

**Hospital and Law Enforcement
Guide to Health Care Related Disclosure**

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TABLE OF CONTENTS

INTRODUCTION.....	1
SCOPE AND FOCUS OF THE GUIDE	1
FREQUENTLY USED TERMS	2
ACCESSING INFORMATION.....	4
TOPICS COVERED.....	4
I. Disclosing protected health information	4
II. Patient authorization to access protected health information.....	6
III. Patients with Specific Injuries	7
IV. Minimizing an imminent danger	11
V. Identifying or locating a suspect, fugitive, material witness, or missing person.....	13
VI. Follow-up to patients brought to the hospital by authorities	18
VII. Notification on release of a patient	20
VIII. Request for blood tests and samples.....	21
IX. Request for a patient’s physical items or samples as evidence.....	23
X. Release of mental health, substance abuse treatment, or HIV information.....	24
XI. Responding to a court order, warrant or subpoena	27
XII. Release of information on crime victims.....	28
XIII. Reporting information regarding crimes on hospital property	30
XIV. Disclosure of protected health information concerning minors	31
XV. Reporting child or vulnerable adult abuse or neglect and release of records to law enforcement	33
XVI. Special considerations for homeland and national security	38
XVII. Law enforcement’s access to hospital facilities.....	40
SAMPLE DISCLOSURE FORM	41
REQUEST FOR MENTAL HEALTH SERVICE INFORMATION FORM	44
REQUEST FOR RECORDS INVOLVING CHILD ABUSE	46

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 a valid authorization.

Hospitals must adhere to the federal regulations. Additionally, several Washington State laws also govern release of patient information. Where state law is more strict 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 taking into account the interests of law enforcement.

This information is provided as a guide for both hospitals and law enforcement officials. Hospitals are encouraged to consult with 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 does not cover every situation that could potentially arise. The 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 every facet of law enforcement. For instance, the Guide does not cover release of protected

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

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. When the Guide refers to “protected health information,” it generally has the same meaning provided under HIPAA.²

The Guide is separated into sections covering a variety of situations likely to arise for hospitals and law enforcement concerning disclosure of protected health information. It focuses on exceptions under HIPAA and state law that permit disclosure of protected health information to law enforcement without patient authorization. The last section in the Guide is slightly different and addresses law enforcement officer presence in treatment areas of the hospital. At the end of the Guide a model form is provided that authorizes release of PHI for law enforcement officials seeking access to patient records. The form is not the standard, but merely an example 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 the particular section.

Directory information: Directory information means the following information maintained regarding individuals in a facility: the individual’s name, location in the facility, and a description of the individual’s condition that does not communicate specific medical information. 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.³ 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:

- A. **Undetermined:** The patient is awaiting a physician and assessment.
- B. **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.

² See Frequently Used Terms for a description of ‘protected health information.’

³ 45 CFR 164.510, RCW 70.02.200.

- C. **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 condition, simply that the patient is at another facility.
- D. **Satisfactory:** Vital signs (heartbeat, breathing, blood pressure, temperature) are stable and within normal limits. The patient is conscious and comfortable. Indicators are good.
- E. **Serious:** Vital signs may be unstable and not within normal limits. Patient is acutely ill. Indicators are questionable.
- F. **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.
- G. **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.
- H. **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 cannot give the release date, admission date, length of stay or any other information.

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.⁴

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.⁵ 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

⁴ 45 CFR 164.103 and RCW 70.02.010(12). Note that the HIPAA definition also includes those individuals empowered by law to prosecute or conduct civil and administrative proceedings.

⁵ RCW 70.02.010(31).

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.⁶ 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

While hospitals differ in their procedures for releasing information to law enforcement, the following things are generally consistent across facilities. Because of HIPAA, hospitals 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.

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 other designated person for additional help in determining whether the request can be fulfilled.

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.⁷ In some cases this documentation may require that the patient complete an authorization form or that the law enforcement officer complete other documentation forms.

Topics Covered

I. Disclosing protected health information

To disclose PHI to law enforcement, 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 under both HIPAA and state law that

⁶ 45 CFR 160.103.

⁷ Note that disclosures made pursuant to USA PATRIOT Act court orders will not be disclosed to the patient or included in the disclosure log.

allows the disclosure of PHI without an authorization. Each circumstance requires an analysis of the particular facts and the relevant exceptions. The following are general categories described in this Guide that may be considered to support the disclosure of protected health information.

- The officer provides a HIPAA compliant authorization signed by the patient or patient's representative. See Section II for information on patient authorization to access PHI. See the last page of this guide for a model authorization form.
- The disclosure to law enforcement is required for patients with specific injuries as described in Section III.
- The release of information is necessary to minimize an imminent danger as described in Section IV.
- 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 as described in Section V.
- The information is provided as follow up to certain authorities that brought or caused the patient to be brought to the hospital as described in Section VI.
- The information relates to the discharge of a patient and law enforcement requested notification of release of the patient and the requirements for the disclosure of the information meet those described in Section VII.
- The information relates to a law enforcement request for blood testing and sampling of a patient as described in Section VIII.
- The information relates to a request for a patient's physical items or samples as evidence as described in Section IX.
- The information relates to the fact of admission for mental health, alcohol or drug abuse treatment, or HIV status and may be released as described in Section X.
- The officer produces a court order, warrant, or subpoena that meets the requirements described in Section XI.
- The information relates to a victim of a crime and involves minimization of an imminent danger and is released as described in Section XII.
- The information relates to a crime that occurred on hospital property and is released as described in Section XIII.
- The information relates to a minor and is released as described in Section XIV.

