

Hospital and Law Enforcement Guide to Health Care Related Disclosure

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Introduction

Hospitals and health systems are responsible for protecting the privacy and confidentiality of their patients and patient information. Hospitals also have a responsibility to work with law enforcement to help keep their communities safe. This Guide is intended to assist hospitals and law enforcement officials in working together, particularly in the area of release of protected health information.

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandated regulations that govern privacy standards for health care information. HIPAA's privacy regulation, effective April 2003, specifies the circumstances under which protected health information may and may not be released. In general, under HIPAA, either a patient or a patient's representative must authorize disclosure of protected health information, or the disclosure must fit a specific exception in order for protected health information to be disclosed to law enforcement. If a patient (or the patient's representative) authorizes the disclosure, the authorization must meet the regulatory requirements for valid authorization.

Hospitals must adhere to the federal regulations. Additionally, several Washington State laws also govern release of patient information. Where state law is stricter than HIPAA, hospitals must adhere to state law. This Guide addresses hospital obligations that arise as a result of both federal and Washington state law.

The information provided in this Guide should be applied in the context of what is reasonable under the circumstances. The HIPAA Privacy Regulations are based upon the need to balance competing interests, including those of protecting privacy while allowing law enforcement to do its job. Similarly, Washington state law recognizes the importance of protecting patients' privacy while considering the interests of law enforcement.

This information is provided as a guide for both hospitals and law enforcement officials. Hospitals are encouraged to consult their own legal counsel before finalizing any policy on the release of protected health information.

Scope and Focus of the Guide

This Guide endeavors to provide information about common situations concerning hospital disclosure of protected health information to law enforcement officials,¹ but it does not cover every situation that could potentially arise. This Guide focuses on release of protected health information to law enforcement officials who are conducting investigations, making official inquiries into potential violations of the law, and prosecuting or otherwise conducting criminal, civil, or administrative proceedings related to alleged violations of the law. It does not apply to

¹ See Frequently Used Terms for a description of 'law enforcement.'

every facet of law enforcement. For instance, the Guide does not cover release of protected health information to state or federal correctional institutions or release of protected health information concerning offenders who are also subject to court ordered treatment.

Throughout the Guide, references are made to “protected health information” or PHI. In simple terms, protected health information is the patient information hospitals must protect by law.² When the Guide refers to “protected health information,” it generally has the same meaning provided under HIPAA.³

The Guide is separated into sections covering a variety of situations likely to arise for hospitals and law enforcement concerning disclosure of PHI. It focuses on exceptions under HIPAA and state law that permit disclosure of protected health information to law enforcement without patient authorization. The last sections in the Guide addresses law enforcement officer presence in treatment areas of the hospital, use of body worn cameras, and considerations related to out-of-state subpoenas and legal process. In the appendix to the Guide, several model forms are provided. These include A) authorization for release of PHI for law enforcement officials seeking access to patient records; B) request for mental health service information form; C) request for records involving child abuse; and D) resources for hospitals on immigration enforcement. The forms and information are not the standard but merely examples health care facilities may wish to implement.

Frequently Used Terms

The following terms are used frequently in this Guide, and definitions are set out here for easy reference. However, no attempt has been made to define every technical term in the Guide. In general, individual sections of the Guide refer to any definitions necessary to understand that particular section.

Directory information: Directory information means information disclosing the presence and, for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular person who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.⁴

² The My Health My Data Act (MHMD), passed in 2023, expands protections for health information to cover all reasonably identifiable information that is linkable to a consumer. Protected health information under HIPAA is not subject to the act. Some HIPAA covered entities may have data not considered protected health information under HIPAA but protected under MHMD. Since MHMD primarily impacts non-HIPAA covered entities this Guide does not explore MHMD requirements in detail. See chapter RCW 19.373.

³ See Frequently Used Terms for a description of ‘protected health information.’

⁴ RCW 70.02.010.

Where an admitted patient is listed in the facility directory and is asked for by name, a one-word condition and general location may be released unless the patient has opted out of the directory.⁵ The disclosure of directory information is made in response to a call or inquiry to the facility. A facility may not affirmatively contact a person to disclose directory information. The Washington State Hospital Association *Media Guide to Cooperation* recognizes the following conditions and locations that may be provided when a patient is listed in the facility directory and is asked for by name:

- (1) Undetermined: The patient is awaiting a physician and assessment.
- (2) Treated and Released: The patient has been treated by the hospital and has been released. In this instance, “treated” is the condition and “released” is the location. Generally, this indicates the patient’s condition was satisfactory upon release.
- (3) Stabilized and Transferred: The patient was stabilized at the hospital and has been transferred to another facility for further care. In this instance, “stabilized” is the condition and “transferred” is the location. Hospitals should not release where the patient was transferred. This classification does not imply a patient’s condition, simply that the patient is at another facility.
- (4) Satisfactory: Vital signs (heartbeat, breathing, blood pressure, temperature) are stable and within normal limits. The patient is conscious and comfortable. Indicators are good.
- (5) Serious: Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.
- (6) Critical: Vital signs are unstable or not within normal limits. The patient may be unconscious. There is some doubt the patient will recover. Death could be imminent.
- (7) Deceased: The death of a patient may be reported to the authorities by the hospital, as required by law. Typically, a report will be made after efforts have been made to notify the next-of-kin. The death of a patient may also be reported to the media after the next-of-kin has been notified, as long as the patient’s body is still in the hospital.
- (8) Released: If a patient has been released, and the hospital receives an inquiry about the patient by name, the hospital may confirm that the patient is no longer in the hospital, but it cannot give the release date, admission date, length of stay or any other information.

⁵ 45 CFR 164.510(a); RCW 70.02.200(1)(e).

Law enforcement: Under HIPAA and Washington law, law enforcement officials include an officer or employee of any agency, or authority of the United States, a state, a territory, a political subdivision of a State or territory or an Indian tribe who is empowered by law to: (1) investigate or conduct an official inquiry into a potential violation of law; or (2) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.⁶

Patient: Under Washington law and for purposes of this Guide, patient is defined as “an individual who receives or has received health care.” The term includes a deceased individual who has received health care.⁷ HIPAA does not define the term patient.

Protected health information or “PHI”: Individually identifiable health information that is a subset of health information, including demographic information collected from an individual and: (1) is created or received by a health care provider, health plan, employer, or health care clearing house and (2) relates to the past, present, or future physical or mental health condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.⁸ Note that under the definition of “protected health information,” even information such as a patient’s discharge date and time or presence in the hospital would be considered protected health information since it is individually identifiable information created by a health care provider related to the provision of health care.

Accessing Information

Hospitals, in accordance with HIPAA guidelines, have designated privacy officers who are available to assist with requests for information. Often, privacy officers are the best starting point for a situation where law enforcement requires access to PHI. This is especially true if the request is not a routine one.

While hospitals differ in their procedures for releasing information to law enforcement, the following things are generally consistent across facilities. Hospital staff, including front-line patient care staff, have received training about disclosure of PHI under HIPAA. When considering whether to release PHI, hospital staff will follow their training on the law and act in the best interests of the patient. Unfortunately, the law can be very confusing. Depending on the circumstances of the request for information, hospital staff may need to consult with the designated privacy officer or another designated person for additional help in determining whether the request can be fulfilled.

⁶ 45 CFR 164.103 and RCW 70.02.010(13). Note that the HIPAA definition also includes those individuals empowered by law to prosecute or conduct civil and administrative proceedings.

⁷ RCW 70.02.010(34).

⁸ 45 CFR 160.103.

If PHI pertains to a patient not currently being treated, the request usually needs to be routed through the hospital's health information management or medical records department rather than through the emergency department or patient care unit. Because every hospital is different, it is worth inquiring about the optimal way to access PHI at a particular facility before initiating PHI requests.

Hospital staff must document nearly every disclosure of PHI to law enforcement. In some cases, the disclosure may require that the patient completes an authorization form or that the law enforcement officer completes other documentation forms.

Topics Covered

I. Disclosing protected health information

To disclose PHI to law enforcement⁹, a hospital must either receive a valid authorization executed by the individual whose information is sought (or his or her personal representative) or the request must fall within a specific circumstance recognized under both HIPAA and state law that allows the disclosure of PHI without authorization. Each circumstance requires an analysis of the particular facts and the relevant exceptions. The following are general categories described in each section of this Guide that may be considered to support the disclosure of protected health information:

Section II: the officer provides a HIPAA compliant authorization signed by the patient or patient's representative. See the appendix of this Guide for a model authorization form;

Section III: the disclosure of information to law enforcement is required for patients with specific injuries;

Section IV: the release of personal health information is necessary to minimize an imminent danger;

Section V: the information is necessary to identify or locate a suspect, fugitive, material witness or missing person and the disclosure will avoid or minimize an imminent danger;

Section VI: there is a question regarding whether law enforcement can use physical force in a health care setting, including a hospital;

⁹ Under RCW 70.02.101(13) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.

Section VII: the information is provided as follow up to certain authorities who either brought or caused the patient to be brought to the hospital;

Section VIII: the information relates to the discharge of a patient of whom law enforcement has requested notification of release and the requirements for the disclosure of the information meet those described in Section VIII;

Section IX: the information relates to a law enforcement request for blood testing and sampling of a patient;

Section X: the information relates to a request by law enforcement for a patient's physical items or samples as evidence;

Section XI: the information relates to the fact that the patient has been admitted for mental health, alcohol abuse treatment, drug abuse treatment, or HIV status and may be released as described in the section;

Section XII: a law enforcement officer produces a court order, warrant, or subpoena that meets the requirements described in the section;

Section IV: the information relates to a victim of a crime, involves minimization of an imminent danger, and is released as described in the section;

Section XIV: the information relates to a crime that occurred on hospital property and is released as described in the section;

Section XV: the information relates to a minor and is released as described in the section;

Section XVI: the information must be reported under mandatory child or vulnerable adult abuse and neglect reporting statutes;

Section XVII: the information is released for homeland security or national security purposes;

Section XVIII: there is a question regarding whether law enforcement can access hospital facilities; the information is necessary for an officer or guard to fulfill their duties when accompanying a patient in custody for a violent or sex offense;

Section XIX: there is a question regarding the use of body worn cameras in hospitals; and

Section XX: the information being requested is protected health information relating to reproductive or gender affirming health care and the request involves an out-of-state subpoena and/or criminal court process.

While this Guide does attempt to address the most common situations concerning release of personal health information to law enforcement, it is not exhaustive in its coverage and hospitals may be able to release PHI to law enforcement under other circumstances.

II. Patient authorization to access protected health information

Most of the subjects covered in this Guide pertain to circumstances where law enforcement wants access to PHI and the patient would likely refuse to provide it to law enforcement. However, if a patient completes a valid authorization to disclose the PHI to law enforcement, then the information identified in the authorization must be disclosed. A sample authorization form is provided in the appendix of this Guide.

If a patient is incapacitated or otherwise unable to execute an authorization, a personal representative of the patient may execute an authorization allowing disclosure of the patient's PHI to law enforcement. HIPAA recognizes the state law hierarchy, set forth in RCW 7.70.065, of persons who may consent to care and authorize disclosure of PHI in place of the patient.¹⁰ Persons authorized to provide informed consent to health care on behalf of an adult patient who does not have the capacity to make health care decisions shall be members of one of the following classes of persons in the following order of priority:¹¹

- (1) the appointed guardian(s) of the patient, if any;
- (2) the individual(s), if any, to whom the patient has given durable power of attorney that encompasses the authority to make health care decisions;
- (3) the patient's spouse;
- (4) children of the patient who are at least eighteen years of age;
- (5) parents of the patient;
- (6) siblings of the patient;
- (7) adult grandchildren of the patient who are familiar with the patient;

¹⁰ Under the HIPAA regulation, a person authorized under state or other applicable law to act on behalf of the individual in making health care decisions is the individual's personal representative and can also authorize disclosure of protected health information. 45 CFR 164.502(g). In addition to exercising the individual's rights under the HIPAA regulation, a personal representative may also authorize disclosures of the individual's protected health information. Office of Civil Rights HIPAA Privacy Guidance, December 2, 2002.

¹¹ Note that while RCW 7.70.065 refers to persons who may provide consent to care for medical treatment, the authority to authorize disclosure of protected health information is encompassed within the authority to consent to medical care. See Section XV regarding the disclosure of protected health information concerning minors.

- (8) adult aunts and uncles of the patient who are familiar with the patient; and
- (9) an adult who has exhibited special care and concern for the patient; is familiar with the patient's personal values; is reasonably available to make health care decisions; is not a physician to the patient or an employee of the physician, the owner, administrator, or employee of a health care facility, nursing home, or long-term care facility where the patient resides or receives care, or a person who receives compensation to provide care to the patient; and provides a declaration of willingness to become involved with the patient's care subject to penalty of perjury under chapter 5.50 RCW.¹²

It is important to note that no person may consent to health care on behalf of the patient or authorize disclosure of the patient's PHI if:

- (1) a person of higher priority has refused to give such authorization; or
- (2) there are two or more individuals in the same class, and the decision is not unanimous among all available members of that class.¹³

Additionally, state law requires that before any person may provide consent to care or authorize disclosure of PHI on behalf of a patient not competent to do so, the person must first determine in good faith that the patient, if competent, would consent to the proposed health care or authorize the disclosure of PHI. If such a determination cannot be made, the decision to disclose PHI may be made only after determining that the proposed health care or disclosure of PHI is in the patient's best interests.¹⁴

If law enforcement officials want access to PHI regarding a law enforcement officer who is being treated at a hospital for an injury not likely suffered as a result of criminal conduct¹⁵ and want more information than a location and one-word condition (*directory information*), they must have a valid authorization from the patient/officer or his or her personal representative. One way to address this issue is to obtain authorizations from all officers in advance.¹⁶

III. Patients with specific injuries

Under HIPAA, hospitals may disclose PHI to law enforcement for a law enforcement purpose if the disclosure is required by law, "including laws that require the reporting of certain types of

¹² See WSHA bulletin with sample health care decision statement. [Effective July 28, 2019: Changes to State Law on Medical Decision Making | Washington State Hospital Association](#)

¹³ RCW 7.70.065(1)(b).

¹⁴ RCW 7.70.065(1)(c).

¹⁵ RCW 70.02.050(2)(a). See the specific injuries and the information that may be described in Section III.

¹⁶ The authorization must have an expiration date or event. In this case the authorization could expire upon the individual's termination of employment as a law enforcement officer.

wounds and other physical injuries.”¹⁷ Washington State law requires hospitals to disclose certain health care information to law enforcement authorities when the patient is being treated for injuries likely suffered as a result of criminal conduct.¹⁸

Affirmative obligation to report: If a patient is treated for a bullet wound, gunshot wound, or stab wound, hospitals **must** report to a local law enforcement authority as soon as is reasonably possible, taking into consideration the patient’s emergency care needs.¹⁹ The report must include:

- (1) name of the patient;
- (2) patient’s residence;
- (3) patient’s sex;
- (4) patient’s age;
- (5) whether the patient received a bullet wound, gunshot wound, or stab wound; and
- (6) the name of the health care provider providing treatment for the injury.

Disclosure upon request: Hospitals are required to disclose certain PHI when federal, state, or local law enforcement authorities make a written or oral request to a nursing supervisor, administrator, or designated privacy official, and the request involves a patient who is being treated or has been treated for:

- (1) a bullet wound;
- (2) a gunshot wound;
- (3) a powder burn;
- (4) another injury arising from or caused by the discharge of a firearm;
- (5) an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which the law enforcement authority making the request states is reasonably believed to have been intentionally inflicted; or
- (6) a blunt force injury that the law enforcement authority making the request states is reasonably believed to have resulted from a criminal act.

¹⁷ 45 CFR §164.512(f)(1)(i).

¹⁸ RCW 70.02.200(2)(b).

¹⁹ RCW 70.41.440.

While a hospital must report certain information on bullet wounds, gunshot wounds, and stab wounds as noted above, disclosures made upon request must include more information than is included in the mandatory report. A hospital is permitted to disclose information to law enforcement authorities about patients being treated for **other injuries only** if a **request** is made.²⁰ A hospital may not notify law enforcement authorities when a patient presents with these types of injuries unless another reporting obligation exists or another exception applies.²¹ Where a request is properly made, the following information must be disclosed, if known, to the federal, state or local law enforcement authorities making the request:

- (1) name of the patient;
- (2) patient's residence;
- (3) patient's sex;
- (4) patient's age;
- (5) patient's condition;
- (6) patient's diagnosis or extent and location of injuries as determined by a health care provider;
- (7) whether the patient was conscious when admitted;
- (8) name of the health care provider making the determination with respect to the patient's condition, diagnosis, extent and location of injuries, and whether or not the patient was conscious when admitted;
- (9) whether the patient has been transferred to another facility; and
- (10) patient's discharge date and time.

