-5-4h

Subpoenas – General

W.Va. Code § 57-5-4b, 4c, 4d, 4e

- Seal the records in an inner-envelope or wrapper with the style and number of the action, name of witness and date of subpoena on the inner-envelope.
- Place inner-envelope in an outer-envelope and wrapper, seal it and address the envelope:
 - If appearance is in court – the clerk or judge
 - If appearance at a deposition – the officer before whom the deposition is to be taken

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Subpoenas – General

W.Va. Code § 57-5-4e

- With the records, enclose an Affidavit stating
 - Duly authorized custodian of the records and has authority to certify the records
 - The copy is a true copy of all the records described in the subpoena
 - The records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business at or near the time of the act, condition or event reported therein, and
 - Certifying the amount of the reasonable charges of the hospital for furnishing such copies of the records.
 - If there are no records – custodian shall so state in the affidavit

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Administrative Requests, Subpoenas, Summons,
Investigative Demands

Administrative

- 164.512(f)(1)(ii)(C) – A covered entity may disclose PHI...in compliance with and as limited by the relevant requirements of...an administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that (GET CONFIRMATION IN WRITING THAT):
 - The information sought is relevant and material to a legitimate law enforcement inquiry;
 - The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - De-identified information could not reasonably be used.

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Other Requests, Demands, Inquiries and Reports

CPS

- Child Protective Services – W.Va. Code 49-2-803 – requires any medical provider who has reasonable cause to suspect that a child has been neglected or abused to report to the DHHR. If one believes the child suffered serious physical abuse or sexual abuse or sexual assault, report to State Police and any law-enforcement agency having jurisdiction to investigate
- 49-2-809 – Reporting Procedure
- 49-2-812 – Penalties for failing to report – Misdemeanor

CPS

- W.Va. Code § 49-2-807 – Requires report to the medical examiner when there is reasonable cause to suspect a child has died as a result of child abuse or neglect.
- W.Va. Code § 49-2-808 – May take photographs of areas of trauma visible on child and, if medically indicated, perform radiology studies. If done, requires sending with the report

APS

- APS – W.Va. Code § 9-6-9 – “If any medical, dental or mental health professional...has reasonable cause to believe that an incapacitated adult or facility resident is or has been neglected, abused or placed in an emergency situation, or if such person observes an incapacitated adult or facility resident being subjected to conditions that are likely to result in abuse, neglect or an emergency situation, the person shall immediately report the circumstances...”
- W.Va. Code § 9-6-11 – Reporting procedures

APS

- W.Va. Code § 9-6-10 – Report to medical examiner if probable cause to believe that an incapacitated adult or facility resident has died as a result of abuse or neglect.
- W.Va. Code § 9-6-14 – Penalty for failing to report – Misdemeanor

APS

- HIPAA – 164.512(c)(1) permits the disclosure as it is required by law. However - - -
- HIPAA – 164.512(c)(2) – if disclosure is made, must promptly inform the individual that such report has been or will be made, except if:
 - The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
 - The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual...

CPS/APS

- If you get a request/demand for records that did not involve a required reporting then follow the other HIPAA rules regarding subpoenas, court orders, warrants, administrative demands

Custody Issues

- W.Va. Code § 48-9-209 – In the case of parents who do not live together, each such parent has full and equal access to a child's medical records absent a court order to the contrary; Neither parent may veto the access requested by the other parent.

DMV

- Authorizes providers to report to the DMV the name, DOB, and address of every person who suffers from a physical or mental condition that prevents the person from safely operating a motor vehicle.

DUI Investigations

- W.Va. Code § 17C-5-4 and 17C-5-6 – mandates implied consent for secondary chemical test of blood, breath, or urine for purposes of determining alcoholic content of a driver's blood; requires physician, nurse, or trained medical technician to withdraw blood for this purpose; implies mandated disclosure of contents to law enforcement
- Patient can refuse

Motor Vehicle Deaths

- W.Va. Code § 17C-5B-1 and 17C-5B-2 – Requires blood test to be taken of any driver or adult pedestrian who dies as a result of a MVA; requires results to be reported to the Chief Medical Examiner and to the WV State Police.