- The information must be reported under mandatory child or vulnerable adult abuse and neglect reporting statutes described in Section XV.
- The information is released for homeland security or national security purposes as described in Section XVI.
- There is a question regarding law enforcement's access to hospital facilities as described in Section XVII.

The Guide is not exhaustive in its coverage and hospitals may be able to release PHI to law enforcement under other circumstances. However, the Guide does attempt to address the most common situations concerning release of PHI to law enforcement.

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 on the last page 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 of persons who may consent to care and authorize disclosure of PHI in place of the patient.⁸ The state law hierarchy, set forth in RCW 7.70.065 for adult patients is as follows:⁹

- 1) The appointed guardian of the patient, if any;
- 2) The individual, if any, to whom the patient has given a 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; and

⁸ 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 164.501(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.

⁹ 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 XIV regarding the disclosure of protected health information concerning minors.

- 6) Adult brothers and sisters of the patient.

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

Also, 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 may be made only after determining that the proposed health care or disclosure of PHI is in the patient's best interests.

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 conduct¹⁰ and want more information than a location and one-word condition (directory information), the law enforcement officials 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 in advance from all officers.¹¹

III. Patients with Specific Injuries

Under HIPAA, hospitals may disclose PHI for a law enforcement purpose to a law enforcement official if the disclosure is required by law "including laws that require the reporting of certain types of wounds and other physical injuries."¹² 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.¹³

Affirmative Obligation to Report: If a patient is treated for a bullet wound, gunshot wound, or stab wound, hospitals are **required** to report to a local law enforcement authority as soon as is reasonably possible, taking into consideration the patient's emergency care needs.¹⁴ The report must include:

- name of the patient;

¹⁰ RCW 70.02.050(2)(a). See the specific injuries and the information that may be described in Section III.

¹¹ 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.

¹² 45 CFR §164.512(f)(1)(i).

¹³ RCW 70.02.200(2)(b).

¹⁴ RCW 70.41.440.

- patient's residence;
- patient's sex;
- patient's age;
- whether the patient received a bullet wound, gunshot wound, or stab wound; and
- 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:

- a bullet wound;
- a gunshot wound;
- a powder burn;
- other injury arising from or caused by the discharge of a firearm;
- 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
- a blunt force injury that the law enforcement authority making the request states is reasonably believed to have resulted from a criminal act.

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.¹⁵ A hospital may not notify law enforcement authorities when a patient presents with these injuries unless another reporting obligation exists or another exception applies.¹⁶

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:

¹⁵ RCW 70.02.200(2)(b).

¹⁶ Additional considerations regarding exceptions: WAC 246-101-301 requires monthly reporting of gunshot wounds to the Department of Health. 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.

- name of the patient;
- patient's residence;
- patient's sex;
- patient's age;
- patient's condition;
- patient's diagnosis or extent and location of injuries as determined by a health care provider;
- whether the patient was conscious when admitted;
- name of the health care provider making the determination with respect to the patient's condition, diagnosis and extent and location of injuries and whether or not the patient was conscious when admitted;
- whether the patient has been transferred to another facility; and
- 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 wound in the last twenty-four hours. The police department believes that someone was intentionally stabbed and may seek medical care."

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

If patients subject to a request for information from law enforcement authorities are treated for or discharged to obtain mental health treatment, other laws may apply.

The required disclosure to law enforcement does not supersede the 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.¹⁷ For example, the fact of mental health treatment generally cannot be disclosed. However, existing exceptions still apply. 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.

¹⁷ See Section X.

Providing health care services in response to a medical emergency: A health care provider, operating outside of a hospital, must disclose PHI upon a request from federal, state, or local law enforcement if the patient is being treated for¹⁸:

- a bullet wound;
- a gunshot wound;
- a powder burn;
- other injury arising from or caused by the discharge of a firearm;
- 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;
- a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act; or
- injuries sustained in an automobile collision.

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

- name of the patient;
- patient's residence;
- patient's sex;
- patient's age ;
- patient's condition or extent and location of injuries as determined by the first responder;
- whether the patient was conscious when contacted;
- whether the patient appears to have consumed alcohol or be under the influence of alcohol or drugs;
- the name of the provider who first treated the patient; and
- 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.

¹⁸ RCW 18.73.270

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 perpetrator¹⁹ **and** the disclosure is necessary to avoid an imminent danger (see Section IV).²⁰ 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 release of PHI may reasonably avoid or minimize an imminent danger to the health or safety of a patient or other individual, a provider may release PHI to law enforcement without a patient's authorization. State law and the HIPAA privacy regulation must be read together to provide the parameters for disclosure in this instance.²¹

The provider must believe in good faith²² that disclosure of PHI is necessary to prevent or lessen a **serious** and **imminent** threat to health or safety. 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 decide to release 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.²³ 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 and release the minimum necessary information to lessen the threatened harm.