Example: A hospital nursing supervisor receives a telephone call from a local police department stating: "I am Detective Smith with the city police department. I would like information regarding any patient who has been admitted with stab wounds in the last twenty-four hours. The police department believes that someone was intentionally stabbed and may seek medical care."

²⁰ RCW 70.02.200(2)(b).

²¹ Additional considerations regarding exceptions: WAC 246-101-101 requires reporting of gunshot wounds to the Department of Health within 30 days. Reporting gunshot wounds to law enforcement authorities is determined on a jurisdiction-by-jurisdiction basis. Other exceptions include situations involving minimizing imminent danger, locating a fugitive, and reporting child or vulnerable child abuse or neglect.

The hospital nursing supervisor should verify the identity of the officer, and if the person is confirmed to be a police officer, they must release the PHI described above for any patient admitted with a stab wound.

The required disclosure to law enforcement does not supersede laws that apply to information relating to treatment for mental illness or substance abuse. Such information generally cannot be accessed by law enforcement without the patient's authorization or a court order.²² For example, the fact of mental health treatment generally cannot be disclosed. Requests involving patients receiving mental health or substance abuse treatment must be evaluated based upon all of the facts and circumstances and applicable laws before a disclosure is made (see Section XI). If patients who agree to law enforcement's request for information are treated for or discharged to obtain mental health treatment, other laws may apply as described in Section XI.

Providing health care services in response to a medical emergency: A health care provider, operating outside of a hospital (e.g. paramedic, emergency medical technician), **must** disclose PHI upon a **request** from federal, state, or local law enforcement if the patient is being treated for:²³

- (1) a bullet wound;
- (2) a gunshot wound;
- (3) a powder burn;
- (4) other injury arising from or caused by the discharge of a firearm;
- (5) an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state or local law enforcement authorities reasonably believe to have been intentionally inflicted;
- (6) a blunt force injury that federal, state or local law enforcement authorities reasonably believe resulted from a criminal act; or
- (7) injuries sustained in an automobile collision.

If the request is appropriately made, the report must include:

- (1) name of the patient;
- (2) patient's residence;

²² See Section II regarding patient authorization. Section XII regarding a court order.

²³ RCW 18.73.270(1).

- (3) patient's sex;
- (4) patient's age;
- (5) patient's condition or extent and location of injuries as determined by the first responder;
- (6) whether the patient was conscious when contacted;
- (7) whether the patient appears to have consumed alcohol or be under the influence of alcohol or drugs;
- (8) the name of the provider who first treated the patient; and
- (9) the name of the facility where the patient is being transported for additional treatment.²⁴

The disclosure of PHI to law enforcement by a health care provider who is providing emergency health care services outside a hospital in response to a medical emergency at the request of law enforcement is required by law. As a result, HIPAA is preempted in this instance.²⁵

In addition to the conditions which require PHI disclosure when the information is **requested** by law enforcement, a health care provider providing emergency health care services in response to a medical emergency **may disclose** PHI to law enforcement if such disclosure appears necessary to alert law enforcement to the commission and nature of a crime, the location of such crime or the victims, and the identity, description, and location of the perpetrator²⁶ and the disclosure is necessary to avoid an imminent danger (see Section IV).²⁷ If a disclosure is made in this circumstance, it should include only the minimum amount of allowable information in order to assist law enforcement officers with their official duties.

IV. Minimizing an imminent danger

In instances where disclosure of PHI may reasonably avoid or minimize an imminent danger to the health or safety of a patient, any other individual, or the public, a provider may release PHI to law enforcement, as well as any other person reasonably able to prevent or lessen the threat, without a patient's authorization. State law and the HIPAA privacy regulation must be read together to provide parameters for disclosure in this instance.²⁸

²⁴ RCW 18.73.270(1).

²⁵ 45 CFR 160.203(c).

²⁶ 45 CFR 164.512(f)(6).

²⁷ The Washington state imminent danger analysis criteria set forth in Section IV must be met because Washington state lacks an equivalent to 45 CFR 164.512(f)(6).

²⁸ RCW 70.02.050(1)(c) and 45 CFR 164.512(j)(1).

Providers, apart from mental health professionals, must believe in good faith²⁹ that disclosure of PHI is necessary to prevent or lessen a **serious** and **imminent** threat to the health or safety of a person or the public. The disclosure must be to a person who is reasonably able to prevent or lessen the threat.

Under this exception to authorization requirements, providers **may disclose PHI without** a direct **request** from law enforcement. If the anticipated disclosure is due to a **request** from law enforcement, law enforcement should provide sufficient detail to the provider about the anticipated harm to justify the release. Law enforcement must demonstrate that the anticipated harm is serious and imminent. “Imminent” means ready to take place or about to occur, hanging threateningly over one’s head, or menacingly near.³⁰ If law enforcement credibly demonstrates to a health care provider that in the opinion of the law enforcement officer the harm is serious and imminent and that the information requested is needed to lessen that threatened harm, providers may reasonably rely upon such representations. Still, if the health care provider does not know the requesting law enforcement official, the provider must verify the identity and authority of the official prior to disclosing the information. The provider can then release the minimum information necessary to lessen the threatened harm.³¹

Mental health professionals are subject to slightly different standards. A mental health professional is permitted to disclose information related to mental health services under the following circumstances: (1) to law enforcement and to any person, if the person’s identity is known, when that person’s health and safety has been threatened; or (2) to law enforcement in the event of a crisis or emergent situation that poses a significant and imminent risk to the public.³²

The Washington Supreme Court has expanded a mental health professional’s duty to warn to include protecting “foreseeable victims” of a patient’s dangerous propensities, creating a potential conflict with limitations on disclosures of PHI to avert serious and imminent threats to

²⁹ Under HIPAA a “good faith” belief is presumed if it is based on “actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.” 45 CFR 164.512(j)(4).

³⁰ *Tarasoff v. Regents of Univ. of Cal.*, 551 P.2d 334, 340, 343 (1976).

³¹ The minimum necessary standard is applicable generally under HIPAA. Where use and disclosure is discretionary, and not otherwise required by law, it should be applied in the circumstances to uphold privacy standards to the extent possible. See HHS FAQ *When does the Privacy Rule allow covered entities to disclose protected health information to law enforcement officials?*, available online: <https://www.hhs.gov/hipaa/for-professionals/faq/505/what-does-the-privacy-rule-allow-covered-entities-to-disclose-to-law-enforcement-officials/index.html> (citing 45 CFR 164.514(d)(3)(iii)(A)).

³² RCW 70.02.230(2)(h), (i), describing such disclosures as “mandatory” for the purposes of HIPAA. See also OCR’s *Message to Our Nation’s Health Care Providers*, available online: <https://www.hhs.gov/sites/default/files/ocr/office/lettertonationhncp.pdf>; HIPAA Privacy Rule and Sharing Information Related to Mental Health, available online: <https://www.hhs.gov/hipaa/for-professionals/special-topics/mental-health/index.html>

safety under both state law and HIPAA.³³ Until the Washington legislature or courts clarify the standard under which a mental health professional must warn of a patient’s dangerous propensities, mental health professionals will be faced with the difficult task of balancing the new, broader duty to warn with state and federal law limitations on disclosures to decide whether the circumstances require notifying law enforcement of a patient’s potential for dangerous conduct because a threat is posed to any “foreseeable victim”, even if there is not a serious and imminent threat to a reasonably identifiable victim or victims or the public.³⁴ WSHA, in collaboration with Washington State Medical Association (WSMA) and Physicians Insurance (PI), has released a guide to the new duty to warn or protect standard.³⁵

In the event of an emergency situation that poses a significant risk to the public or the patient, at the **request** of the department of corrections or law enforcement, a mental health service agency **must** release information related to the mental health services delivered to the patient and, if known, information regarding where the patient is likely located to the department of corrections or law enforcement.³⁶ When the request is submitted **orally**, the mental health service agency is **limited** to providing only information regarding whether or not the patient/offender is being treated by the provider and the address or information regarding the location of the patient/offender.³⁷

In the event that the individual in question is a current inpatient or outpatient, providers and law enforcement may cooperate to station law enforcement personnel in the facility in order to protect patients, staff, or the public.

The following are examples that illustrate application of the above principles:

Example 1: A patient comes to the emergency room and needs stitches for a cut on his head. In discussing with the provider how he obtained the cut, the patient reveals he was in a fight in an alley a few blocks away and that the other person involved in the fight was not moving when he left.

The provider may telephone law enforcement and **report** the information in order to lessen the threat to the other person’s health or safety if the person does not

³³ *Volk v. DeMeerleer*, 386 P.3d 254 (Wash. 2016).

³⁴ In *Volk v. DeMeerleer*, the Washington Supreme Court requires mental health professionals to “act with reasonable care, informed by the standards and ethical considerations of the mental health profession, when identifying and mitigating the dangerousness of psychiatric patients” which, depending on the circumstances, may require warning law enforcement officials.

³⁵ <https://www.wsha.org/wp-content/uploads/Volk-recs-FINAL.pdf>

³⁶ RCW 70.02.260(5).

³⁷ *Id.*

obtain medical assistance. If law enforcement requires the patient's assistance in locating the alley, the provider may reveal the name and location of the patient.³⁸

Example 2: A patient tells her mental health therapist during a session that if her mother ever yells at her again, she will put rat poison in her coffee.

If the provider reasonably believes that the patient is going to poison her mother, the provider must **report** the information to law enforcement and the mother.³⁹ If, however, the provider believes that the patient is not seriously threatening the safety or health of the mother, no information may be released. The provider must use his or her best professional judgment and consider factors such as the current symptoms of the patient, the patient's credibility and history of violent acts, and any known ability or access to the method of harm.⁴⁰

Example 3: Law enforcement telephones the hospital and **requests** information on the condition, prognosis, and discharge date of an individual suspected of burglary.

The provider must use his or her best professional judgment to determine whether disclosure of this information is necessary to lessen or eliminate an imminent threat to the health and safety of any individual, including staff or other patients. Law enforcement can assist the provider by providing the suspect's criminal history, if any, including any convictions for violent crime and by providing their professional opinion as to whether provider staff or other patients would be in danger if the patient were awake and ambulatory. If the patient is considered a threat and information is disclosed, steps should be taken to decrease any risk to provider staff and patients, including posting a law enforcement officer with the patient.

Example 4: The **police** department calls the emergency department **asking** if any patients match the description of a particular woman who is a witness to, and perhaps a suspect in, a car accident.

The provider may not answer the questions unless the provider believes the disclosure is necessary to avoid or minimize an imminent danger to the health and safety of the patient or another individual. Even then, the provider may only release the minimum necessary information to minimize the imminent danger. If the police department has the patient's name, then the hospital can provide directory information, including location and a one-word condition regarding the

³⁸ See Section III for information regarding patients with specific injuries.

³⁹ RCW 70.02.230(2)(h).

⁴⁰ If the mother qualifies as a "vulnerable adult" and the patient reveals information in the therapy session that gives the provider reasonable cause to believe that the mother has been subject to abuse or neglect, the provider must report the information. See Section XVI.

patient. If, however, the patient has opted out of the directory, the hospital may not release any information about the patient.

Example 5: An emergency medical provider subject to the HIPAA regulation⁴¹ responds to a car accident and provides treatment to an individual involved in the accident. The provider smells alcohol on the breath of an individual and wonders if he should contact law enforcement.

If the suspected intoxicated individual is someone other than the person being treated, the information is not PHI, and the provider may **report** the information. If the suspected intoxicated individual is the person being treated, the provider may disclose the information if the provider believes the disclosure is necessary to avoid or minimize an imminent danger to the health and safety of the patient or another individual. Even then, the provider may only release the information necessary to minimize the imminent danger.

V. Identifying or locating a suspect, fugitive, material witness, or missing person

Unlike the HIPAA Privacy Regulations, Washington State law does not have an exception allowing disclosure of PHI to law enforcement to identify or locate a suspect, fugitive, material witness or missing person. As a result of the more stringent Washington law, hospitals may disclose PHI concerning identification or location of a suspect, fugitive, material witness or missing person **only if** the disclosure fits **within another exception**. This means the disclosure must be:

- (1) based upon specific injuries to the person;⁴²
- (2) based on a reasonable belief that the disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual;⁴³
- (3) limited to directory information if the patient is asked for by name, including a one-word condition and patient location,⁴⁴ and if the patient has not opted out of the directory;⁴⁵ or

⁴¹ Note that some emergency medical providers are subject to HIPAA while others are not.

⁴² RCW 70.02.200(2)(b) and RCW 70.41.440.

⁴³ RCW 70.02.050(1)(c).

⁴⁴ See Frequently Used Terms for a description of 'directory information.'

⁴⁵ RCW 70.02.200(1)(e).

- (4) regarding a patient who was brought or caused to be brought to the hospital by fire, police, sheriff, or other public authority and the information disclosed is limited to the name, address, age, gender, and type of injury.⁴⁶

Note that if a hospital is disclosing PHI to avoid or minimize an imminent danger, the hospital must only provide the minimum information necessary to prevent the harm.^{47 48}.

Violent crime or escape from correctional institution: HIPAA and state law must be read together to understand when and how Washington hospitals may disclose PHI relating to the identification or apprehension of an individual. If the provider believes in good faith that the disclosure is necessary for law enforcement authorities to identify or apprehend an individual either because of a statement made by the patient admitting to participating in a violent crime or where it appears the patient has escaped from a correctional institution, a disclosure is allowed.⁴⁹ However, disclosure is limited to the circumstances and the information listed in items (1) through (4) above.

If the disclosure is required under item (1) above (patients with specific injuries) and disclosure is mandatory because the injury is a bullet wound, gunshot wound, or stab wound, then the information disclosed is limited to the following:⁵⁰

- (a) name of the patient;
- (b) patient's residence;
- (c) patient's sex;
- (d) patient's age;
- (e) whether the patient received a bullet wound, gunshot wound, or stab wound; and
- (f) the name of the health care provider providing treatment for the injury.

⁴⁶ RCW 70.02.200(1)(f) and 45 CFR 512(f). For a complete description of how these provisions must be read together to yield the list of information that may be provided see Section VII regarding follow-up to authorities about cases initially reported by authorities.

⁴⁷ The minimum necessary standard is applicable generally under HIPAA. Where use and disclosure is discretionary, and not otherwise required by law, it should be applied in the circumstances to uphold privacy standards to the extent possible. See OCR HIPAA Privacy statement on the Minimum Necessary standard, available online: <http://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/coveredentities/minimumnecessary.pdf>

⁴⁸ See Section III for a description of disclosures required for patients with specific injuries or in response to a request for information about a patient with a specific injury. See Section IV for a description of disclosures allowed in order to avoid or minimize an imminent danger. See Section VII for a description of disclosures allowed as a follow-up to authorities about patients brought or caused to be brought to the hospital by certain authorities.

⁴⁹ 45 CFR 164.512(j)(1)(ii).

⁵⁰ RCW 70.41.440(2)(a)-(c).

If the disclosure is required under item (1) above (patients with specific injuries) and disclosure is **requested** by federal, state, or local law enforcement, then the information disclosed is limited to the following:⁵¹

- (a) name of the patient;
- (b) patient's residence;
- (c) patient's sex;
- (d) patient's age;
- (e) patient's condition;
- (f) patient's diagnosis or extent and location of injuries as determined by a health care provider;
- (g) whether the patient was conscious when admitted;
- (h) the name of the health care provider making those determinations;
- (i) whether the patient has been transferred to another facility; and
- (j) the patient's discharge date and time.

If the disclosure is permitted under item (2) above (imminent danger), then the HIPAA Privacy Regulations limit disclosure of PHI to the following minimum necessary information:⁵²

- (a) patient's name and address;
- (b) patient's date and place of birth;
- (c) patient's social security number;
- (d) patient's ABO blood type and rh factor;
- (e) patient's type of injury;
- (f) date and time of the patient's treatment;
- (g) date and time of the patient's death, if applicable; and

⁵¹ RCW 70.02.200(2)(b)(i)-(x).

⁵² 45 CFR 164.512(j)(3), referring to the list contained in 45 CFR 164.512(f)(2)(i).