Gunshot and Knife Wounds

- W.Va. Code § 61-2-27 – Requires any medical provider who provides medical treatment to a person suffering a wound from a gunshot or knife or other sharp or pointed instrument, under circumstances which would lead a reasonable person to believe the wound resulted from a violation of criminal law to report same to law enforcement

Reporting of Burns

- W.Va. Code § 61-2-27a – a provider who examines or renders medical treatment to a person with a burn (fire or chemical) must report same to the office of the state fire marshal if the situation gives the health care provider reasonable cause to suspect that the injury occurred during the commission or attempted commission of an arson.

Reporting Violent or Unusual Deaths

- W.Va. Code § 61-12-8 – Requires any physician in attendance to report to Chief Medical Examiner, county ME, or Coroner the death of a person from violence, death from suicide, sudden death in a healthy patient, an inmate of a public institution, some disease which might constitute a public health threat
- Failure to do so - misdemeanor
- Chief Medical Examiner can request medical records for treatment prior to death

Fatality and Mortality Review Team

- W.Va. Code § 61-12A-1 through 61-12A-4
- Created under the Bureau for Public Health – a multidisciplinary team created to oversee and coordinate the examination, review and assessment of:
 - Deaths from unintentional prescription or pharmaceutical drug overdoses
 - The deaths of children under the age of 18
 - Deaths from suspected domestic violence
 - Deaths of all infants and all women who die during pregnancy, at the time of birth or within 1 year of the birth of a child

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Fatality and Mortality Review Team

- W.Va. Code § 61-12A-3 – FMRT and the advisory panel may request information and records as necessary to carry out its responsibilities – includes requesting medical dental and mental health records

Additional Law Enforcement

- 164.512(f)(5) – A covered entity may disclose to law enforcement protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

Additional Law Enforcement

- 164.512(f)(2) – a covered entity may disclose the following PHI in response to a law enforcement official’s request for information for purpose of identify or locating a suspect, fugitive, material witness, or missing person:
 - Name and address
 - DOB and SSN
 - ABO blood type and rh factor
 - Type of injury
 - Date and time of treatment
 - Date and time of death if applicable and
 - Description of distinguishing physical characteristics
 - NOT DNA, dental records, analysis of body fluids or tissue or samples

Additional Law Enforcement

- 164.512(f)(3) – a covered entity may disclose PHI in response to a law enforcement request for such information about an individual who is or is suspected to be a victim of a crime if:
 - If the individual agrees; or
 - The CE is unable to obtain agreement due to incapacity or emergency provided that:
 - Law enforcement represents that such info is needed to determine if a violation of law by a person other than the victim has occurred and the info is not intended to be used against the victim;
 - Law enforcement represents that immediate law enforcement activity would be materially and adversely affected by waiting until the individual is able to agree; and
 - The disclosure is in the best interests of the individual in the exercise of professional judgment

Additional Law Enforcement

- 164.512(j)(1) – A CE may, consistent with applicable law and standards of ethical conduct, use or disclose PHI, if the CE, in good faith, believes the use or disclosure:
 - Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
 - Is made to a person reasonably able to prevent or lessen the threat, including the target of the threat

Additional Law Enforcement

- 164.512(j)(2) - A CE may, consistent with applicable law and standards of ethical conduct, use or disclose PHI, if the CE, in good faith, believes the use or disclosure:
 - Is necessary for law enforcement to identify or apprehend an individual
 - Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have cause serious physical harm to the victim; or
 - Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

Additional Law Enforcement

- If considering a disclosure because of a statement made, the disclosure cannot be made if the statement was made:
 - In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure, or counseling or therapy
 - Through a request by the individual to initiate or to be referred for treatment, counseling, or therapy
- The disclosure regarding the statement must be limited to the statement and the PHI permitted for locating an individual

Useful Resources

- 2015 West Virginia Health Care Privacy Laws HIPAA Preemption Analysis -
<http://www.privacy.wv.gov/SiteCollectionDocuments/HIPAA/2015%20HIPAA%20Preemption%20Update.pdf>
- HIPAA Frequently Asked Questions -
<http://www.hhs.gov/ocr/privacy/hipaa/faq/index.html>

- J. Dustin Dillard: ddillard@flahertylegal.com
(304) 347-4258
- Robert L. Coffield: rcoffield@flahertylegal.com
(304) 345-3791
- www.flahertylegal.com

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