In the event of an emergency situation that may pose a significant risk to the public or the patient in question, providers may release requested information related to mental health services. If the request is submitted in writing, providers may release information related to the mental health services delivered. When the request is submitted orally, this information is

¹⁹ 45 CFR 164.512(f)(6).

²⁰ 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).

²¹ RCW 70.02.050(1)(c) and 45 CFR 164.512(j)(1).

²² Under HIPAA a "good faith" belief is presumed if it is based on actual knowledge or reliance on a "credible representation by a person with apparent knowledge or authority." 45 CFR 164.512(j)(4).

²³ *Tarasoff v. Regents of Univ. of Cal.*, 17 Cal.3d 425, 551 P.2d 334, 340, 343, 131 Cal.Rptr. 14 (1976).

limited to whether or not the offender is being treated by the provider and information regarding the location of the offender.²⁴

In the event the individual at issue is a current inpatient or outpatient, providers and law enforcement may cooperate in stationing 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: 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 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.²⁵

Example: 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 in the near future, the provider may report the information to law enforcement. 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.²⁶

Example: 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

²⁴ RCW 70.02.260(5).

²⁵ See Section III for information regarding patients with specific injuries.

²⁶ 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 XV.

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

Example: An emergency medical provider subject to the HIPAA regulation²⁷ 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 disclose 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,²⁸ **or**

²⁷ Note that some emergency medical providers are subject to HIPAA while others are not.

- (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;²⁹ **or**
- (3) limited to directory information, including a one word condition and patient location,³⁰ if the patient is asked for by name, and the patient has not opted out of the directory;³¹ **or**
- (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.³²

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 VI for a description of disclosures allowed as a follow-up to patients brought or caused to be brought to the hospital by certain authorities. Note that hospitals disclosing to avoid or minimize an imminent danger must only provide the minimum information necessary to prevent the harm.

Violent crime or escape from correctional institution: HIPAA and state law must be read together to understand how Washington hospitals may disclose PHI relating to 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.³³ However, disclosure is limited to the circumstances and the information listed in items (1) through (4) in the paragraph above. Additionally, if the disclosure is required under item (1) in the paragraph 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:³⁴

- name of the patient;
- patient's residence;
- patient's sex;

²⁸ RCW 70.02.200(2)(b) and RCW 70.41.440.

²⁹ RCW 70.02.050(1)(c).

³⁰ See Frequently Used Terms for a description of 'directory information.'

³¹ RCW 70.02.200(1)(e).

³² 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 VI regarding follow-up to cases initially reported by authorities.

³³ 45 CFR 164.512(j)(1)(ii).

³⁴ RCW 70.41.440(2)(a)-(c).

- patient's age;
- whether the patient received a bullet wound, gunshot wound, or stab wound; and
- the name of the health care provider providing treatment for the injury.

If the disclosure is required under item (1) in the paragraph 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:³⁵

- name of the patient;
- patient's residence;
- patient's sex;
- patient's age;
- patient's condition;
- patient's diagnosis or extent and location of injuries as determined by a health care provider;
- whether the patient was conscious when admitted;
- the name of the health care provider making those determinations;
- whether the patient has been transferred to another facility; and
- the patient's discharge date and time.

If the disclosure is permitted under item (2) in the paragraph above (imminent danger), then the HIPAA Privacy Regulations limit the disclosure to the following minimum necessary information listed below:³⁶

- A. Name and address;
- B. Date and place of birth;
- C. Social security number;
- D. ABO blood type and rh factor;

³⁵ RCW 70.02.200(2)(b)(i)-(x).

³⁶ 45 CFR 164.512(j)(3).

- 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.

If the disclosure is permitted under item (4) on the previous paragraph (patients brought or caused to be brought to the hospital by certain authorities), then the information disclosed is limited to name, address, age, gender, and type of injury.

A disclosure based on a 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.³⁷

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 perpetrator³⁸ **and** the disclosure is necessary to avoid an imminent danger (see Section IV)³⁹ **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.

Example: While caring for a patient's broken arm, a nurse learns from the patient's companion 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, using the patient's name, by

³⁷ 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.

³⁸ 45 CFR 164.512(f)(6).

³⁹ 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).

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: 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 the disclosure is limited to directory information including a one word condition and location of the patient, the patient has not opted out of the directory, and 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 for such behavior, the disclosure is not allowed.

Example: 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 appears 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.⁴⁰

VI. Follow-up to 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.⁴¹ Because both state⁴² and federal law⁴³ 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 to patients brought or caused to be brought to the hospital by authorities. Reading the provisions together, the following may be disclosed by hospitals: name, address, age, gender and type of injury.

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

- A patient or legally authorized surrogate has authorized the release by signing a valid authorization.⁴⁴ See Section II for information on patient or surrogate authorization. See the last page of this guide for a model authorization form.
- A law enforcement authority requests information about a patient with specific injuries.⁴⁵ See Section III regarding disclosures in response to a request for information about patients with specific injuries.
- A patient poses an imminent danger and the release of the information will avoid or minimize this imminent threat posed by the patient.⁴⁶ See Section IV regarding disclosure to minimize an imminent threat.

⁴⁰ See Section III for information regarding patients with specific injuries.

⁴¹ RCW 70.02.200(1)(f).

⁴² 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.

⁴³ 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.

⁴⁴ See RCW 70.02.030.