- (h) a description of the patient's distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

If the disclosure is permitted under item (4) above (patients brought or caused to be brought to the hospital by certain authorities), then the information disclosed is limited to:⁵³

- (a) name of the patient;
- (b) patient's address;
- (c) patient's age;
- (d) patient's gender;
- (e) the type of injury sustained by the patient;

A disclosure based on a patient's statement is not permitted if the statement was made to the provider during the course of treatment where the purpose of the treatment is to affect the patient's propensity to commit similar criminal conduct, or during a request for such treatment.⁵⁴

Providing health care services in response to a medical emergency: The disclosure of PHI to law enforcement by a health care provider who is providing emergency health care services in response to a medical emergency may only be made if the disclosure appears necessary to alert law enforcement to the commission and nature of a crime, the location of such crime or the victims, and the identity, description, and location of the perpetrator⁵⁵ and the disclosure is necessary to avoid an imminent danger (see Section IV)⁵⁶ or if falls under the Specific Injuries exception (see Section III). If a disclosure is made in this circumstance, it should include only the minimum amount of allowable information in order to assist law enforcement officers with their official duties.

⁵³ RCW 70.02.200(1)(f) and 45 CFR 512(f). For a complete description of how these provisions must be read together to yield the list of information that may be provided see Section VII regarding follow-up to authorities about cases initially reported by authorities.

⁵⁴ 45 CFR 164.512(j)(2). This prohibition on disclosure is limited to disclosures to identify or apprehend an individual. A provider may make disclosures required by law, such as mandatory reporting of child or vulnerable adult abuse, even if the information is obtained in the course of treatment to affect a patient's propensity to commit similar criminal conduct.

⁵⁵ 45 CFR 164.512(f)(6).

⁵⁶ The Washington state imminent danger analysis criteria set forth in Section IV must be met because Washington state lacks an equivalent to 45 CFR 164.512(f)(6).

Example 1: While caring for a patient's broken arm, a nurse learns from the patient's companion that the patient is wanted by police in connection with a recent car theft. The nurse wonders whether steps can be taken to alert law enforcement.

The nurse may take the initiative and alert law enforcement as to the identification or location of the patient only if the nurse has a reasonable belief that the disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual. The nurse may respond to an inquiry from law enforcement regarding the patient and using the patient's name, by providing directory information (including a one-word condition and location of the patient) if the patient has not opted out of the directory. The nurse may also provide information to law enforcement if the patient was brought or caused to be brought to the hospital by fire, police, sheriff, or other public authority and the information disclosed is limited to the name, residence, gender, age, and type of injury.

Example 2: During the course of treatment, a patient states that she was involved in a shooting. The treatment provider wonders whether law enforcement may be contacted.

If the provider believes in good faith that the disclosure is necessary for law enforcement authorities to identify or apprehend an individual either because of a statement by the patient admitting to participating in a violent crime or where it appears the patient has escaped from a correctional institution, a disclosure is allowed. However, disclosure is limited to situations in which the treatment provider has a reasonable belief that the disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, or is limited to directory information (including a one word condition and location of the patient) if the patient has not opted out of the directory. Such information can be disclosed if law enforcement requests the information by using the patient's name, or the patient was brought or caused to be brought to the hospital by fire, police, sheriff, or other public authority and the information disclosed is limited to the name, residence, gender, age, and type of injury. Additionally, if information is disclosed under this section, the HIPAA privacy regulation limits the disclosure to the minimum necessary information listed above. Finally, if the statement was made to the provider during a course of treatment where the purpose of the treatment is to affect the patient's propensity to commit shootings or similar behavior, or during a request for treatment of such behavior, the disclosure is not allowed.

Example 3: An emergency physician treating a knife wound learns that patient was likely the perpetrator of a stabbing and that victims of the stabbing still may be at the location of the crime. The physician wants to contact law enforcement.

The disclosure may be made if the physician reasonably believes that the disclosure will avoid or minimize an imminent danger to the victims at the location of the crime. The disclosure must also appear necessary to alert law enforcement to the commission and nature of the crime, the location of such crime or the victims, and the identity, description, and location of the perpetrator (See Section IV.) The disclosure should include only the minimum amount of PHI necessary to assist law enforcement officers with their official duties.⁵⁷

VI. Use of physical force in the healthcare setting: peace officers and behavioral health

Washington law addresses the use of physical force within the healthcare setting in two specific statutes that differentiate between the individuals using the physical force, the individuals who are restrained, and the circumstances under which physical force was deemed necessary. The statutes apply only to use of force within the healthcare setting and do not address Washington's use of force laws generally. While these laws do not directly address information sharing, they are included in the Guide for context.

RCW 9A.16.020 establishes that use of force is not unlawful when used by *any person* to prevent a "mentally ill, mentally incompetent, or mentally disabled person" from harming themselves or someone else. Such an individual may be restrained for only as long as necessary to obtain legal authority for the restraint or custody of the person.⁵⁸ Also within the behavioral health arena, physical force may be used to the extent necessary to take a person into custody, transport a person for evaluation or treatment, or provide assistance under chapters 10.77, 71.05, or 71.34 RCW.⁵⁹

RCW 10.120.020 addresses the physical force that peace officers may employ. The statute provides that peace officers may use physical force in responding to a request for help from first responders, medical or behavioral health professionals, designated crisis responders, or members of the public, only to protect the life of the officer or the life of another from imminent threat.⁶⁰ That is further limited by the fact that peace officers may only use force if they have exhausted all de-escalation techniques.⁶¹ When employing physical force, the officers must also use the least amount of force necessary and remove the force as soon as that necessity ends.⁶²

⁵⁷ See Section III for information regarding patients with specific injuries.

⁵⁸ RCW 9A.16.020

⁵⁹ RCW 10.120.020(1)(d).

⁶⁰ RCW 10.120.020(5)(b) and (4).

⁶¹ RCW 10.120.020(3)(a).

⁶² RCW 10.120.020(3)(b)-(e).

VII. Follow-up to authorities about patients brought to the hospital by authorities

For patients brought or caused to be brought to the hospital by fire, police, sheriff, or other public authority, hospitals may provide certain information to the authorities.⁶³ Because both state⁶⁴ and federal law⁶⁵ have limitations on what may be disclosed, the two provisions must be read together to establish what the hospital can provide to law enforcement when releasing information as a follow-up on patients brought or caused to be brought to the hospital by authorities. Reading the provisions together, the following may be disclosed by hospitals:

- (1) name of the patient;
- (2) patient's address;
- (3) patient's age;
- (4) patient's sex/gender;⁶⁶ and
- (5) the type of injury sustained by the patient.

The hospital may release additional information **only if** another exception applies, such as:

- (1) a patient or legally authorized surrogate has authorized the release by signing a valid authorization.⁶⁷ See Section II for information on patient or surrogate authorization. See the last section of this Guide for a model authorization form;

⁶³ RCW 70.02.200(1)(f).

⁶⁴ RCW 70.02.200(1)(f) permits disclosure of certain information regarding patients who were brought or caused to be brought to the hospital by certain authorities, including name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries determined by a physician, and whether the patient was conscious when admitted.

⁶⁵ The HIPAA privacy regulation at 45 CFR 164.512(f) permits disclosure of a minimum amount of information:

- (A) Name and address;
- (B) Date and place of birth;
- (C) Social security number;
- (D) ABO blood type and rh factor;
- (E) Type of injury;
- (F) Date and time of treatment;
- (G) Date and time of death, if applicable; and
- (H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

⁶⁶ Note that state law RCW 70.02.200(1)(f) uses the word "sex" to refer to a patient's sexual/gender identity and federal law 45 CFR 164.512(f) uses the word "gender."

⁶⁷ See RCW 70.02.030.

- (2) a law enforcement authority requests information about a patient with specific injuries.⁶⁸ See Section III regarding disclosures in response to a request for information about patients with specific injuries;
- (3) a patient poses an imminent danger, and the release of the information will avoid or minimize this imminent threat posed by the patient.⁶⁹ See Section IV regarding disclosure to minimize an imminent threat;
- (4) an admitted patient is listed in the facility directory and is asked for by name. In this case, unless the patient has opted out of the directory, a one-word condition and general location may be released;⁷⁰ or
- (5) the patient is the subject of suspected child⁷¹ or vulnerable adult abuse.⁷²

Regulations regarding substance abuse treatment program records do not contain a similar exception for case reports to police.⁷³ Therefore, law enforcement may not access substance abuse treatment program records without a court order, warrant, or subpoena, **even if** the officers reported the case to the hospital. It is important to make a distinction between substance abuse treatment records and records related to emergency department testing of individuals for drugs or alcohol. Records of tests for drug or alcohol use are treated in the same manner as any other PHI. See Section XI for more on release of substance abuse treatment information.

Example 1: Police accompany an individual who has been stabbed to a hospital emergency department for treatment. A police officer later contacts the hospital regarding the status of the patient. Is it permissible for the hospital to provide information to the police officer?

If the police officer makes the request for information to a nursing supervisor, administrator or designated privacy official and states the belief that the stab wound was intentionally inflicted, the hospital must provide information to the police officer regarding the patient's condition. The hospital also must disclose: the patient's name; residence; sex⁷⁴; age; diagnosis, and extent and location of injuries; whether the patient was conscious when admitted; the name of the health care provider making the determination with respect to the patient's condition, diagnosis, and extent and location of injuries; whether the patient has been

⁶⁸ RCW 70.02.200(2)(b).

⁶⁹ RCW 70.02.050.

⁷⁰ 45 CFR 164.510, RCW 70.02.200(1)(e). See Frequently Used Terms for a description of 'directory information.'

⁷¹ 45 CFR 164.512(b)(1)(ii); RCW 26.44.030; RCW 26.44.040

⁷² 45 CFR 164.512(c); RCW 74.34.035. See Section XVI.

⁷³ 42 CFR 2.12(c).

⁷⁴ See footnote 65.

transferred to another facility (unless the other facility is a mental health facility); and the date and time of the patient's discharge.⁷⁵

Example 2: Police respond to a car accident. Aid units also respond. The police direct the aid units to take injured individuals to the hospital. Police investigating the accident subsequently contact the hospital for information regarding the individuals brought to the hospital by the aid unit. What can the hospital tell police?

Because the police officers at the scene initiated the transport of patients to the hospital, the hospital may disclose the name, address, age, gender and type of injury of the patients. In order for the hospital to confirm that the police were involved in initiating the care provided, law enforcement officials should be able to describe the accident involving the patients to the health care provider. If the patients' injuries involve blunt force trauma, and the police officer directs the request to a nursing supervisor, administrator or designated privacy official, and states that the car accident is reasonably believed to have resulted from a criminal act, the hospital must provide for each patient: the name; residence; sex/gender; age; condition, diagnosis and extent and location of injuries; whether the patient was conscious when admitted; the name of the health care provider making the determination with respect to the patient's condition, diagnosis, and extent and location of injuries, whether the patient has been transferred to another facility (unless the other facility is a mental health facility); and the date and time of the patient's discharge. The hospital may provide additional information only if another exception applies.

VIII. Notification on release of a patient

Sometimes a person is arrested and, in lieu of booking at the jail, is taken to the emergency room or health care facility because they are injured or complaining of symptoms that require medical attention. In such cases, the law enforcement officer frequently leaves the patient at the emergency room or facility to receive care. Often, a law enforcement officer will ask the hospital to notify him or her upon the patient's release and to receive information on the patient's condition.

In general, without a guard or police officer supervising the patient's whereabouts in the hospital, a hospital cannot consider a patient to be in the custody of a law enforcement agency. Except as otherwise described elsewhere in this Guide, hospitals generally have no legal authority under the HIPAA privacy regulation or state law to release personal health information to law enforcement if the patient is not in the custody of law enforcement.

⁷⁵ See Section III for information regarding patients with specific injuries.

However, there are exceptions to this general rule. RCW 71.05.157 allows for patients who are arrested and brought to a health care facility to be evaluated for a 72-hour psychiatric detention. If it is determined that the patient is not an appropriate candidate for such an admission, the patient can be held for up to 8 hours at the request of law enforcement so that they can return to take the patient back into custody. During this holding period, the hospital must make reasonable attempts to contact the requesting law enforcement officer to inform the officer that the person is not approved for admission in order to enable the officer to return to the facility and take the individual back into custody.

Other exceptions that would enable the hospital to release the fact that a patient has been discharged are:

- (1) a patient or legally authorized surrogate has authorized the release by signing a valid authorization.⁷⁶ See Section II for information on patient or surrogate authorization. See the last page of this Guide for a model authorization form;
- (2) a law enforcement authority requests a patient's discharge date and time for a patient who was treated for a specific injury.⁷⁷ See Section III for information regarding patients with specific injuries;
- (3) a patient poses an imminent danger, and the release of the information would avoid or minimize the imminent threat posed by them;
- (4) an admitted patient is listed in the facility directory and is asked for by name. In this case, unless the patient has opted out of the directory, a one-word condition and general location may be released;⁷⁸ or
- (5) the patient is the subject of suspected child or vulnerable adult abuse.

See Section XI for exceptions for minors who are receiving mental health treatment. See Section VIII for information regarding notification of a patient's release if that patient is in custody for a violent or sex offense and was initially accompanied or secured by a law enforcement officer.

IX. Request for blood tests and samples

Alcohol or drug test results and implied consent: Under Washington's Implied Consent statute, everyone who operates a motor vehicle in this state has given implied consent to a test of his or

⁷⁶ See RCW 70.02.030.

⁷⁷ RCW 70.02.200(2)(b). Note that the hospital is required to respond to a request regarding the patient's discharge date and time. A hospital is not required to notify law enforcement when a patient is discharged.

⁷⁸ 45 CFR 164.510(1)&(2), RCW 70.02.200(1)(e). See Frequently Used Terms for a description of 'directory information.'

her breath if the arresting officer has reasonable grounds to believe the person was driving or in physical control of a vehicle while intoxicated or under the influence of any drug or was otherwise in violation of certain statutes.⁷⁹

Washington's Implied Consent statute also allows a person's blood alcohol, THC, or drug levels to be tested and disclosed to law enforcement without the patient's authorization when done pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or when under other authority of law.⁸⁰ For blood to be drawn pursuant to this section of the law, the officer must have reasonable grounds to believe that the person is in physical control or driving a vehicle under the influence or in violation of certain statutes.

Disclosure of blood alcohol or drug levels to law enforcement under these circumstances would be permitted under HIPAA because the reporting is required by law and the person is deemed to have consented.⁸¹

*Missouri v. McNeely*⁸² – *warrant required unless exigent circumstances exist*: The United States Supreme Court's 2013 decision in *McNeely* overturned 46 years of precedent by holding that, where police officers can reasonably obtain a warrant before a blood sample is drawn, they should do so unless there are exigent circumstances for proceeding without it. However, the judgment left unanswered precisely what type of "exigent" circumstances would justify law enforcement obtaining a blood test without a warrant if the person did not consent. Similarly, the Washington legislature amended the Implied Consent statute to permit law enforcement to obtain a blood test without the person's consent, where "exigent circumstances exist."⁸³

Further, in 2016, the Centers for Medicare & Medicaid Services (CMS) released a memorandum regarding the provision of services to justice-involved individuals.⁸⁴ CMS states that an intervention performed for law enforcement purposes, rather than to provide diagnosis or treatment of the patient, would not be viewed as a health care service. The memorandum uses the example of performing a test or examination to confirm whether an object is concealed within the body or has been ingested. If it is the case and there is no other clinical justification to perform the test, the hospital must ensure there is a lawful order by a court to proceed. It

⁷⁹ RCW 46.20.308 and RCW 46.61.503.

⁸⁰ RCW 46.20.308 and RCW 46.61.503.

⁸¹ 45 CFR 164.512(f)(1)(i); RCW 46.20.308.

⁸² 569 U.S. 141 (2013).

⁸³ RCW 46.20.308(4).

⁸⁴ Referring to inmates of a public institution, individuals under the care of law enforcement, and individuals under community supervision (e.g. parole or on probation) DSHS and CMS, Updated Guidance to Surveyors on Federal Requirements for Providing Services to Justice Involved Individuals, (Dec. 23, 2016),

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-16-21.pdf>

further states, “These types of situations must be addressed in hospital policies that address both the legal authority for such interventions, as well as the specific criteria that must be met prior to carrying out such requests or directives from law enforcement.”⁸⁵

Immunity for blood draws directed by law enforcement: The Implied Consent statute shields medical personnel and hospitals from civil and criminal liability for withdrawing blood at the direction of a law enforcement officer under the provisions of a search warrant, or even in exigent circumstances.⁸⁶ Similar protections from findings of professional misconduct also exist where the blood withdrawal is directed by law enforcement under the provisions of a search warrant or exigent circumstances.⁸⁷ In Washington, the state bears the burden of proving exigency by clear and convincing evidence.⁸⁸ While Washington courts have not provided a clear interpretation of the term “exigent,” multiple courts have provided guidance by ruling that a circumstance is likely found to be “exigent” where:

- (1) it is impractical to wait for a warrant either because the delay would destroy evidence;
- (2) there is a compelling need for officer action;⁸⁹
- (3) a person is badly injured and needs a prompt airlift;
- (4) the accident occurred in a remote location; or
- (5) where the person's blood-alcohol level will dissipate over time and may be impacted by treatment.⁹⁰

Example 1: A patient involved in a motor vehicle accident is transported to the emergency department in an emergency medical vehicle or ambulance. Shortly after the patient’s arrival, police arrive and request that a blood sample be obtained by emergency department personnel as law enforcement has reasonable grounds to believe the person was driving, or in physical control of, a vehicle while intoxicated. The patient is unconscious or otherwise incapable of consenting to the blood test.

