

Clearing Up Confusion: When and How Information Related to Mental Health May Be Disclosed Under the HIPAA Privacy Rule

On February 20, 2014 the Health and Human Services Office for Civil Rights (OCR) issued guidance to help healthcare providers better understand when and how a patient's mental health information may be shared with others under the HIPAA Privacy Rule: (<http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/mhguidance.html>). The guidance "HIPAA Privacy Rule and Sharing Information Related to Mental Health" explains that the Privacy Rule provides strong protections for an individual's health information and "these protections are especially important where very sensitive information is concerned, such as mental health information. At the same time, the Privacy Rule recognizes circumstances arise where health information may need to be shared to ensure the patient receives the best treatment and for other important purposes, such as for the health and safety of the patient or others."

The guidance addresses how the Privacy Rule balances appropriate disclosures with the protections for information related to mental health. Written in the form of Frequently Asked Questions, the guidance clarifies "when HIPAA permits health care providers to:

- ▶ Communicate with a patient's family members, friends, or others involved in the patient's care;
- ▶ Communicate with family members when the patient is an adult;
- ▶ Communicate with the parent of a patient who is a minor;
- ▶ Consider the patient's capacity to agree or object to the sharing of their information;
- ▶ Involve a patient's family members, friends, or others in dealing with patient failures to adhere to medication or other therapy;
- ▶ Listen to family members about their loved ones receiving mental health treatment;
- ▶ Communicate with family members, law enforcement, or others when the patient presents a serious and imminent threat of harm to self or others; and
- ▶ Communicate to law enforcement about the release of a patient brought in for an emergency psychiatric hold."

Additionally, the FAQ includes information about:

- ▶ Protections for psychotherapy notes;
- ▶ Understanding that there may be federal laws (other than HIPAA) and state laws that apply to alcohol and substance use treatment information that are more stringent than HIPAA and must be taken into account before making decisions about disclosures of information related to mental health; and
- ▶ How HIPAA and the Family Educational Rights & Privacy Act (FERPA) interact when it comes students' information related to mental health.
(see guidance developed by HHS and the Department of Education at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/hipaaferpajointguide.pdf>)