⁴⁵ RCW 70.02.200(2)(b).

⁴⁶ RCW 70.02.050.

- 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.⁴⁷
- The patient is the subject of suspected child⁴⁸ or vulnerable adult abuse.⁴⁹

Regulations regarding substance abuse treatment program records do not contain a similar exception for case reports to police.⁵⁰ 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. See Section X for more on release of substance abuse treatment information. 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.

Example: 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; sex; 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 transferred to another facility (unless the other facility is a mental health facility); and the date and time of the patient's discharge.⁵¹

Example: 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

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

⁴⁸ 45 CFR 164.512(b)(1)(ii).

⁴⁹ 45 CFR 164.512(a); RCW 26.44.030; RCW 26.44.040; RCW 74.34.035. See Section XV.

⁵⁰ 42 CFR 2.12(c), RCW 70.96A.150.

⁵¹ See Section III for information regarding patients with specific injuries.

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; 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.

VII. 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 the person is 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 asks 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, a hospital cannot consider a patient left by police at a hospital 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 information to law enforcement if the patient is not in the custody of law enforcement. However, there are exceptions to this general rule:

RCW 71.05.190 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 the patient is not appropriate for such an admission, at the request of a law enforcement, the patient can be held for up to 8 hours in order for law enforcement to return to take the patient back into custody. During this holding period, the hospitals 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.

There are also exceptions for minors who are receiving mental health treatment. See Section XIV for more information.

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

- A patient or legally authorized surrogate has authorized the release by signing a valid authorization.⁵² See Section II for information on patient or surrogate authorization. See the last page of this guide for a model authorization form.
- A law enforcement authority requests a patient's discharge date and time for a patient who was treated for a specific injury.⁵³ See Section III for information regarding patients with specific injuries.
- 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 regarding disclosure to minimize an imminent threat.
- 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.⁵⁴
- The patient is the subject of suspected child or vulnerable adult abuse.

VIII. Request for blood tests and samples

Alcohol or drug test results. 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 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.⁵⁵ With the passage of Initiative I-502, which decriminalized the possession and use of certain amounts of marijuana, the Implied Consent statute was also revised to include blood testing for THC concentration.⁵⁶

If Washington's Implied Consent law is valid, a person's blood alcohol, TCH, or drug levels may be tested and disclosed to law enforcement without the patient's authorization if:

- A. The person is incapable of providing a breath sample due to physical injury, physical incapacity or other physical limitation;
- B. The person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or similar facility;

⁵² See RCW 70.02.030.

⁵³ 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.

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

⁵⁵ RCW 46.20.308.

⁵⁶ *Id.*

- C. The officer has reasonable grounds to believe the person is under the influence of alcohol or a drug;
- D. The person is under arrest for:
 - i. vehicular homicide;
 - ii. vehicular assault; or
 - iii. DUI and the arrest results from an accident in which there was serious bodily injury to another person.

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.⁵⁷

Washington legislature amended the Implied Consent statute to address how law enforcement may obtain a blood test without the person's consent in light of the United States Supreme Court's recent decision in *Missouri v. McNeely*.⁵⁸ The *McNeely* decision overturned 46 years of precedents by holding that, where police officers can reasonably obtain a warrant before a blood sample is drawn, they should do so. The majority's four opinions left unanswered what type of "exigent" circumstances would justify law enforcement obtaining a blood test without a warrant if the person did not consent. While the Implied Consent statute shields medical personnel from civil and criminal liability for withdrawing blood at the direction of a law enforcement officer, this issue has not been litigated in Washington and it is unclear how the courts will interpret the statutes' immunity provisions after *McNeely*.

Until the Washington legislature or courts clarify what type of exigent circumstances that would justify a warrantless blood draw without patient consent hospitals should obtain patient consent or require law enforcement to obtain a warrant in most, if not all, situations in which law enforcement requests assistance in obtaining a blood sample for use in a criminal investigation.

Example: 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.

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

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

⁵⁸ _ US_, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013).

hospital. See Section XI for further guidance on how the hospital should respond to a court order, warrant or subpoena.

Example: 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 offers 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.

IX. 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. 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.

The same analysis applies to cells, tissues, and physical items “such as clothing, weapons, or a bloody knife.” 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 elsewhere in 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. See Sections II and XI. 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 not only the item but also the identity of the person that possessed the item can be disclosed to law enforcement.

Example: Police arrive in the emergency department with a person suspected of a shooting. Police physically remain with the suspect while the suspect is treated. During the course of 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 in police control since arriving at the hospital and during treatment. Therefore, the police can take the item as evidence.

Example: 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 is required by law to be disclosed.

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

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

- A. in accordance with the prior authorization of the patient;
- B. If authorized by an appropriate court order;

- C. to comply with state laws mandating the reporting of suspected child abuse or neglect; or
- D. when a patient commits a crime on program premises or against program personnel, or threatens to do so.⁵⁹

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.**

Additionally, when a patient receiving court ordered treatment is, or becomes, subject to supervision by the department of corrections,⁶⁰ certain records may be released. Any other disclosure must be authorized by the patient.

Mental health: If a patient is committed under the involuntary treatment act (Chapter 71.05 RCW) after dismissal of a sex, violent, or felony harassment offense, a provider *may* release mental health information to a police agency upon the patient's release, final discharge, transfer, authorized leave, or escape from involuntary treatment.⁶¹ This, however, does not apply to mental health services provided for minors.