⁸⁵ *Id.* at 10.

⁸⁶ RCW 90.56.560 and RCW 46.61.513.

⁸⁷ RCW 18.130.410.

⁸⁸ *State v. Rawley*, 13 Wash. App. 2d 476 (2020).

⁸⁹ *State v. Baird*, 187 Wash. 2d 212 (2016).

⁹⁰ *State v. Inman*, 2 Wash. App. 2d 283 (2018).

The emergency personnel may draw the blood sample but should not provide it to law enforcement until a court order, warrant, or subpoena is provided to the hospital. See Section XII for further guidance on how the hospital should respond to a court order, warrant or subpoena.

Example 2: The same person arrives in the emergency department accompanied by police. Police remain with the suspect and advise the emergency department personnel that the person is under arrest for vehicular homicide, vehicular assault, or DUI accident that caused serious bodily injury to another person, and the officer has reasonable grounds to believe the person was under the influence of alcohol or a drug at the time. Police ask the person, who is conscious, to consent to a blood test and the person refuses. Law enforcement requests that emergency department personnel draw a blood sample, and they offer to physically restrain the person while their blood is drawn.

Emergency department personnel should contact a nursing supervisor, administrator, or designated privacy official for assistance and ask the patient to consent to a blood draw with the understanding that the sample will not be provided to law enforcement unless the hospital receives a properly issued court order, warrant, or subpoena. If the person agrees, the sample should be taken and preserved by the hospital pending receipt of a court order, warrant, or subpoena. The number of people who have custody of the blood sample should be minimized to reduce the number of hospital employees who must testify in court as to the chain of custody of the piece of evidence. If the person refuses to consent, emergency department personnel should decline to participate in a warrantless blood draw, particularly if the sample is to be obtained by force.

X. Request for a patient's physical items or samples as evidence

Health care providers and law enforcement officials need to carefully evaluate their evidence transfer procedures in light of HIPAA requirements. Certain transfers that, in the past may not have been considered to involve PHI, now may contain PHI. Patient authorization or a court order will be required in order for providers to release such information, samples, or records.

The following is a quote from the preamble to the HIPAA regulation:

...if a person provides a bullet to law enforcement, and tells law enforcement that the bullet was extracted from an identified individual, the person has disclosed the fact that the individual was treated for a wound, and the additional statement is a disclosure of protected health information.⁹¹

⁹¹ 65 FR 82462.

The same analysis applies to cells, tissues, and physical items “such as clothing, weapons, or a bloody knife.”⁹² In order to make statements to law enforcement about these items, the disclosure must fall within one of the exceptions for disclosure to law enforcement discussed in Section III of this Guide and may only contain the limited information allowed by the particular exception.

If no exception applies or if more extensive information is sought, patient authorization or a warrant must be obtained as described in Sections II and XII, respectively. Patient authorization or a court order is necessary in the case of mental health, substance abuse, or HIV information or treatment records. Note that items removed or identified while the patient is under the physical control of a police officer may be taken by the police officer as evidence.

Additional considerations for hospitals in this area include minimizing the number of people who have custody of the physical item in order to reduce the number of people who must testify in court as to the chain of custody of the piece of evidence. In order to further minimize the chain of custody problem, hospitals also may consider providing the evidence directly to law enforcement authorities even if the identity of the person who possessed the evidence cannot be disclosed. In such cases, the items can be tracked by a number. Hospitals also should cross-reference such items with any pending search warrants to determine whether either the item and/or the identity of the person that possessed the item can be disclosed to law enforcement.

Example 1: Police arrive in the emergency department with a person suspected of perpetrating a shooting. Police physically remain with the suspect while the suspect is treated. During treatment, the suspect’s sweatshirt is removed. Police request the sweatshirt as evidence because they believe it will assist others in identifying the suspect. Emergency department personnel are unsure what to do with the sweatshirt.

Police may immediately take the sweatshirt as evidence in the suspected crime. The suspect has physically remained under police control since arriving at the hospital and during treatment. Therefore, the police can take the item as evidence.

Example 2: The same suspect is subsequently taken to surgery. The police officer that had remained with the patient waited in the lobby during the surgery. A bullet is removed during surgery.

The bullet may be provided directly to a police officer if a written or oral request for the bullet is made by the police officer to a nursing supervisor, administrator, or designated privacy official because the bullet comes from a person who is being treated for a bullet wound. The identity of the person from whom the bullet was taken is required by law to be disclosed.

⁹² 65 FR 82462.

XI. Release of mental health, substance abuse treatment, or HIV information

Substance abuse treatment records: Under federal law, records of substance abuse treatment programs may only be released:

- (1) to comply with state laws mandating the reporting of suspected child abuse or neglect - namely to provide incidents of abuse or neglect. But the original drug or alcohol abuse patient records will not be reported; or
- (2) when a patient commits a crime on program premises, against program personnel, or threatens to do so.⁹³

This means that, unless one of the above circumstances apply, substance abuse treatment records may not be disclosed to law enforcement without the patient's authorization. This is **true even if one of the other exceptions described in this Guide applies.**

Behavioral health: If a patient is committed under the involuntary treatment act (chapter 71.05 RCW) after dismissal of a violent, sexual, or felony harassment offense, a provider may release mental health information to a police chief, sheriff, prosecuting attorney, or victim upon the patient's release, final discharge, transfer, authorized leave, or escape from involuntary treatment.⁹⁴ This, however, does not apply to mental health services provided for minors (see section XV). Any other disclosure must be authorized by the patient.

Upon request by law enforcement⁹⁵, a provider must also release the place and date of an involuntary commitment, the fact and date of discharge or release, and the last known address of patients committed under the involuntary treatment act.⁹⁶ Providers must also release information related to mental health services for patients who:

- (1) are currently committed to the custody or supervision of the department of corrections or the indeterminate sentence review board;
- (2) have been convicted or found not guilty by reason of insanity of a serious violent offense; or

⁹³ 42 CFR 2.12(c)(5).

⁹⁴ RCW 70.02.230(2)(j), RCW 71.05.425.

⁹⁵ Under RCW 70.02.101(13) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law

⁹⁶ RCW 70.02.260(1)(a)(i).

(3) were charged with a serious violent offense and the charges were dropped when the patient was determined to be incompetent.⁹⁷

However, this information may only be released when the requesting individual has a reasonable suspicion that the patient in question has engaged in behavior indicating a crime; when a violation of community custody or a parole violation has been committed or is likely to be in the near future; or when the patient is exhibiting signs of mental deterioration that may make the individual appropriate for commitment under the involuntary treatment act and/or is likely to be civilly committed in the near future.⁹⁸ These records may only be requested for the purposes of completing risk assessment reports, assessing a risk to the community, harm to self and others when in a city or county jail, planning for the supervision of an offender and responding to an offender's failure to report for department of corrections supervision.⁹⁹ For more detailed information on the release of mental health information, please review the Department of Social and Health Services official form "Request for Mental Health Service Information" located in the appendix of this Guide.

If a representative of a law enforcement or corrections agency requests that a provider commence an investigation or provide treatment to an offender, the health care provider shall provide the representative with written results of the investigation, including the reasons for either the detention or release of the patient.¹⁰⁰ When a patient is receiving court-ordered treatment and subsequently becomes subject to supervision by the department of corrections, the provider shall notify the department of corrections of the treatment.¹⁰¹ The information shall include all relevant records and reports necessary for the department of corrections to carry out their duties.¹⁰²

After previously being involuntarily committed for mental health treatment, if an individual is found to be guilty of unlawful possession of a firearm, providers may disclose the fact, place and date of involuntary commitment and an official copy of the order of commitment.¹⁰³

Providers may also notify the police of information necessary to prevent or lessen a serious and imminent threat to health or safety.¹⁰⁴ See Section IV for further details.

Note that the above access to mental health treatment records does **not** include access to "psychotherapy notes."¹⁰⁵ Psychotherapy notes are a very limited set of records documenting or

⁹⁷ RCW 70.02.260(1)(a)(ii).

⁹⁸ RCW 70.02.260(3)(b).

⁹⁹ RCW 70.02.260(3)(a).

¹⁰⁰ RCW 70.02.230(2)(e)(i).

¹⁰¹ RCW 71.05.445(1)(b).

¹⁰² RCW 71.05.445(2).

¹⁰³ RCW 70.02.230(2)(m).

¹⁰⁴ RCW 71.05.120, 71.05.330, 71.05.340, RCW 70.02.230(2)(h), (i), 70.02.230(2)(n), (s), 42 CFR 164.512(f).

¹⁰⁵ RCW 70.02.010(36), 45 CFR 164.524(a)(1).

analyzing the contents of conversations or therapy sessions. They are kept separate from the patient's medical record and are only for the individual provider's use.¹⁰⁶

HIV/Sexually transmitted diseases: A law enforcement officer, firefighter, health care provider, health care facility staff person, department of corrections staff person, jail staff person, or certain other persons who have been substantially exposed to an individual's bodily fluids may request that a public health officer test the individual for HIV and may receive the results of that test.¹⁰⁷ Persons who have been placed at risk for acquisition of a sexually transmitted disease because of their behavioral interaction with the infected individual, may also request the results of the test.¹⁰⁸

Example: A police officer is bitten by a suspect enroute to the jail. The bite breaks the skin.

The officer may request that the suspect be tested by a public health officer and the HIV status of the suspect disclosed to the officer. The officer's local legal advisor can assist in obtaining the necessary testing. The officer should not take the suspect directly to a hospital or health care facility to request testing.

XII. Responding to a court order, warrant or subpoena

HIPAA and Washington state law must be read together to understand how a hospital should respond to a court order, warrant, or subpoena.¹⁰⁹ A health care provider must provide information to law enforcement authorities when they are required to do so by law, such as in the case of a properly issued court order or warrant.¹¹⁰ However, any court order, warrant, subpoena, summons, grand jury subpoena, and administrative order must be properly issued and must meet certain requirements before PHI is disclosed.¹¹¹ Following Governor Inslee's June 2022 directive, state police have been instructed not to cooperate with out-of-state requests in abortion and other reproductive health care investigations, prosecutions, or legal actions.¹¹² Additionally, the Shield Law, passed in 2023, protects patient information from out-of-state

¹⁰⁶ RCW 70.02.230(2)(t), 45 CFR 164.501.

¹⁰⁷ RCW 70.02.220(2)(g), RCW70.24.340, 45 CFR 164.512(a).

¹⁰⁸ RCW 70.02.220(2)(f) (assuming the provider believes the exposed person was unaware of the risk of exposure and disclosure of the identity of the infected person is necessary).

¹⁰⁹ See Section XX for information specific to foreign (out-of-state) court processes relating to protected health services.

¹¹⁰ RCW 70.02.200(2)(a).

¹¹¹ 45 CFR 164.512(f).

¹¹² On June 30, 2022, Governor Inslee issued a directive to the state patrol, prohibiting cooperation or assistance with out-of-state abortion and other reproductive health care investigations, prosecutions, or other legal actions. This includes declining to cooperate with out-of-state subpoena, search warrants, and court orders that have not been domesticated in Washington. [https://www.governor.wa.gov/sites/default/files/directive/22-12%20-%20Prohibiting%20assistance%20with%20interstate%20abortion%20investigations%20\(tmp\).pdf?utm_medium=email&utm_source=govdelivery](https://www.governor.wa.gov/sites/default/files/directive/22-12%20-%20Prohibiting%20assistance%20with%20interstate%20abortion%20investigations%20(tmp).pdf?utm_medium=email&utm_source=govdelivery)

requests regarding abortion, reproductive care, and gender-affirming treatment.¹¹³ See Section XX for further details on protections for patient health information related to abortion and gender-affirming care.

Court-ordered requests: A hospital may disclose PHI without prior authorization if the information is requested pursuant to a court order, a court-ordered warrant, a subpoena, summons issued by a judicial officer, a grand jury subpoena, or an administrative request. The health care provider may release only the information expressly authorized by the court order, warrant, subpoena, grand jury subpoena, or administrative order, and nothing more.¹¹⁴

In the case of an administrative order (such as an administrative subpoena or a civil investigative demand), HIPAA further requires that the requested information be released only if the request is relevant and material to a legitimate law enforcement inquiry; specific and limited in scope based on the purpose for the request; and unable to be fulfilled with de-identified information.¹¹⁵

The general rule is that when the requesting document has been issued by a court/administrative tribunal (such as a warrant) or is accompanied by a court order, the hospital or health care provider need only follow the above requirements before disclosing the requested information and must promptly release it.

Requests not accompanied by court order or issued by court: When the subpoena, summons, discovery request, or other lawful process is not accompanied by an order of a court/administrative tribunal or has not been otherwise issued directly from a court, RCW 70.02.060 includes notice requirements for both the health care provider and patient involved and an opportunity to seek a protective order to prevent disclosure.¹¹⁶ For example, this could include a subpoena in a civil litigation case where an attorney signs the subpoena.¹¹⁷ In such case, the following requirements must be followed in addition to those above before disclosing the information:

- (1) Before service of a discovery request or compulsory process on a health care provider for health care information, an attorney shall provide advance notice to the health care provider and the patient or the patient's attorney involved through service of process or first-class mail, indicating the health care provider from whom the information is sought, what health care information is sought, and the date by which a protective order must be obtained to prevent the health care provider from complying. Such date shall give the patient and the health care provider adequate time to seek a protective order, but in no

¹¹³ Chapter 7.115 RCW.

¹¹⁴ 45 CFR 164.512(f)(1)(ii)(A) & (B), 45 CFR 164.512(e).

¹¹⁵ 45 CFR 164.512(f)(1)(ii)(C).

¹¹⁶ At least one Washington hospital has been instructed by the Office of Civil Rights, in response to a HIPAA complaint, to verify and document at the end of the 14-day notice period that no protective order has been issued prior to releasing the records.

¹¹⁷ Subpoenas for documents in criminal cases are issued by a court and therefore would be subject to the disclosure rules outlined above for "Court-Ordered Requests." CrR 4.7(d); CrRLJ 4.7(d).

event be less than fourteen days since the date of service or delivery to the patient and the health care provider of the foregoing. Thereafter the request for discovery or compulsory process shall be served on the health care provider.

- a. Without the written consent of the patient, the health care provider may not disclose the health care information sought under subsection (1) of this section if the requestor has not complied with the requirements of subsection (1) of this section.

Under Washington law, a health care provider is required to disclose PHI pursuant to a discovery request or other compulsory process that meets the requirements of RCW 70.02.060.¹¹⁸

Patient-requested accountings of disclosures: Ordinarily, a hospital must comply with a patient's request for an accounting of disclosures made of his or her PHI.¹¹⁹ However, the hospital or health care provider must temporarily suspend an accounting of disclosures made to a law enforcement official - for the time specified - if the official provides the hospital with a written statement that such an accounting would be reasonably likely to impede the agency's activities and specifying the time for which a suspension is required.¹²⁰ Subpoenas issued by a federal grand jury or by a Washington Special Inquiry Judge that state that the recipient may not disclose the receipt of the subpoena would constitute a written statement suspending the hospital's obligation to account for that disclosure.

If the official statement is made orally, the hospital must document the statement (include the identity of the official making the statement), temporarily suspend the right to an accounting of disclosures subject to the statement and limit the temporary suspension to no longer than 30 days from the date of the oral statement, unless a written statement is submitted during that time.¹²¹

It is important to note that revealing the location of a patient to law enforcement so that they can be served with an order, warrant or subpoena is, in itself, a release of PHI, and is thus also subject to the guidelines above.

Hospital personnel should consult with legal counsel if they have questions about what to do on receipt of a court order, warrant, or subpoena.

XIII. Release of information on crime victims

Disclosures regarding crime victims generally may be made in the instances enumerated below. Washington law does not expressly permit disclosures in response to a law enforcement officer's

¹¹⁸ RCW 70.02.200(2)(c).

¹¹⁹ 45 CFR 164.528(a)(1).

¹²⁰ 45 CFR 164.528(a)(2)(i).

¹²¹ 45 CFR 164.528(a)(2)(ii).

request for information about an individual who is the victim of a crime, however, HIPAA does allow this type of disclosure.¹²² Because state law is stricter, a hospital generally may not give information about a crime victim directly to law enforcement unless another basis for disclosing the information applies. Disclosure of PHI of a crime victim is permitted where:

- (1) the victim-patient or legally authorized surrogate has authorized the release by signing a valid authorization.¹²³ See Section II for information on patient or surrogate authorization. See the last section of this Guide for a model authorization form;
- (2) the victim-patient is being treated for a specific injury. See Section III regarding disclosure of information on specific injuries to law enforcement authority;
- (3) the victim-patient poses an imminent danger, and the release of the information will avoid or minimize the imminent threat posed by the patient.¹²⁴ See also Section IV, disclosing to minimize an imminent threat;
- (4) the victim-patient is subject to an imminent threat or danger, and the release of the information will avoid or minimize the threat to the patient.¹²⁵ See Section IV, disclosing information to minimize an imminent threat;
- (5) an admitted victim-patient is listed in the facility directory and is asked for by name. In this case, unless the patient has opted out of the directory, a one-word condition and general location may be released;¹²⁶
- (6) the patient was brought or caused to be brought to the hospital by fire, police, sheriff or other public authority. See Section VII for the information that may be disclosed in this circumstance; or
- (7) if the victim-patient is the subject of suspected child or vulnerable adult abuse, a report must be made. See Section XVI.

A law enforcement officer may accompany a victim while the victim receives treatment in the hospital if the patient consents and hospital staff determine that patient care will not be compromised. Additionally, if the patient verbally consents, the provider may respond to questions from the law enforcement officer regarding the patient. If the officer wants any written

¹²² 45 CFR 164.512(f)(3).

¹²³ RCW 70.02.030.

¹²⁴ RCW 70.02.050(1)(c).

¹²⁵ RCW 70.02.050(1)(c).

¹²⁶ 45 CFR 164.510, RCW 70.02.200(1)(e). See Frequently Used Terms for a description of 'directory information.'

materials the patient must authorize the disclosure or another exception, such as those discussed above, must apply.¹²⁷

All of the restrictions stated above apply no matter whether the victim is a hospital employee, patient, or visitor.

Example 1: A 45-year-old woman is being treated for bruising and contusions. The woman says she fell down the stairs, but the health care provider suspects she may be experiencing physical abuse at home. The woman plans to return home after treatment.

If the woman meets the definition of a vulnerable adult, the provider must disclose PHI pursuant to state mandated reporting statutes. If the woman does not qualify as a vulnerable adult, the provider must determine whether another exception is met. For example, if the woman was brought to the hospital by a police officer, the police may be told the woman's name, address, age, gender and type of injury.

Example 2: A person who is being treated for injuries sustained in a street fight says as soon as he gets out of the emergency department that he is going to find the person who injured him and "teach him a lesson."

The health care provider will need to determine whether the person poses an imminent danger and the release of PHI to police would avoid or minimize the imminent threat posed by the patient.

XIII. Collection and release of information related to immigration status

Under the Keep Washington Working Act¹²⁸ all public "health care facilities"¹²⁹ which are defined to include municipalities such as public hospital districts, and also include public substance use treatment facilities, are required to adopt policies consistent with those published by the Attorney General's Office.¹³⁰ If they do not do so they must notify the office that they are not adopting the changes, state the reasons why they are not doing so, and provide the office with a copy of the agency's policies that ensure compliance with Act.¹³¹ Private facilities are also encouraged to adopt the policies. The purpose of the policies is, "limiting immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, health facilities operated by the state or a political

¹²⁷ See section XVIII for more information on law enforcement access to hospital facilities.

¹²⁸ E2SSB 5497 (2019) <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5497-S2.SL.pdf>.

¹²⁹ RCW 70.170.020.

¹³⁰ <https://www.atg.wa.gov/publications-reports>, see *Keep Washington Working Model Guidance* section.

¹³¹ <https://fortress.wa.gov/atg/formhandler/ago/KeepWashingtonWorking.aspx>.

subdivision of the state, courthouses, and shelters, to ensure they remain safe and accessible to all Washington residents, regardless of immigration or citizenship status.”

There are two model policies related to collection and release of information related to immigration status.

Gathering information on citizenship or immigration status. One model policy relates to gathering information on immigration or citizen status. The policy states that personnel shall not inquire, request, or collect information regarding the immigration or citizenship status, or place of birth of any person accessing services unless doing so is necessary to properly provide health care to the person, necessary to determine eligibility for state or federal programs, or otherwise required by law. The policy goes on to state personnel shall consider information other than immigration or citizenship status, or place of birth, such as recent travel activities when ascertaining geographically specific exposure.

As a practical matter hospitals will need to collect information on citizenship status as a part of providing health care and determining eligibility for programs. Hospitals should determine if there are other reasons this information must be collected and whether it requires development of a policy that is more expansive than the model provided. If so, hospitals that qualify as public health care facilities under the Act should follow the process for submitting alternative policies to the Attorney General Office.

Responding to requests for information. Another model policy produced by the office is protecting patient information and responding to requests for information. Most hospitals will already have policies that address this subject and should consider whether to adopt the model policy as a standalone policy or if it is better to integrate elements of the model policy into an existing policy. The model policy states a patient’s PHI or health information must be treated “equally” regardless of the patient’s immigration status, citizenship status or place of birth. The policy goes on to say that the facility may not provide “personal information” to any person engaged in immigration enforcement except as required by law. It also may not require personnel to answer any questions from immigration authorities except as required by a court order or judicial warrant.

For more information about immigration enforcement, including other model policies required to be adopted by public facilities under the Keep Washington Working Act see Section XVIII, Law enforcement’s access to hospital facilities. Also please see “Resources for Hospitals on Immigration Enforcement” at the appendix of this Guide for additional content.

XIV. Reporting information regarding crimes on hospital property

If a patient assaults a staff member, other patient, or visitor, property is stolen, or some other crime occurs on hospital property, the hospital will probably contact law enforcement. The

question, then, becomes whether hospital staff can affirmatively share PHI that may support or document this criminal behavior or identify a suspect.

Both HIPAA and Washington State law specifically allow the disclosure of PHI to a law enforcement official that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the hospital.¹³²

Example 1: While waiting to check in for surgery a patient shoplifts items from the hospital gift shop.

The hospital may report the crime. The hospital may also identify a patient as a suspect but may disclose only PHI, which constitutes evidence of the crime, so the medical treatment the patient was in the hospital to receive may not be disclosed.

Example 2: A patient presents identification and insurance coverage information that the hospital admitting office clerk believes is false. Can law enforcement be notified?

The hospital may contact law enforcement and report possible identity theft or fraud.

XV. Disclosure of protected health information concerning minors

HIPAA addresses disclosure of PHI for both emancipated and unemancipated minors.¹³³ While HIPAA does not define these terms, Washington State law provides some guidance as to their meaning. Generally, however, a person under the age of 18 is a minor.¹³⁴

Emancipated minors: Under Washington State law, a minor of at least 16 years of age and residing in Washington can petition for emancipation status from a court under RCW 13.64.010 which includes the right to consent to health care. Hospitals generally require documentation of emancipation status¹³⁵ before treating a minor as emancipated. For purposes of disclosure of PHI to law enforcement, emancipated minors are treated the same as adults. For disclosure of PHI to law enforcement to occur, the emancipated minor must either authorize the disclosure, or the disclosure must fit an exception of the type described in this Guide.

Unemancipated minors: HIPAA defers to state laws that address the ability of a parent, guardian or other person acting *in loco parentis* (acting in the place of parent(s) – including governmental

¹³² 45 CFR 164.512(f)(5); RCW 70.02.200(1)(g).

¹³³ 45 CFR 164.502(g).

¹³⁴ RCW 26.28.010.

¹³⁵ Hospitals will look for documentation in the form of a court order granting the status or a driver's license indicating the minor has been emancipated – although not all drivers' licenses of emancipated minors will necessarily reflect the minor's emancipated status. RCW 13.64.050.

agencies) to obtain PHI concerning a minor.¹³⁶ In most cases, under HIPAA and state law, the parent is considered the personal representative of a minor child and can exercise the minor's rights with respect to PHI. Thus, a parent may authorize disclosure of a child's PHI to law enforcement. If the parent refuses, the disclosure may only be made according to another exception of the type described in this Guide.

HIPAA and state law prohibit a hospital from disclosing a minor child's PHI to a parent or to others when it is expressly prohibited under state or other laws. In such cases the minor must authorize the disclosure of PHI to law enforcement, or the disclosure must be made according to an exception of the type discussed elsewhere in this Guide.

When HIPAA¹³⁷ and Washington state law are read together, there are several situations where a parent is not considered the personal representative of a minor. As noted above, in such circumstances a hospital cannot provide health information in response to a question from the parent, law enforcement, or to anyone else unless the minor consents or the disclosure meets an exception discussed in this Guide. Because a minor can consent to health care in these situations, a minor can presumably also authorize disclosure of that particular set of PHI to law enforcement.

Situations where a parent is not considered the personal representative of the minor and the minor may independently consent to care (and authorize disclosure of information) include:

- (1) a minor recognized as a "mature minor" under state common law may be treated as emancipated for purposes of making health care decisions re. *Smith v. Seibly*.¹³⁸ A physician makes the determination of whether the minor is a mature minor based on information and documentation about the minor's level of maturity and decision-making ability;¹³⁹
- (2) if a person under 18 is married to a person 18 or older, the minor is deemed to be of full age;¹⁴⁰

¹³⁶ 45 CFR 164.502(g).

¹³⁷ HIPAA specifies three situations where a parent is not the "personal representative" with respect to certain protected health information about a minor. See 45 CFR 164.502(g)(3)(i). They are 1) when state or other law does not require the consent of a parent or other person before a minor can obtain a particular health care service, and the minor consents to the health care service; 2) when the minor may lawfully obtain health care services without the consent of a parent, guardian or other person acting in loco parentis and the minor, a court, or other person authorized by law consents to the care; and, 3) when a parent agrees to a confidential relationship between the minor and the physician.

¹³⁸ *Smith v. Seibly*, 70 Wn.2d 16, 431 P.2d 719 (1967).

¹³⁹ Under *Smith v. Seibly*, 70 Wn.2d 16, 431 P.2d 719 (1967), factors to be considered in determining whether a minor is emancipated for the purpose of making health care decisions include age, intelligence, maturity, training, experience, economic independence, and freedom from parental control. The physician must ask questions to determine capacity and whether the minor is capable of providing informed consent.

¹⁴⁰ RCW 26.28.020.

- (3) minors may also consent to certain medical treatments without parental consent;¹⁴¹ and
- (4) although state law does not specifically address it in the context of minor consent to disclosure of PHI, a parent in Washington State may presumably agree to a confidential relationship between a minor and a treatment provider.

Other areas of state law also address disclosure of minor's PHI to law enforcement. For instance, health care providers are required to report instances of known or suspected child abuse.¹⁴²

Mental health treatment for minors: The fact of admission and confidential information about the treatment of a minor in a mental health evaluation and treatment facility may be disclosed to law enforcement or public health officers as necessary for the responsibilities of their offices¹⁴³ but the disclosure is restricted to the following information:

- (1) the fact and date of patient's admission;
- (2) the date of patient's discharge;
- (3) the name and address of the treatment provider, if any; and
- (4) the last known address of the patient.

Disclosures to law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies may be made if a minor has escaped from custody, disappeared from a mental health evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave. Such disclosures must be limited to the minimum information necessary to provide for public safety or to assist in the apprehension of the minor¹⁴⁴ and, due to HIPAA, is restricted to the list found in 45 CFR 164.512(f).¹⁴⁵

¹⁴¹ STD testing and treatment, see RCW 70.24.110 (minor may consent absent parental consent at age 14); HIV testing, see RCW 70.24.325 (minor may consent absent parental consent at age 14); abortion, see RCW 9.02.110 and *State v. Koome*, 84 Wash. 2d 901, 530 P.2d 260 (1975) (a pregnant patient may consent to or refuse termination of a pregnancy prior to viability of the fetus or to protect her life or health absent parental consent); voluntary behavioral health treatment, see RCW 71.34.500- 530 (minor may consent absent parental consent at age 13).

¹⁴² See section XV for more information on disclosing unemancipated minors PHI to law enforcement.

¹⁴³ RCW 70.02.240(7).

¹⁴⁴ RCW 70.02.240(8).

¹⁴⁵ The HIPAA privacy regulation at 45 CFR 164.512(f) permits disclosure of a minimum amount of information:

- (A) Name and address;
- (B) Date and place of birth;
- (C) Social security number;
- (D) ABO blood type and rh factor;
- (E) Type of injury;
- (F) Date and time of treatment;
- (G) Date and time of death, if applicable; and

Disclosures of PHI maintained by mental health evaluation and treatment facilities regarding minors are subject to specific charting requirements. In the case of minors, in addition to charting according to the usual facility policies, the name or names of the persons or agencies to whom the disclosure was made and their relationship, if any, to the minor, must also be charted.¹⁴⁶

XVI. Reporting child or vulnerable adult abuse or neglect and release of records to law enforcement

HIPAA permits the disclosure of PHI when required by law and Washington law mandates the reporting of suspected child or vulnerable adult abuse or neglect.¹⁴⁷

Reporting child abuse or neglect: Health care workers, law enforcement personnel, and other mandated reporters¹⁴⁸ must report at the first opportunity when they have reasonable cause to believe that a child has suffered abuse or neglect. This report must be made within 48 hours of discovering reasonable cause.¹⁴⁹

- (1) a “child” is any person under the age of 18, and
- (2) “abuse or neglect” means “means sexual abuse, sexual exploitation, female genital mutilation as defined in RCW 18.130.460, trafficking as described in RCW 9A.40.100, sex trafficking or severe forms of trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq., or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child..”¹⁵⁰

A report of suspected child abuse or neglect must be made to the Department of Children, Youth, and Families or law enforcement.¹⁵¹

Releasing medical records to law enforcement in child abuse cases: Upon receiving a report of abuse or neglect, the Department of Children, Youth, and Families or law enforcement shall have access to all of the child’s relevant records that are in the custody of mandated reporters and their employees as necessary to investigate such allegations.¹⁵² Mandated reporters include podiatrists,

(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

¹⁴⁶ RCW 70.02.320.

¹⁴⁷ 45 CFR 160.203(c); 45 CFR 164.512(a) and (c); and RCW 26.44; RCW 74.34.

¹⁴⁸ See RCW 26.44.030 for a list of mandated reporters.

¹⁴⁹ RCW 26.44.030(1)(h).

¹⁵⁰ RCW 26.44.020(1).

¹⁵¹ See [How to Report Child Abuse or Neglect | Washington State Department of Children, Youth, and Families](#) for more information on how to report suspected child abuse and/or neglect.

¹⁵² RCW 26.44.030(15)(a)(ii).

optometrists, chiropractors, nurses, dentists, osteopathic physicians, physicians, psychologists, and other persons licensed by the state to provide health services, along with persons with official supervisory capacity in a nonprofit or for-profit organization (which include hospitals).¹⁵³ Accordingly, the “relevant records” to which law enforcement shall have access include health care records in the possession of health care providers.

Such access is not precluded by HIPAA. Rather, HIPAA specifically permits the disclosure of PHI without patient authorization to a “public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect.”¹⁵⁴ Washington law authorizes law enforcement agencies to receive reports of child abuse.¹⁵⁵ Moreover, HIPAA does not preempt state laws, such as Washington’s, which mandate reporting of child abuse.¹⁵⁶

Prior to July 1, 2014, Washington’s Uniform Health Care Information Act (UHCIA) supported law enforcement access to all health care records in connection with mandatory reports of child abuse without patient authorization by requiring disclosures “to federal, state, or local law enforcement authorities to the extent the health care provider is required by law....”¹⁵⁷ Effective July 1, 2014, such disclosures to law enforcement are required only for health information that does not include information related to sexually transmitted diseases and information related to mental health services.¹⁵⁸ Accordingly, this creates some question about access or disclosure of information related to sexually transmitted diseases or mental health services in child abuse investigations. The provisions of UHCIA governing disclosures of information related to sexually transmitted diseases and information related to mental health services do not explicitly permit disclosures to law enforcement as “required by law” and do not reference disclosures to law enforcement in connection with either reporting or investigating child abuse.¹⁵⁹

Nonetheless, there are several arguments that support providing law enforcement with access to information related to sexually transmitted diseases and mental health services when it is relevant to the suspected or alleged child abuse. The statutory grant of access to law enforcement to “all relevant records” is clear and unequivocal.¹⁶⁰ As a matter of statutory construction, such a clear and specific statute should control over the more general provisions of the UHCIA. Additionally, the Washington Supreme Court has recognized the preeminence of the statute requiring mandatory child abuse reporting over other Washington statutes, finding that it “trumps” other

¹⁵³ RCW 26.44.030(1)(a)-(b); RCW 26.44.020(16).