Upon request, a provider must also release the fact, 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. Providers must also release information related to mental health services for patients who:

- A. Are currently committed to the custody or supervision of the department of corrections or the indeterminate sentence review board;
- B. Has been convicted or found not guilty by reason of insanity of a serious violent offense;
- C. Or was charged with a serious violent offense and the charges were dropped when the patient was determined to be incompetent.

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, a violation of community custody or a parole violation has been committed or is likely to be in the near future; or is exhibiting signs of mental deterioration and is likely to be civilly committed in the near future. 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

⁵⁹ 42 CFR 2.12(c), RCW 70.96A.150.

⁶⁰ RCW 71.05.445(1)(b).

⁶¹ RCW 70.02.230(2)(j).

offender's failure to report for department of corrections supervision.⁶² 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 at the end 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 provider shall provide the representative with written results of the investigation including the reasons for either detention or release.⁶³ When a patient is receiving court ordered treatment and becomes, subject to supervision by the department of corrections, the provider shall notify the department of corrections of the treatment. The information shall include all relevant records and reports necessary for the department of corrections to carry out their duties.⁶⁴

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.⁶⁵

Providers may also notify the police of information necessary to prevent or lessen a serious and imminent threat to health or safety.⁶⁶ See Section IV for further details.

Note that the above access to mental health treatment records **does not** include access to "psychotherapy notes."⁶⁷ Psychotherapy notes are a very limited set of records documenting or 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.⁶⁸

HIV/sexually transmitted diseases: A law enforcement officer, fire fighter, 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.⁶⁹ 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.

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

⁶² RCW 70.02.260(3).

⁶³ RCW 70.02.230(2)(e).

⁶⁴ RCW 71.05.445(1)(b).

⁶⁵ RCW 70.02.230(2)(m).

⁶⁶ 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).

⁶⁷ RCW 70.02.010(36), 45 CFR 164.524(a)(1).

⁶⁸ RCW 70.02.230(2)(t), 45 CFR 164.501.

⁶⁹ RCW 70.02.220(2)(g), 70.24.340, 45 CFR 164.512(a).

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.

XI. 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. A health care provider must provide information to law enforcement authorities when the health care provider is required to do so by law, such as in the case of a properly issued court order or warrant.⁷⁰ 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.⁷¹

Court-ordered requests: The hospital may disclose PHI without prior authorization if the information is requested pursuant to a court order or court-ordered warrant, or a subpoena or 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.⁷²

In the case of an administrative order (such as an administrative subpoena or a civil investigative demand), HIPAA further requires that the requested information may 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.⁷³

The general rule is: when the requesting document has been issued by a court or 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 and must promptly release the requested information.

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 or administrative tribunal or has not been otherwise issued directly from a court, the following requirements must be followed in addition to those above before disclosing the information. 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 70.02.060.⁷⁴ Examples of this situation include a subpoena in a civil litigation case, where an attorney signs

⁷⁰ RCW 70.02.200(2)(a).

⁷¹ 45 CFR 164.512(f).

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

⁷³ 45 CFR 164.512(f)(1)(ii)(C).

⁷⁴ RCW 70.02.200(2)(c).

the subpoena. 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.”⁷⁵ RCW 70.02.060 sets out the procedure by which PHI may be sought from a health care provider and includes notice requirements for both the health care provider and patient involved and an opportunity to seek a protective order to prevent disclosure.⁷⁶

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.⁷⁷ However, the hospital or health care provider must temporarily suspend an accounting of disclosures made to a law enforcement official, for the time specified by such official, 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.⁷⁸ 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.⁷⁹

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

XII. 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 request for information about an individual who is the victim of a crime. HIPAA does allow this type of disclosure.⁸⁰ Because state law is more strict, a hospital generally may not

⁷⁵ CrR 4.7(d); CrRLJ 4.7(d).

⁷⁶ 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.

⁷⁷ 45 CFR 164.528(a)(1).

⁷⁸ 45 CFR 164.528(a)(2)(i).

⁷⁹ 45 CFR 164.528(a)(2)(ii).

⁸⁰ 45 CFR 164.512(f)(3).

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:

- A. The victim-patient or legally authorized surrogate has authorized the release by signing a valid authorization.⁸¹ See Section II for information on patient or surrogate authorization. See the last page of this guide for a model authorization form.
- B. The victim patient is being treated for a specific injury. See Section III regarding disclosure of information on specific injuries to law enforcement authority.
- C. The victim-patient poses an imminent danger and the release of the information will avoid or minimize the imminent threat posed by the patient.⁸² See also Section IV, disclosing to minimize an imminent threat.
- D. 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. See Section IV, disclosing to minimize an imminent threat.
- E. 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.⁸³
- F. The patient was brought or caused to be brought to the hospital by fire, police, sheriff or other public authority. See Section VI for the information that may be disclosed in this circumstance.
- G. If the victim-patient is the subject of suspected child or vulnerable adult abuse, a report **must** be made. See Section XV.

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. See Section XVII for more information on law enforcement presence in the hospital. 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 materials or substances, the patient must authorize the disclosure or another exception, such as those discussed above, must apply.

Finally, all of the above applies even if the victim is a hospital employee, patient, or visitor.

⁸¹ RCW 70.02.030.

⁸² RCW 70.02.050(1)(c).

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

Example: 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: A person who is being treated for injuries sustained in a street fight says as soon as he gets out of the emergency department 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. 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.⁸⁴

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

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

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

XIV. Disclosure of protected health information concerning minors

HIPAA addresses disclosure of PHI for both emancipated and unemancipated minors.⁸⁵ While HIPAA does not define these terms, Washington State law provides some guidance as to their meaning. Generally, a person under the age of 18 is a minor.⁸⁶

Emancipated minors: For purposes of disclosure of PHI to law enforcement, emancipated minors are treated the same as adults. In order for disclosure of PHI to law enforcement to occur, the emancipated minor must authorize the disclosure or the disclosure must fit an exception of the type described in this Guide. 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. Emancipation status includes the right to consent to health care. Hospitals generally require documentation of emancipation status⁸⁷ before treating a minor as emancipated.

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 agencies) to obtain PHI concerning a minor.⁸⁸ 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 HIPAA⁸⁹ 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

⁸⁵ 45 CFR 164.502(g).

⁸⁶ RCW 26.28.010.

⁸⁷ 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.

⁸⁸ 45 CFR 164.502(g).

⁸⁹ 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

circumstances a hospital cannot provide the 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, presumably a minor can also authorize disclosure of that particular set of PHI to law enforcement.

The 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:

- A minor recognized as a “mature minor” under state common law may be treated as emancipated for purposes of making health care decisions. *Smith v. Seibly*.⁹⁰ 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.⁹¹
- If a person under 18 is married to a person 18 or older, the minor is deemed to be of full age.⁹²
- Minors may also consent to certain medical treatments without parental consent.⁹³
- Although state law does not specifically address it, in the context of minor consent to disclosure of PHI, presumably a parent in Washington State may 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. See Section XV for more information.

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

authorized by law consents to the care; and, 3) when a parent agrees to a confidential relationship between the minor and the physician.

⁹⁰ *Smith v. Seibly*, 70 Wn.2d 16, 431 P.2d 719 (1967).

⁹¹ 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.

⁹² RCW 26.28.020.

⁹³ 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 female 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 mental health treatment, see RCW 71.34.530 (minor may consent absent parental consent at age 13); substance abuse treatment, see RCW 70.96A.095 (minor may consent absent parental consent at age 13).

law enforcement or public health officers as necessary for the responsibilities of their offices⁹⁴ but the disclosure is restricted to the following information:

- A. The fact and date of admission;
- B. The date of discharge;
- C. The name and address of the treatment provider, if any; and,
- D. 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 minor⁹⁵ and, due to HIPAA, is restricted to the list found in 45 CFR 164.512(f).⁹⁶

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.⁹⁷

XV. 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.⁹⁸

⁹⁴ RCW 70.02.240(5).

⁹⁵ RCW 70.02.240(6).

⁹⁶ 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.

⁹⁷ RCW 70.02.320.

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

Reporting child abuse or neglect: Health care workers, law enforcement personnel, and other mandated reporters⁹⁹ 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*.

- A. A “child” is any person under the age of 18.
- B. “Abuse or neglect” means “injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child’s health, welfare, and safety is harmed.”¹⁰⁰

A report of suspected child abuse or neglect must be made to the Department of Social and Health Services Child Protective Services or law enforcement. See <http://www1.dshs.wa.gov/ca/safety/abuseReport.asp> or call 1-866-363-4276.

Releasing medical records to law enforcement in child abuse cases: Upon receiving a report of abuse or neglect, the Department of Social and Health Services or law enforcement shall have access to all relevant records of the child in the possession of mandated reporters and their employees as necessary to investigate such allegations.¹⁰¹ Mandated reporters include podiatrists, 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).¹⁰² This means the “relevant records” to which law enforcement shall have access to include health care records in the possession of health care providers.

Such access is not precluded by HIPAA. 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.”¹⁰³ Washington law authorizes law enforcement agencies to receive reports of child abuse.¹⁰⁴ Moreover, HIPAA does not preempt state laws, such as Washington’s, which mandate reporting of child abuse.¹⁰⁵

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....”¹⁰⁶ Effective July 1, 2014, such disclosures to law enforcement are required only for health information that

⁹⁹ See RCW 26.44.030 for a list of mandated reporters.

¹⁰⁰ RCW 26.44.020.

¹⁰¹ RCW 26.44.030(14)(a)(ii).

¹⁰² RCW 26.44.030(1)(a)-(b); RCW 26.44.020(16).

¹⁰³ 45 CFR 164.512 (b)(1)(ii).

¹⁰⁴ RCW 26.44.030(1)

¹⁰⁵ 45 CFR 160.203(c).

¹⁰⁶ RCW 70.02.050(2)(b).

does not include information related to sexually transmitted diseases and information related to mental health services,¹⁰⁷ creating 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.¹⁰⁸

Nonetheless, there are a number of arguments supporting the propriety of providing law enforcement with access to information related to sexually transmitted diseases and information related to 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. 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 confidentiality statutes.¹⁰⁹ To aid disclosure of treatment records to law enforcement the following tools have been developed:

- Letter Template for Abuse and Neglect Concerns
- Document Sets for Responding to Attorney General and Prosecutor Requests for Information
- Document Sets for Responding to Child Protective Services and Police Requests for Information

Hospitals and health systems can make 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 reporters¹¹⁰, must ***immediately report*** when they have reasonable cause to believe that a vulnerable adult has been subject to abandonment, abuse, financial exploitation, or neglect.¹¹¹

A. A “vulnerable adult” is

¹⁰⁷ RCW 70.02.200(2)(a).