¹⁵⁴ 45 CFR 164.512 (b)(1)(ii).

¹⁵⁵ RCW 26.44.030(1).

¹⁵⁶ 45 CFR 160.203(c).

¹⁵⁷ RCW 70.02.050(2)(b).

¹⁵⁸ RCW 70.02.200(2)(a).

¹⁵⁹ See RCW 70.02.220 through RCW 70.02.260.

¹⁶⁰ RCW 70.02.240.

confidentiality statutes.¹⁶¹ To aid in the disclosure of treatment records to law enforcement, the following tools have been developed:

- (1) letter template for abuse and neglect concerns;
- (2) document sets for responding to attorney general and prosecutor requests for information; and
- (3) document sets for responding to child protective services and police requests for information.

Hospitals and health systems can make such a template letter to law enforcement through the medical records department. Also, a specific medical records point-person can be identified to law enforcement and other relevant agencies to assist with child abuse information requests.

Reporting vulnerable adult abuse or neglect: Health care workers, law enforcement personnel, and other mandated reporters,¹⁶² must immediately make a report when they have reasonable cause to believe that a vulnerable adult has been subject to abandonment, abuse, financial exploitation, neglect, sexual assault, or physical assault.¹⁶³ A “vulnerable adult” is characterized as:

- (1) any person, sixty years of age or older, who has the functional, mental, or physical inability to care for himself or herself;
- (2) an adult found incapacitated as under chapter 11.88 RCW;
- (3) an adult with a developmental disability;
- (4) an adult living in facility such as a nursing home, boarding home, or adult family home;
- (5) an adult receiving services from home health, hospital, or home care agencies;
- (6) an adult receiving services from an individual provider; or
- (7) an adult receiving care services in his or her own family’s home.¹⁶⁴

¹⁶¹ See *State v. Warner*, 125 Wn.2d 876 (1995), citing *State v. Fagalde*, 85 Wn.2d 730 (1975).

¹⁶² See RCW 74.34.020 for a complete list of mandated reporters.

¹⁶³ See RCW 74.34.020 for complete definitions and examples of abandonment, abuse, financial exploitation, or neglect.

¹⁶⁴ RCW 74.34.020.

For residents of long-term care facilities, including nursing homes, boarding homes, or adult family homes, a report must be made to the Complaint Resolution Unit.¹⁶⁵ For vulnerable adults who are not residents in a facility, a report must be made to the Department of Social and Health Services Adult Protective Services Central Intake.¹⁶⁶

If there is reason to suspect that a vulnerable adult has been subjected to sexual or physical assault, a report must be made immediately to both local law enforcement and to the department indicated above. Also, if there is reason to suspect that physical assault has occurred or is reasonable cause to believe that an act has caused fear of imminent harm, a report must be made to the Department of Social and Health Services. A report must also be made to local law enforcement under these circumstances unless an incident of physical assault between vulnerable adults is one that causes minor bodily injury and does not require more than basic first aid.¹⁶⁷ However, even if the incident is one that causes minor bodily injury and does not require more than basic first aid, a report must still be made to both the department and law enforcement if certain criteria are met. These include a request to report to the law enforcement agency that is made by the injured vulnerable adult or his or her legal representative or family member or any of the following:

- (1) the injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;
- (2) there is a fracture;
- (3) there is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or
- (4) there is an attempt to choke a vulnerable adult.

If there is reason to suspect a vulnerable adult's death was caused by abuse, neglect, or abandonment, the death must be reported to the medical examiner or coroner, as well as the Department of Social and Health Services and local law enforcement. Although there is no requirement to disclose the patient's full medical record when a report is made, reporters must provide all information that may be helpful in establishing the extent of abuse.¹⁶⁸ Each report, oral or written, must contain as much as possible of the following information:

- (1) the name and address of the person making the report;

¹⁶⁵ Contact 1-800-562-6078 for the Complaint Resolution Unit. See <https://www.dshs.wa.gov/altsa/residential-care-services/residential-care-services-online-incident-reporting>

¹⁶⁶ Contact <https://www.dshs.wa.gov/altsa/home-and-community-services/report-concerns-involving-vulnerable-adults> for the Department of Social and Health Services Adult Protective Services Central Intake.

¹⁶⁷ RCW 74.34.035.

¹⁶⁸ RCW 74.34.035(8).

- (2) the name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;
- (3) the name and address of the legal guardian or alternate decision maker;
- (4) the nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;
- (5) any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;
- (6) the identity of the alleged perpetrator, if known; and
- (7) other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

Additional access to PHI must be granted during the conduct of an investigation. The Department of Social and Health Services may interview the reporter, the vulnerable adult, and facility staff. In order to document evidence, the department may photograph a vulnerable adult or their environment. The patient's or patient representative's permission is required prior to photographing the vulnerable adult unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused the vulnerable adult, consent from the legal representative is not necessary. It is not necessary to obtain consent to photograph the physical environment.¹⁶⁹

If medical records concerning the vulnerable adult's treatment are sought, a subpoena should be issued and processed through the hospital's medical records or health information services department.

Example 1: An elderly adult patient who receives home care arrives through the emergency department for treatment of pneumonia. In treating the patient, emergency department staff also discovered multiple large bedsores.

As mandated reporters, emergency department caregivers must immediately make a report if they have reasonable cause to believe this vulnerable adult has been subject to abandonment, abuse, or neglect. A report should be made to Adult Protective Services in the appropriate county. Adult Protective Services may request certain information from the mandated reporter at the time the report is made regarding the basis for the reporter's claim. However, if medical records are

¹⁶⁹ RCW 74.34.067.

sought, a subpoena should be issued and processed through the hospital's medical records department.

Example 2: A developmentally delayed woman who has been adjudged mentally incompetent and lives in a group home is admitted to the hospital for pregnancy complications. Based on comments from the woman and her family hospital, staff suspect she became pregnant through a sexual assault at the group home.

If there is reason to suspect that a vulnerable adult has been subjected to sexual or physical assault, a report must be made immediately to both local law enforcement and to the department indicated above. Here, because the residence of the woman likely qualifies as an adult family home, a report must be made to the Complaint Resolution Unit listed above and to local law enforcement authorities. Certain information may be requested from the mandated reporter at the time the report is made regarding the basis for the reporter's claim. However, if medical records are sought, a subpoena should be issued and processed through the hospital's medical records department.

XVII. Special considerations for homeland and national security

Homeland security: The Department of Homeland Security is an umbrella agency consisting of numerous smaller agencies, many of which do not have law enforcement power and thus are beyond the scope of this manual. Homeland Security does not include the Federal Bureau of Investigation (FBI) or the Central Intelligence Agency (CIA), but does include, among others, the Immigration and Naturalization Service and the Secret Service. Upon encountering an individual from Homeland Security who requests access to PHI, it is important to definitively identify what specific agency the requester is from, whether or not the requester has law enforcement power, the reason the requester wants the information, and the specific types of PHI is being sought. Many Homeland Security agents do not have law enforcement reason/power for requiring the disclosure of PHI.

The secret service: A hospital may make a disclosure to the Secret Service when the Secret Service is acting in its capacity of providing protective services to the president, the president's immediate family, past presidents and certain heads of state. However, Secret Service can only do so if Washington state law exceptions permitting disclosure are met.¹⁷⁰ Possible exceptions might include:

¹⁷⁰ Under HIPAA, a hospital **may** disclose PHI to the Secret Service (a member of Homeland Security) or any other authorized federal officials for the provision of protective services to the President, the President's immediate family, past Presidents, and certain heads of state. 45 CFR 164.512(k)(3) However, Washington State law does not contain a similar exception, so Washington state law must be followed in this area.

- (1) a patient or legally authorized surrogate has authorized the release by signing a valid authorization.¹⁷¹ See Section II for information on patient or surrogate authorization and see the last section of this Guide for a model authorization form;
- (2) the Secret Service has requested information about a patient being treated for specific injuries.¹⁷² See Section III for information regarding disclosures in response to requests regarding patients treated for specific injuries;
- (3) a patient poses an imminent danger, and the release of the information will avoid or minimize this imminent threat posed by the patient. See Section IV for information on disclosure to minimize an imminent threat;
- (4) a report is initially made by certain authorities. See Section VII for examples; or
- (5) an admitted patient is listed in the facility directory, has not opted out of the directory and is asked for by name. In this case a one-word condition and general location may be released.¹⁷³

National security issues: Disclosure of PHI to the Secret Service or other authorized federal officials relating to the conduct of lawful intelligence, counterintelligence and other national security activities conducted by the FBI and CIA may be made only if another exception permitting disclosure is also met. See 1-5 immediately above for possible exceptions.¹⁷⁴

Because the FBI and the CIA are not a part of Homeland Security, if an agent from Homeland Security requests records pursuant to National Security and the agent is not a member of the FBI or CIA, the agent should be directed to get a court order.

USA PATRIOT Act court orders: USA PATRIOT Act¹⁷⁵ court orders are often confused with Homeland Security issues. The USA PATRIOT Act, as it amends the Foreign Intelligence Surveillance Act, allows the FBI to obtain specialized court orders for “any tangible thing” that could relate to “international terrorism or clandestine intelligence activities.” The court order must be made by a qualified court and the court order itself cannot be disclosed to any persons other than those necessary to carry out the order.¹⁷⁶ Although Washington law generally requires

¹⁷¹ RCW 70.02.030.

¹⁷² RCW 70.02.200(2)(b).

¹⁷³ 45 CFR 164.510, RCW 70.02.200(1)(e). See Frequently Used Terms for a description of ‘directory information.’

¹⁷⁴ Under HIPAA, a hospital **may** disclose PHI to authorized federal officials for the conduct of lawful intelligence, counterintelligence, and other national security activities conducted by the FBI and the CIA. See the National Security Act (50 USC 401 et seq.) and 45 CFR 164.512(k)(2) for more information. However, Washington State law does not contain a similar exception, so Washington state law must be followed in this area.

¹⁷⁵ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

¹⁷⁶ 50 USC 1862(d).

notification of a patient of a health care provider's disclosure of PHI, state law is preempted in this case. This means that the patient is not allowed to know that his or her PHI is being disclosed—this is the critical difference between a USA PATRIOT Act court order and any other court order presented to a hospital for the disclosure of PHI. Compare Section XII (re. responding to a court order, warrant, or subpoena) to this section.¹⁷⁷ USA PATRIOT Act court orders should not be made part of the medical record or included in a disclosure log.

XVIII. Law enforcement's access to hospital facilities

Generally: When a criminal suspect or a victim of a crime is brought to a hospital for treatment, law enforcement officers may seek to be present in the treatment or procedure areas while care is being rendered. A patient may consent to law enforcement presence in the treatment area. In some cases, law enforcement presence may be necessary to facilitate treatment of a patient or to protect health care providers. If a patient is under arrest, or if a search warrant or court order has been issued allowing law enforcement officers to be present, law enforcement officers may be entitled to accompany a criminal suspect or a victim of a crime in treatment and procedure areas. However, there may also be circumstances in which hospitals and treatment providers will limit access by law enforcement officers to treatment and procedure areas in order to comply with their obligations to their patients.

Hospitals are required to protect the confidentiality of the criminal suspect or victim's PHI or the PHI of other patients that are in the treatment or procedure area. Hospitals also have a responsibility to ensure that care is delivered in an efficient and timely manner, without disruptions or interference. Hospitals may limit access to treatment or procedure areas when access could impede the provision of care.

Even if a patient has consented to the presence of law enforcement officers, access may be limited if the presence of law enforcement officers would result in the disclosure of PHI of other patients who have not consented or would interfere with or disrupt the provision of care. Not all parts of a hospital are open to the public. Therefore, if law enforcement officials do not have a court order or search warrant authorizing their presence in treatment and procedure areas or other areas with restricted access, their access may be restricted. The hospital may balance the requirements for efficient health care delivery with the privacy interests of all patients in determining whether to grant access to law enforcement.

Patients brought to the hospital by law enforcement for a violent or sex offense: Different rules apply when a patient is brought to a hospital for treatment by law enforcement officers and is in custody for a violent or sex offense.¹⁷⁸ Under those circumstances, the officer must continue to accompany

¹⁷⁷ See 50 USC 1861, 45 CFR 164.512(a), and 45 CFR 164.512(e)(1)(i) for more information.

¹⁷⁸ See RCW 9.94A.030(58) for a definition of "violent offense" and RCW 9.94A.030(47) for a definition of "sex offense."

and secure the patient while he or she is receiving care at the hospital.¹⁷⁹ If the accompanied patient is waiting for treatment in the hospital's emergency department, the hospital should see the patient in as expeditious a manner as possible, also taking into consideration best triage practices and legal obligations regarding screening and treatment of patients.¹⁸⁰ This rule does not apply if the patient is merely being supervised by the state department of corrections, the indeterminate sentence review board, or the court in response to a violation of sentencing conditions. A hospital may disclose the patient's health information to a law enforcement officer, corrections officer, or guard accompanying the patient, to the extent the information is incidental to the fulfillment of the officer's or guard's role.¹⁸¹

There are four exceptions to the rule that an officer must stay with a patient brought to a hospital by law enforcement who is also in custody for a violent or sex offense:

- (1) the patient's health care provider determines that the officer no longer needs to accompany the patient;
- (2) the accompanying officer, using his or her best judgment, determines that the patient does not present an imminent and significant risk of causing physical harm to themselves or another person;
- (3) the accompanying officer, using his or her best judgment, determines that there is no longer sufficient evidentiary basis to maintain the individual in custody; or
- (4) the accompanying officer, using his or her best judgment, determines that his or her presence at another location is urgently required in the interest of public safety.¹⁸²

If the patient's health care provider determines that the officer no longer needs to accompany the patient under (1) above, the officer has no ongoing duty to stay with the patient for the remaining treatment. In this circumstance, the hospital must notify the officer or his or her designee when the patient is expected to be released from the hospital.¹⁸³ If, after the patient's health care provider determines that the officer no longer needs to accompany the patient under (1) above, the patient demonstrates behavior that presents an imminent and significant risk of causing physical harm to themselves or others and the patient's physical condition renders him or her capable of causing such harm, the hospital may request that the officer return to accompany the patient.¹⁸⁴

¹⁷⁹ RCW 10.110.020

¹⁸⁰ RCW 10.110.040

¹⁸¹ RCW 70.02.200(1)(j).

¹⁸² RCW 10.110.030(1)(a)-(b).

¹⁸³ RCW 10.110.030(2).

¹⁸⁴ RCW 10.110.030(2).

If the accompanying officer, using his or her best judgment, determines that the patient no longer needs to be accompanied under (2) or (3) above, the officer must notify the patient's health care provider that the officer is leaving the patient unattended. Under these circumstances, the hospital has no duty to notify the officer or his or her designee when the patient is expected to be released from the hospital.¹⁸⁵

If the accompanying officer is urgently required at another location under (4) above, the officer must notify the patient's health care provider or, if immediate departure is required, other hospital staff, that the officer is leaving the patient unattended. The officer must also make a reasonable effort to ensure a replacement officer or other means of accompanying or securing the patient is provided as soon as reasonably possible under the circumstances. The hospital must notify the officer or his or her designee if the patient is, or is expected to be, released prior to the officer or a replacement officer returning to the patient.¹⁸⁶

These rules are intended to protect other patients and health care providers from violent and sex offenders while these offenders are in the hospital for treatment. However, except for actions involving gross negligence or willful misconduct, the hospital and its providers are immune from liability (including civil liability), professional conduct sanctions, and administrative sanctions from the patient not being accompanied or secured.¹⁸⁷ Similarly, these rules do not create a special relationship exception to the public duty doctrine, and officers and their employing departments or agencies are immune from civil liability arising of a failure to comply with these rules, unless it is shown that the officer or entity acted with gross negligence or in bad faith.¹⁸⁸

Immigration enforcement: Under the Keep Washington Working Act all public "health care facilities"¹⁸⁹ which are defined to include municipalities such as public hospital districts, and also include public substance use treatment facilities, are required to adopt policies consistent with those published by the Attorney General Office.¹⁹⁰ If they do not do so they must notify the office that they are not adopting the changes, state the reasons why they are not doing so, and provide the office with a copy of the agency's policies that ensure compliance with Act.¹⁹¹ Private facilities are also encouraged to adopt the policies. The purpose of the policies is, "limiting immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, health facilities operated by the state or a political subdivision of the state, courthouses, and shelters, to ensure they remain safe and accessible to all Washington residents, regardless of immigration or citizenship status."