¹⁰⁸ See RCW 70.02.220 through RCW 70.02.260.

¹⁰⁹ See *State v. Warner*, 125 Wn.2d 876 (1995), citing *State v. Fagalde*, 85 Wn.2d 730 (1975).

¹¹⁰ See RCW 74.34.020 for a complete list of mandated reporters.

¹¹¹ See RCW 74.34.020 for complete definitions and examples of abandonment, abuse, financial exploitation, or neglect.

- a. any person, sixty years of age or older, who has the functional, mental, or physical inability to care for himself or herself;
- b. an adult found incapacitated under chapter 11.88 RCW;
- c. an adult with a developmental disability;
- d. an adult living in facility such as a nursing home, boarding home, or adult family home;
- e. an adult receiving services from home health, hospital, or home care agencies;
- f. an adult receiving services from an individual provider; or
- g. an adult receiving care services in his or her own family's home;¹¹²

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 (1-800-562-6078). 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 Office in the appropriate county. (See <http://www.aasa.dshs.wa.gov/Programs/aps.htm> for specific county contact numbers.).

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 there 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.¹¹³ 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.¹¹⁴ 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

¹¹² RCW 74.34.020.

¹¹³ RCW 74.34.035.

¹¹⁴ These include a request to report to the law enforcement agency 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.

establishing the extent of abuse.¹¹⁵ Each report, oral or written, must contain as much as possible of the following information:

- A. The name and address of the person making the report;
- B. The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;
- C. The name and address of the legal guardian or alternate decision maker;
- D. The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;
- E. Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;
- F. The identity of the alleged perpetrator, if known; and
- G. 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.¹¹⁶

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: 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 discover 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

¹¹⁵ RCW 74.34.035(7).

¹¹⁶ RCW 74.34.067.

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

Example: 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. 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.

XVI. 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 that the requester seeks. Many Homeland Security agents do not have a law enforcement basis 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, only if Washington state law exceptions permitting disclosure are met.¹¹⁷ Possible exceptions might include:

¹¹⁷ 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.

- A. A patient or legally authorized surrogate has authorized the release by signing a valid authorization.¹¹⁸ See Section II for information on patient or surrogate authorization. See the last page of this guide for a model authorization form.
- B. The Secret Service has requested information about a patient being treated for specific injuries.¹¹⁹ See Section III for information regarding disclosures in response to requests regarding patients treated for specific injuries.
- C. 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 III for information on disclosure to minimize an imminent threat.
- D. A report is initially made by certain authorities. See Section V for more information.
- E. 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.¹²⁰

National security issues: Disclosure of PHI to the Secret Service or other authorized federal officials relating to the conduct of lawful intelligence, counter-intelligence and other national security activities conducted by the FBI and CIA may be made only if another exception permitting disclosure is also met. See A-E immediately above for possible exceptions.¹²¹

It is important to note the FBI and the CIA are **not** a part of Homeland Security. Therefore, 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 Act¹²² 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.¹²³ Although Washington law generally requires notification of a patient of a health care provider’s disclosure of PHI, state law is

¹¹⁸ RCW 70.02.030.

¹¹⁹ RCW 70.02.200(2)(b).

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

¹²¹ Under HIPAA, a hospital **may** disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, 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.

¹²² Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

¹²³ 50 USC 1861(d).

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 XI to this section.¹²⁴ USA PATRIOT Act court orders should not be made part of the medical record or included in a disclosure log.

XVII. Law enforcement's access to hospital facilities

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 protect health care providers. If a patient is under arrest, or if a search warrant or court order has been issued for 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 assure that care is delivered in an efficient and timely manner, without disruptions or interference. Hospitals 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. 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, as well as the privacy interests of all patients, in determining whether to grant access to law enforcement.

¹²⁴ See 50 USC 1861, 45 CFR 164.512(a), and 45 CFR 164.512(e)(1)(i) for more information.

Sample Disclosure Form

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

ANY AND ALL RECORDS CONCERNING THESE SUBJECT AREAS:

- H.I.V. / AIDS TESTING/TREATMENT SEXUALLY TRANSMITTED DISEASES
MENTAL ILLNESS / MENTAL HEALTH TREATMENT 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# _____

Request for Mental Health Service Information Form

RCW 70.02.260, effective July 2014, requires the Department of Social and Health Services to create a standard form to be completed by legally authorized agency personnel requesting mental health service information. This 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 71.05.385 requires mental health providers to release patient service information when requested on this form.