¹⁸⁵ RCW 10.110.030(3).

¹⁸⁶ RCW 10.110.030(4).

¹⁸⁷ RCW 10.110.030(5).

¹⁸⁸ RCW 10.110.050

¹⁸⁹ RCW 70.170.020.

¹⁹⁰ <https://www.atg.wa.gov/publications-reports>, see *Keep Washington Working Model Guidance section*.

¹⁹¹ <https://fortress.wa.gov/atg/formhandler/ago/KeepWashingtonWorking.aspx>

One of the policies required to be adopted relates to access to facilities.¹⁹² In addition to non-discrimination, interpreter services, and access to care language typically included in such a policy, the policy designates all areas of facility premises as private spaces, except for those specifically designated as public. The policy suggests public areas include the main lobby, reception/information desk, waiting areas, gift shops, and parking garages or other areas specifically designated as open to the public. Only those with approval may access non-public areas. The policy prohibits immigration enforcement to be conducted on its premises and prohibits access to the private spaces of the facility without permission or without a court order or judicial warrant requiring such access.

Another of the policies required to be adopted relates directly to immigration enforcement¹⁹³ against patients and visitors on the hospital premises. Among the requirements in the policy is that the facility designate an administrator to respond in cases of immigration enforcement. The facility is not allowed to, “aid or support any person being subject to arrest or having their freedom restricted or hindered for immigration enforcement purposes, except (a) by valid court order or judicial warrant, (b) when it is necessary to secure the immediate safety of facility personnel or the public, or (c) where circumstances otherwise permit warrantless arrest pursuant to RCW 10.31.100.” The policy states the facility does not grant permission to any person engaged in immigration enforcement access to any person receiving care within the facility or their visitors without a court order or judicial warrant or unless the person’s written permission is obtained. There are also elements of the model policy related to verification of the court order or warrant prior to relying upon it.

For additional information about policies related to access to patient information by immigration authorities and required to be adopted by public health care facilities under the Keep Washington Working Act see Section XIII. Finally, WSHA has developed a number of resources for hospitals to use in supporting patients, staff and community members on immigration enforcement issues. Please see “Resources for Hospitals on Immigration Enforcement” in the appendix of this Guide for more information.

XIX. Body worn camera recordings in hospitals

Washington State began to address the increased use of body-worn cameras in medical facilities by adopting RCW 42.56.240(14), which creates a presumption against disclosure under the Public Records Act. However, since law enforcement and corrections agencies (who may wear body worn cameras) are not covered entities under HIPAA, the agencies are not required to protect patient’s health information under that law.¹⁹⁴ Due to the fact body-worn camera recordings are the property of law enforcement and corrections agencies rather than the medical facility, the

¹⁹² See appendix Washington Health Facilities: Guidance and Model Policies to Assist in the Implementation of the Keep Washington Working Act.

¹⁹³ See above.

¹⁹⁴ 45 CFR 160.103, *see definition of “Covered Entity”*

information obtained does not fall within the definition of protected health information and is subject to disclosure in certain instances.¹⁹⁵ Although a body worn camera's incidental collection of sensitive and personal information within hospital walls may be legal per se, the State believes "that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers."¹⁹⁶

Improper disclosure of sensitive health information "may do significant harm to a patient's interests in privacy [and] health care..."¹⁹⁷ Because the circumstances for nondisclosure are limited, hospitals should develop reasonable safeguards to ensure protection of patient's privacy. Although no policy or guidance documents have been issued in Washington, the American Health Information Management Association (AHIMA) developed a list of measures hospitals should consider when addressing the privacy concerns associated with body-worn camera recordings in medical facilities, including:

- (1) developing a hospital policy relating to the use of body-worn cameras within the medical facility;
- (2) identifying possible local law enforcement agencies that may interact with the facility;
- (3) circulating the hospital policy to all local law enforcement agencies;
- (4) posting signage at any entry point where the use of body-worn cameras may be restricted or prohibited;
- (5) distributing guidance documents to law enforcement officers upon entry to patient care areas; and
- (6) educating staff members on the adopted policy.¹⁹⁸

Pursuant to RCW 10.109.010(1), law enforcement agencies that deploy body-worn cameras are required to develop policies regarding their use. Hospitals should request these policies and look to them for guidance when developing their own policies on the use of body-worn cameras within medical facilities. The "Use of Body Worn Cameras Task Force" in Washington considered the use of body worn cameras in health care facilities in light of HIPAA requirements and RCW 70.02 and subsequently released their findings and recommendations in December 2017.¹⁹⁹ Hospitals should develop or update existing policies to address these recommendations.

¹⁹⁵ 45 CFR 160.103, *see definition of "Protected Health Information"*.

¹⁹⁶ RCW 70.02.005(4)

¹⁹⁷ RCW 70.02.005(1)

¹⁹⁸ *Healthcare Privacy Considerations of Body-Worn Cameras*, Journal of AHIMA,

¹⁹⁹ "Healthcare Privacy Considerations of Body-Worn Cameras" in *Journal of AHIMA* 87, no.2, available online: [Healthcare Privacy Considerations of Body-Worn Cameras](#)

XX. Foreign (out-of-state) subpoenas and criminal court processes: Protection of information regarding receipt or provision of reproductive or gender affirming healthcare

In June of 2022, the United States Supreme Court overruled the judicial precedent of *Roe v. Wade* with their decision in *Dobbs v. Jackson Women’s Health Organization*, effectively eliminating federal protection for individuals seeking reproductive healthcare services. Accordingly, many states have begun to implement laws that penalize citizens who receive reproductive and gender-affirming health care services. Many people, therefore, are traveling to other states, such as Washington, to receive these services.

As of 2023, Washington state law addresses protections for the health information of individuals who receive reproductive or gender-affirming care in the state. These new laws provide expanded legal protections, beyond those provided under HIPAA, to “protected health care services,” which include “reproductive health care services” and “gender-affirming treatment.”

“Reproductive health care services” means “all services, care or products of a medical, surgical, psychiatric, therapeutic, mental health, behavioral health, diagnostic, preventative, rehabilitative, supportive, counseling, referral, prescribing, or dispensing nature relating to the human reproductive system, including, but not limited to, all services, care, and products related to pregnancy, assisted reproduction, contraception, miscarriage management, or the termination of a pregnancy, including self-managed termination.”²⁰⁰

“Gender-affirming treatment” means “health services or products that support and affirm an individual’s gender identity, including social, psychological, behavioral, and medical or surgical interventions. Gender-affirming care services include, but are not limited to, evaluation and treatments for gender dysphoria, gender-affirming hormone therapy, and gender-affirming surgical procedures.”²⁰¹ Both of these definitions are significantly broader than elsewhere in existing law.

The primary implications of these expanded protections are for out-of-state subpoenas, and other out-of-state court processes issued by foreign (out-of-state) courts seeking information regarding protected health care services. The goal is to protect patients and providers who are receiving or providing these healthcare services in Washington State from being sued or prosecuted in other states for legally receiving or providing services in Washington State.

²⁰⁰ RCW 7.115.010 (4)

²⁰¹ RCW 7.115.010 (2)

A hospital receiving an out-of-state criminal process (e.g., subpoena, warrant, order seeking records) should ensure the process includes an attestation that it does not unlawfully seek information regarding protected health care services before complying with the request.²⁰²

(1) **If the criminal process includes an attestation**, the hospital must comply.

(2) **If the criminal process does not include an attestation**, the hospital is not required to comply. However, the hospital should be cautious not to disclose PHI otherwise protected by HIPAA or other privacy laws.²⁰³

Under Washington State law, out-of-state parties must request the issuance of a civil subpoena from a Washington State court. Therefore, hospitals should only receive civil subpoenas that already comply with Washington State law related to protected health care services. However, similar to in criminal processes, a party submitting a foreign subpoena must include an attestation stating whether the subpoena is seeking information relating to protected health services.²⁰⁴ Any hospital with concerns regarding the protected status of data a subpoena seeks, should consult with their legal counsel to request that the subpoena be quashed.

²⁰² If someone seeking a subpoena submits a **false attestation**, they will be charged a \$10,000 statutory fine and are subject to the jurisdiction of Washington courts for any suit, penalty, or damages arising out of the false attestation.

²⁰³ A Washington recipient shall not be required to comply with a criminal process issued by or in another state that is related to criminal liability that is based on the provision, receipt, attempted provision or receipt, assistance in the provision or receipt, or attempted assistance in the provision or receipt of protected health care services as defined in section 2 of this act that are lawful in the state of Washington. RCW 10.96.040 (2)

²⁰⁴ RCW 5.51.020

Appendix

A. Sample Disclosure Form To Law Enforcement

A model patient authorization for release of PHI to law enforcement agency is located on the following page. The form is based on a form initially prepared by Harborview Medical Center and the Seattle Police Department.

INCIDENT NUMBER

AUTHORIZATION TO DISCLOSE PROTECTED HEALTH INFORMATION TO
(LAW ENFORCEMENT AUTHORITY)

(Please print)

I, _____ as:

(PERSON AUTHORIZING CONSENT)

(Check one)

PATIENT PATIENT'S PARENT/LEGAL GUARDIAN PATIENT'S AUTHORIZED REPRESENTATIVE

hereby authorize _____ to release the
(HOSPITAL / MEDICAL FACILITY)

protected health information of: _____

(PATIENT'S NAME)

(born ____/____/____), for the time period beginning _____ and ending
(MO.) (DAY) (YR.)

_____. I understand that the purpose of this disclosure is to assist in a criminal investigation and/or prosecution.

INFORMATION TO BE RELEASED (check all appropriate boxes)

- SUMMARY OF MEDICAL HISTORY / TREATMENT
- ADVANCE NOTICE OF DISCHARGE DATE / TIME ONLY
- RADIOLOGY RECORDS
- RADIOLOGY FILMS
- LABORATORY / DIAGNOSTIC TESTS
- NURSING / SOCIAL WORK NOTES
- EMERGENCY ROOM RECORDS
- OTHER: _____

ANY AND ALL RECORDS CONCERNING THESE SUBJECT AREAS:

- H.I.V./ AIDS TESTING/TREATMENT
- MENTAL ILLNESS / MENTAL HEALTH TREATMENT
- SEXUALLY TRANSMITTED DISEASES
- DRUG / ALCOHOL ABUSE TREATMENT

Health information shall be released to the (_____ law enforcement authority). In addition, my care providers may discuss my medical condition and any treatment with the assigned detective or his/her designee. This authorization expires on __/__/__ or when the following event occurs _____, whichever occurs later. Once disclosed, the recipient may not be required to maintain the confidentiality of the health care information. However, I understand that certain health care information may be protected under State and Federal Law (42 CFR Part 2 and RCW 70.24). I reserve the right to revoke consent (in writing to the address below) at any time prior to its expiration, except to the extent that the facility which is to release information has already taken action in accordance with it. I understand that my medical care (treatment, payment, or enrollment) is not conditioned on my signing this authorization.

Signature of Patient Signature of Person Other Than Patient / Relationship to Patient

Signature of Witness / Interpreter Law Enforcement Officer (Print name) Serial/Unit

____/____/____
Date

(FOR FOLLOW-UP UNIT USE ONLY) (Please send medical records to:)

(_____ LAW ENFORCEMENT AUTHORITY)

(ADDRESS OF LAW ENFORCEMENT AUTHORITY HERE)

ATTN: (Person to be contacted) _____ / _____ Unit

Phone: _____ Fax# _____

B. Request for Mental Health Service Information Form

RCW 70.02.260 requires the Health Care Authority to create a standard form to be completed by legally authorized agency personnel requesting mental health service information. The Department of Social and Health Services previously created the standard form. The form, located on the following page, provides the type of information mental health service providers must make available in replying to requests from appropriate agency personnel.



Request for Mental Health Service Information

RCW 70.02.260 requires mental health providers to release patient service information when requested on this form.

REQUEST DATE _____

- Initial request
 Follow up to oral request
 (date of oral request: _____)

NAME OF ORGANIZATION INFORMATION IS REQUESTED FROM				PHONE NUMBER (INCLUDE AREA CODE)
ADDRESS	CITY	STATE	ZIP CODE	EMAIL ADDRESS
REQUESTOR'S NAME AND TITLE				PHONE NUMBER (WITH AREA CODE)
ORGANIZATION				SECURE FAX NUMBER (WITH AREA CODE)
ADDRESS	CITY	STATE	ZIP CODE	EMAIL ADDRESS

Authority for Disclosure (check the appropriate boxes below)*

Requests for mental health service information under 70.02.260 are limited to:

- | | | |
|--|---|---|
| <input type="checkbox"/> Law Enforcement Officer | <input type="checkbox"/> Therapeutic Court | <input type="checkbox"/> Indeterminate Sentence Review Board (ISRB) |
| <input type="checkbox"/> Public Health Officer | <input type="checkbox"/> Department of Corrections (DOC) | |
| <input type="checkbox"/> County / City Jail | <input type="checkbox"/> Designated Mental Health Professionals | |

The patient / client:

- Is currently in custody or under supervision of DOC or ISRB.
 Has been convicted or found Not Guilty by Reason of Insanity of a serious violent offense.
 Is awaiting competency evaluation per 10.77.060.
 Was charged with a serious violent offense and the charge was dismissed under 10.77.086.
 None of the above (if checked, the information released will be limited to the fact, place, and date of an involuntary commitment, the fact and date of discharge or release, and the last known address).

The request is based on the requestor's reasonable suspicion that the patient:

- Is likely to commit a crime or violation of community custody or parole based on current or recent behavior.
 Is exhibiting signs of deterioration in mental functioning that may lead to civil commitment.

* At least one of each of the above three sections must be applicable (checked), otherwise other legal authority must be utilized or an authorization to release information must be obtained from the patient or legal representative prior to release of information.

Purpose for requesting information:

- Request is urgent. If request is more urgent than next business day, follow local emergent protocols
 Provide information within six working days:

Patient Health Information requested for:

PATIENT'S NAME / ALIAS(ES)			GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> X		DATE OF BIRTH
ADDRESS	CITY	STATE	ZIP CODE	SOCIAL SECURITY NUMBER (LAST 4 DIGITS)	

If known, patient's six digit DOC number: _____ or DSHS State Hospital Medical Record number: _____

Requested Information to be released by Mental Health Service Provider per RCW 70.02.260. Client ID Number: _____

Outpatient service records (current or most recent episode of services): Intake assessment Treatment plan
 Psychiatric medical evaluation/assessment

Inpatient psychiatric hospitalization (last admission): Discharge summary

10.77 – forensic: (last admission): Evaluation Treatment plan Discharge summary
 Psychiatric and psychosocial assessment Risk assessment plan

REQUESTOR'S SIGNATURE

I declare the above to be true to the best of my knowledge, and that the information being requested is the minimum necessary for the purpose of carrying out the responsibilities of my office. I understand that any information I receive shall be held confidential and subject to the limitations on disclosure outlined in RCW 70.02.260. Email requests require encryption and electronic signature.

REQUEST FOR MENTAL HEALTH SERVICE INFORMATION
 DSHS 17-194 (REV. 10/2022)



Instructions

Purpose of Form: To provide access to mental health information to law enforcement officers, jail personnel, designated mental health professionals, public health officers, therapeutic court personnel as defined in RCW 71.05.020, or department of corrections personnel (including the indeterminate sentence review board) . Information subject to release under RCW 70.02.260 must be requested during the course of the requesting organization’s business and for the purpose of carrying out the responsibilities of the requesting person’s office as described in RCW 70.02.260(3). Any information received under RCW 70.02.260 shall be held confidential and subject to the limitations on disclosure outlined in RCW 70.02.260.

Information provided under RCW 70.02.260 may not be sufficient to make clinical decisions regarding patient medical care.

RCW 70.02.260 does not limit the disclosure of patient information between health care providers as allowed under RCW 70.02.050.

Patient information released under RCW 70.02.260 shall not include psychotherapy notes or federally protected drug and alcohol and HIV/AIDS records.

Once submitted, mental health service providers, staff, or legal counsel shall not be liable for information released under RCW 70.02.260.

State Hospital Contact Information:

Eastern State Hospital Phone: 509-565-4335 Fax: 509.565.4605
Medical Record Department
Eastern State Hospital
PO Box 800
Medical Lake, WA 99022-0800

Western State Hospital..... Phone: 253-581-8900..... Fax: 253-756-2963
9601 Steilacoom Blvd SW
Lakewood, WA 98498

Child Study and Treatment Center Phone: 253-756-2504..... Fax: 253-756-3911
8805 Steilacoom Blvd. SW
Lakewood, WA 98498

Office of Forensic Mental Health Services... Phone: 253-820-3013..... Fax: 253-444-0636
1949 S State Street
Tacoma, WA 98405

Department of Corrections Phone: 360-725-8859..... Fax: 360-586-0287
Public Disclosure Unit
PO Box 41128
Olympia WA 98504-1128

C. Request for Records Involving Child Abuse

The forms located on the following pages are optional templates for responding to requests for PHI from the Attorney General, Prosecutor, Child Protective Services, or law enforcement. The templates are based on forms initially prepared by Seattle Children's Hospital.

Authorization To Release/Obtain/Exchange Patient Health Information

Patient	Patient Name: _____ Date of Birth: ____/____/____ <small>(Legal Name) Last First Middle Month Day Year</small> Other Names Used: _____ Medical Record Number: _____ <small>(if applicable) (if known)</small>									
Release	I authorize Seattle Children's Hospital to: <input type="checkbox"/> Release To <input type="checkbox"/> Obtain From <input type="checkbox"/> Exchange With (Verbal Information Only) Organization/Recipient/Person _____ Attn: _____ Address: _____ City: _____ State: _____ Zip Code: _____ Phone #: (____) _____ Fax #: (____) _____ Email: _____ <small>(required for CD and electronic delivery)</small>									
Delivery/Purpose	Paper copies will be mailed to the recipient unless another format is checked below: <input type="checkbox"/> CD (compact disc) <input type="checkbox"/> Secure Email (patient/family only) Please indicate the purpose(s) of your request: <input type="checkbox"/> Continuing Care <input type="checkbox"/> Transfer of Care <input type="checkbox"/> Personal Use <input type="checkbox"/> Legal <input type="checkbox"/> Insurance <input type="checkbox"/> Disability <input type="checkbox"/> School <input type="checkbox"/> Other (please provide details): _____									
Information	<table style="width: 100%; border: none;"> <tr> <td style="width: 30%; border: none;"> Records for Dates: From _____ To _____ <small>Month/Year Month/Year</small> If no date is specified, only the most recent clinical documentation will be released. </td> <td style="width: 30%; border: none;"> <input type="checkbox"/> Inpatient Hospital Stay <input type="checkbox"/> Outpatient Clinic/Emergency Department <input type="checkbox"/> Lab & Radiology Reports <input type="checkbox"/> Operative/Procedure Notes <input type="checkbox"/> Radiology Images (on CD) <input type="checkbox"/> Billing Records </td> <td style="width: 30%; border: none;"> <input type="checkbox"/> Psychiatric Summary/Care Plan <input type="checkbox"/> Educational Records <input type="checkbox"/> Odessa Brown Records <input type="checkbox"/> Other (please provide details) _____ </td> </tr> </table>	Records for Dates: From _____ To _____ <small>Month/Year Month/Year</small> If no date is specified, only the most recent clinical documentation will be released.	<input type="checkbox"/> Inpatient Hospital Stay <input type="checkbox"/> Outpatient Clinic/Emergency Department <input type="checkbox"/> Lab & Radiology Reports <input type="checkbox"/> Operative/Procedure Notes <input type="checkbox"/> Radiology Images (on CD) <input type="checkbox"/> Billing Records	<input type="checkbox"/> Psychiatric Summary/Care Plan <input type="checkbox"/> Educational Records <input type="checkbox"/> Odessa Brown Records <input type="checkbox"/> Other (please provide details) _____						
Records for Dates: From _____ To _____ <small>Month/Year Month/Year</small> If no date is specified, only the most recent clinical documentation will be released.	<input type="checkbox"/> Inpatient Hospital Stay <input type="checkbox"/> Outpatient Clinic/Emergency Department <input type="checkbox"/> Lab & Radiology Reports <input type="checkbox"/> Operative/Procedure Notes <input type="checkbox"/> Radiology Images (on CD) <input type="checkbox"/> Billing Records	<input type="checkbox"/> Psychiatric Summary/Care Plan <input type="checkbox"/> Educational Records <input type="checkbox"/> Odessa Brown Records <input type="checkbox"/> Other (please provide details) _____								
Notices	I understand that: <ul style="list-style-type: none"> • Signing this release of health information is voluntary; I do not need to sign this form for treatment or payment. • Any disclosure of information has the potential for further release or distribution by the recipient that may not be protected by confidentiality laws. • I can cancel this authorization at any time by informing the Health Information Integrity department in writing. I understand that once the information has been released according to the terms of this authorization, the information cannot be recalled. 									
Signatures	This authorization expires one (1) year from the date signed unless another date or event is indicated here: _____ <small>Exception: If patient information is to be released to an employer or financial institution, this authorization is only valid for 90 days from the date signed.</small> Minors (age 13-17) - A minor patient's signature is required below to release the following information: 1) conditions related to reproductive care including, but not limited to, birth control, pregnancy-related services and sexually transmitted infections including HIV/AIDS (age 14 or older) 2) mental health conditions (age 13 and older) 3) drug and alcohol abuse diagnosis or treatment (age 13 and older) (This information is subject to Federal Regulation 42 CFR Part 2 - See reverse for more information). I specifically authorize Seattle Children's to release health information checked below: <input type="checkbox"/> Reproductive Care <input type="checkbox"/> Sexually Transmitted Infections (incl. HIV/AIDS) <input type="checkbox"/> Mental Health <input type="checkbox"/> Drug/Alcohol Abuse <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;"> _____ <small>Signature of Minor Patient (Legal Name of Patient)</small> </td> <td style="width: 33%; border: none;"> _____ <small>Printed Name</small> </td> <td style="width: 33%; border: none;"> _____ <small>Date Signed</small> </td> </tr> <tr> <td style="border: none;"> _____ <small>Signature of Patient/Legal Representative (Legal Representative)</small> </td> <td style="border: none;"> _____ <small>Printed Name</small> </td> <td style="border: none;"> _____ <small>Relationship to Patient</small> </td> </tr> <tr> <td style="border: none;"> (____) _____ <small>Phone Number</small> </td> <td style="border: none;"> _____ <small>Date Signed</small> </td> <td style="border: none;"></td> </tr> </table>	_____ <small>Signature of Minor Patient (Legal Name of Patient)</small>	_____ <small>Printed Name</small>	_____ <small>Date Signed</small>	_____ <small>Signature of Patient/Legal Representative (Legal Representative)</small>	_____ <small>Printed Name</small>	_____ <small>Relationship to Patient</small>	(____) _____ <small>Phone Number</small>	_____ <small>Date Signed</small>	
_____ <small>Signature of Minor Patient (Legal Name of Patient)</small>	_____ <small>Printed Name</small>	_____ <small>Date Signed</small>								
_____ <small>Signature of Patient/Legal Representative (Legal Representative)</small>	_____ <small>Printed Name</small>	_____ <small>Relationship to Patient</small>								
(____) _____ <small>Phone Number</small>	_____ <small>Date Signed</small>									
Staff	Have the records been released to the requestor? <input type="checkbox"/> Yes <input type="checkbox"/> No Staff Name: _____ Clinic/Unit: _____ Please forward the completed authorization to the Health Information Integrity department (818-HI)									



Seattle Children's
HOSPITAL - BENJAMIN J. GILBERT FOUNDATION



44036

PO BOX 5371, 818-HI
 SEATTLE, WA 98145-5005
 PHONE: 206-987-2173 FAX: 206-985-3252

PATIENT LABEL

**AUTHORIZATION TO RELEASE/OBTAIN/EXCHANGE
 PATIENT HEALTH INFORMATION**

Instructions for completing the Authorization to Release/Obtain/Exchange Patient Health Information form

Purpose: To request that Seattle Children's Hospital provides health information to a recipient outside of Children's, requests that outside information be sent to our organization, or to exchange verbal information about your child.

Instructions to Staff:

- This authorization form does not need to be completed when clinical or unit staff provides the information directly to the legal representative or current outside provider. (If processing the request please complete the "Staff" section on the form before sending to HII).
- For other recipients, or when clinic is not able to provide the information, send form to HII at 818-HI, but first:
 - Check for form completion and write neatly:
 - Patient information
 - Recipient's name and complete address
 - Clear information about what is being requested to release (for example specific date ranges or record type)
 - Signature of patient/legal representative and contact information for the requestor
 - Signature (when required for specific consent-see additional information below)
- If requested, give parent/legal representative directions to HII department for hand delivery of form.

Instructions for Patient/Legal Representative:

- **Completing the form:**
 - Check for form completion and write neatly:
 - Patient information
 - Recipient information
 - Specific information to be released (for example dates ranges, record type, etc.). If no date range is indicated, an abstract of records will be sent (most recent clinical documentation).
 - Signature of legal representative
 - Signature of patient (minor's signature is required to give specific consent-see additional information below)
- **Where to send the form:**
 - If you complete this form at Children's, give it to a clinic or inpatient unit staff member to send to the HII Department.
 - If you are completing this form outside of Children's, you may mail or fax the form to Seattle Children's Health Information Integrity department (see address and fax number on front of form). You can also email the completed form to healthinformation@seattlechildrens.org.
- **Where to call with questions:**
 - Health Information Integrity: 206-987-2173
 - Radiology Image Library: 206-987-2731, Option 3

Additional Information

CONSENT OF MINOR

A minor patient's signature is required in order to release the following information: 1) conditions related to reproductive care including, but not limited to, birth control, pregnancy-related services and sexually transmitted infections, including HIV/AIDS (age 14 and older) 2) drug and alcohol abuse diagnosis and treatment (age 13 and older) 3) mental health conditions (age 13 and older).

FEE FOR COPYING MEDICAL RECORDS

There may be a fee for copying medical records. If a fee does apply, you will be contacted to approve the fee before HII completes your request.

PROHIBITION ON REDISCLOSURE OF HEALTH INFORMATION

- Federal and State laws prohibit redisclosure of information concerning sexually transmitted infections or mental health conditions without the specific written consent of the person to whom the information pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is NOT sufficient for this purpose.
- Drug and alcohol abuse and treatment records are protected by Federal Confidentiality rules (42 CFR Part 2). The federal rules prohibit the recipient of this information from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

FORMAT TO RECEIVE MEDICAL RECORDS

- **Compact Disc (CD):** Electronic records (with the exception of radiology images) will be password protected. To have the password emailed to you, please provide your email address on the authorization form. If no email address is provided, the password will be mailed separately to the postal address listed on the authorization form.
- **Secure Email:** You must provide an email address to receive medical records in this format. For more information on how to open an encrypted message, please visit: <https://www.seattlechildrens.org/healthcare-professionals/gateway/clinical-resources/opening-encrypted-messages-from-seattle-childrens/>
- **MyChart:** You may receive records via MyChart account by submitting a request through MyChart.

D. Resources for Hospitals on Immigration Enforcement

Disclaimer: This model communication is informational only. Hospitals should consult with their immigration and employment counsel before adopting any portions for use in their facilities.

IMMIGRATION ACTIONS AT **HOSPITAL NAME**: INFORMATION FOR CAREGIVERS

The Trump administration has rescinded the status of hospitals as protected locations from immigration enforcement actions. Previously, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) were instructed to refrain from taking enforcement actions in “protected areas” including hospitals, schools and churches.

HOSPITAL NAME and all hospitals in Washington State are places of healing. Hospitals in our state care for everyone regardless of who they are or why they need care. Hospitals will strive to remain safe and accessible to all Washington residents, regardless of immigration or citizenship status. Given recent federal changes, hospitals are taking steps to provide increased protections to immigrant communities. However, hospitals must respond to properly executed court orders or warrants for immigration enforcement.

Thus far, **HOSPITAL NAME** has not experienced immigration enforcement actions and we are not aware of any hospital in our state that has experienced immigration enforcement actions.

What should I do if I’m approached by someone claiming to be ICE or CBP?

First, do not provide the person with any information about any patients or staff being treated at **HOSPITAL NAME**, or about hospital policies or operations. Staff safety and the safety of our patients is our highest priority, and your responsibility is to let the organization know there has been a demand.

Please immediately alert **CONTACT NAME** or the administrator on call. Inform the agent(s) that a leader will be there to help them and invite them to wait in a public area. One step you can take now is to be familiar with public and private areas of your hospital. Only authorized individuals may be in private areas.

We are currently training lead staff on how to verify the validity of enforcement demands. A demand for information from ICE or CBP is not sufficient to gain access to patients or private areas of hospitals, however, hospitals must comply with court orders and judicial warrants. There can be confusion about what is a properly executed court order or warrant and not simply an ICE or CBP demand, and this confusion can be heightened when faced with armed officers.

Is **HOSPITAL NAME** collecting immigration status information?

No, hospitals in Washington state do not collect immigration status as part of the admission process. We treat everyone who comes through our doors, regardless of their origin, background, ability to pay or immigration status.

People filling out an application for Medicaid may be asked about citizenship, however immigration information should not be used or retained by the hospital or a navigator for any other purpose. Washington state offers health care coverage options for non-citizen residents.

What is **HOSPITAL NAME doing to keep patient care private?**

The directive removes protections from public areas of the hospital. We are developing and implementing policies to designate caregiving and other areas of hospitals as private spaces. Only those with approval may access these private areas. Please make sure you are familiar with the public and private areas of the hospital. If immigration enforcement officers come to the hospital, please make sure they are in public areas and contact **NAME** for assistance.

When would **HOSPITAL NAME provide patient information?**

Hospitals must follow all state and federal privacy laws. If there is a court order or a judicial warrant, we must comply with it. However, **HOSPITAL NAME** will continue to follow all privacy laws and will not provide information about patients except as required in the laws, as the patient requests, or may be required under exigent circumstances involving threats of harm.

What can patients do if they are concerned about immigration actions in the hospital?

Every patient in Washington State hospitals is offered the opportunity to “opt out” of the patient directory. The patient directory is used by front desk staff to verify that a patient is there or to route calls to them. We encourage undocumented immigrants and their advocates to ask to be opted out of our patient directory. If you are working to register patients, please clearly inform them of their right to opt out.

What if an ICE or CBP agents try to stop, detain, or arrest an employee?

All employees of **HOSPITAL NAME** are legal to work in Washington state. However, the new federal administration has expressed a desire to deport people who may have entered lawfully through programs of the prior administration. While we do not foresee immigration enforcement actions against staff, we still want to prepare.

If an ICE or CBP agent asks about a hospital employee, again, do not answer the question. Immediately contact the administrator on call or the contact person above. If a hospital employee is detained or arrested, any team member who witnesses it should immediately call the administrator on duty.

If you are detained or arrested, to best protect your rights, you should stay silent and ask for an attorney. You do not have to hand over any IDs or papers to ICE. All workers have this right. HOSPITAL NAME's administrator on call will first work to verify the legitimacy of the agent's actions and will work to get the employee connected with legal services if needed.

What resources are available if I am concerned about myself or loved ones facing immigration actions?

HOSPITAL NAME has connected with resources to help people facing immigration actions [CONSIDER LISTING THEM – CHURCHES, IMMIGRATION ATTORNEYS, LEGAL AID] and will connect people to these resources as needed and desired.

Steps XXX HOSPITAL is taking: PLEASE REVISE TO FIT YOUR ACTIONS

Controlling access to facilities. We are developing and implementing policies to designate caregiving and other areas of hospitals as private spaces. Only those with approval may access these private areas.

Providing leadership and staff support. HOSPITAL NAME leaders have concerns about how frontline staff might respond to or feel intimidated by armed immigration enforcement officers. We are designating an administrator on each shift to respond in cases of immigration enforcement and ensuring this person is trained and can quickly access legal and administrative resources. All frontline staff are being instructed to neither confirm nor deny the presence of a patient to an ICE officer and to quickly route immigration-enforcement action to the point person.

Verifying validity of enforcement requests. A demand from ICE or CBP is not sufficient to gain access to patients or private areas of hospitals. There can be confusion about what is a properly executed court order or warrant and not simply an ICE or CBP demand, and this confusion can be heightened when faced with armed officers. We are educating our lead staff about how to verify the validity of the enforcement demand.

Maintaining patient privacy. If there is a court order or a judicial warrant, we must comply with it. However, HOSPITAL NAME will continue to follow all state and federal privacy laws and will not provide identifying information about patients except as required in the laws.

Offering "opting out" from directory information. Every patient in Washington State hospitals is offered the opportunity to "opt out" of the patient directory. The patient directory is used by front desk staff to verify that a patient is there or to route calls to them. We encourage undocumented immigrants and their advocates to ask to be opted out of our patient directory.

Providing resources. HOSPITAL NAME has connected with resources to help patients facing immigration actions [CONSIDER LISTING THEM – CHURCHES, IMMIGRATION ATTORNEYS, LEGAL AID] and will connect patients to these resources as needed and desired.