REQUEST DATE <hr style="border: 1px solid black;"/> <input type="checkbox"/> Initial request <input type="checkbox"/> Follow up to oral request (date of oral request: _____)
PHONE NUMBER (INCLUDE AREA CODE)
EMAIL ADDRESS
PHONE NUMBER (WITH AREA CODE)
SECURE FAX NUMBER (WITH AREA CODE)
EMAIL ADDRESS

NAME OF ORGANIZATION INFORMATION IS REQUESTED FROM			
ADDRESS	CITY	STATE	ZIP CODE
REQUESTOR'S NAME AND TITLE			
ORGANIZATION			
ADDRESS	CITY	STATE	ZIP CODE

Authority for Disclosure (check the appropriate boxes below)*

Requests for mental health service information under 71.05.385 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.
- Was charged with a serious violent offense and the charge was dismissed under 10.77.086.

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

- Has engaged in activity indicating that a crime or a violation of community custody or parole has been committed.
- 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	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 71.05.385.

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

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 71.05.385. Email requests require encryption and electronic signature.	REQUESTOR'S SIGNATURE <hr style="border: 1px solid black;"/>
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Instructions

Purpose of Form: To provide the requesting person sufficient information to make decisions regarding the safety risk of a patient / client to self or others.

Information released by mental health providers under 71.05.385 must be requested during the course of the requesting organizations business and for the purpose of carrying out the responsibilities of the requesting person's office.

Information provided under 71.05.385 may not be sufficient to make clinical decisions regarding patient medical care.

71.05.385 does not limit the disclosure of patient information between health care providers as allowed under 71.02.050.

Patient information released under 71.05.385 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 71.05.385.

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, Washington 98498

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

Request for Records Involving Child Abuse

The forms located on the following page 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.

MODEL TEMPLATE:

Document Sets for Responding to Attorney General and Prosecutor Requests for Information

Description:	
Requests for medical records pertaining to child abuse are highly sensitive. These requests require special handling and a quick turnaround time to assist in mandatory reporting requirements.	
<i>In order to classify attorney general and prosecutor requests as pertinent to child abuse, the request must indicate the purpose is for a child abuse investigation.</i>	
Examples:	
Attorney General of Washington, deputy prosecutor.	
Request Indicates:	What to Send:
All	All. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Specific Time Frame	Send all relevant notes within the time frame specified. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Specific Date of Service	Send what is requested. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Specific Diagnosis	Send all relevant notes pertinent to the diagnosis. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Specific time frame & Diagnosis	Send all relevant notes pertinent to the diagnosis within the time frame requested. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Content to Send:	
Outpatient Visits	
Audiology Results (BAER)**	✓
Clinic Note	✓
Correspondences	✓
Diagnostics**	✓
EEG	✓
Opt. Aux. Tests	✓
Sleep study	✓
ED/UC Visit	✓
ED/UC Clinician Record	✓
Eye Exams	✓
Growth Charts	✓
Immunizations	✓
Lab Results**	✓
Nutrition Progress Notes**	✓
Photos **	✓
Radiology Reports **	✓
Radiology Images **	✓ cc request to Radiology Fax:
Therapy Services**	✓
PT/OT	✓
Speech/Swallow Study	✓
Inpatient Visits	
Consults	✓
H&P	✓
Discharge Summary	✓
OR and Procedure	✓
Op note	✓
Procedure note	✓
Cardio Invasive Procedure	✓
Pathology	✓
Progress Notes	✓
Social Work Notes	✓
Transport Records	✓

**This report type can occur in either an outpatient setting or inpatient setting.

MODEL TEMPLATE:

Document Sets for Responding to Child Protective Services (CPS) and Police Requests for Information

Description:	
Requests for medical records pertaining to child abuse are highly sensitive. These requests require special handling and a quick turnaround time to assist in mandatory reporting requirements.	
<i>In order to classify CPS request as pertinent to child abuse, the request must indicate the purpose is for a child abuse investigation. Only medical records relevant to the alleged abuse will be released.</i>	
Examples:	
CPS (Child Protective Services) requests, police & detective requests for child abuse.	
Request Indicates:	What to Send:
All	Request must indicate a specific event pertinent to abuse to receive records. Send all relevant medical records. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Specific Time Frame	Send all relevant notes pertinent to allegations of abuse within the time frame specified. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Specific Date of Service	Send what is requested. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Specific Diagnosis	Send all relevant notes regarding allegations of abuse pertinent to the diagnosis. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Specific time frame & Diagnosis	Send all relevant notes pertinent to the diagnosis within the time frame requested. <i>*Sensitive records can only be released if it is relevant to the investigation.*</i>
Content to Send:	
Outpatient Visits	
Audiology Results (BAER)**	✓
Clinic Note	✓
Correspondences	✓
Diagnostics**	✓
EEG	✓
Opt. Aux. Tests	✓
Sleep study	✓
ED/UC Visit	✓
ED/UC Clinician Record	✓
Eye Exams	✓
Growth Charts	✓
Immunizations	✓
Lab Results**	✓
Nutrition Progress Notes**	✓
Photos **	✓
Radiology Reports **	✓
Radiology Images **	✓ cc request to Radiology Fax:
Therapy Services**	✓
PT/OT	✓
Speech/Swallow Study	✓
Inpatient Visits	
Consults	✓
H&P	✓
Discharge Summary	✓
OR and Procedure	✓
Op note	✓
Procedure note	✓
Cardio Invasive Procedure	✓
Pathology	✓
Progress Notes	✓
Social Work Notes	✓
Transport Records	✓

**This report type can occur in either an outpatient setting or inpatient setting.