

DISCLOSURES TO LAW ENFORCEMENT

The Privacy Rule explains when and under what circumstances a covered entity may disclose protected health information to law enforcement officials. (Section 164.512(f)). *These rules do not create any requirement* that information be disclosed to law enforcement officials and should not be confused with mandatory reporting laws.

I. Permissible Disclosures Requiring “Legal Process”

Legal

Limited information may be disclosed to law enforcement officials in compliance with and as limited by:

- 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 that states that the information sought is relevant and material to a legitimate inquiry and the request is specific and limited in scope.

All other disclosures about victims of domestic violence are subject to the notice and disclosure requirement of Section 164.512(c) (See II below)

II. Requirements When Disclosing Information to Law Enforcement About Domestic Violence Victims (Section 164.512(c))

Section 164.512(c) governs disclosure of information about domestic violence victims. A covered entity may disclose protected health information about a victim of abuse (other than child abuse), neglect, or domestic violence to an authorized government authority if (1) the individual agrees, or (2) the disclosure is (a) required by state law (mandatory reporting law) or (b) expressly authorized by statute or regulation.

When disclosing information, regardless of the basis for the disclosure, a provider must promptly inform the individual or their personal representative (either orally or in writing) that such a report has been made or will be made. For example, in order to comply with the regulation, health plans and providers should establish policies that require prompt notice to the individual when reporting domestic violence to law enforcement.

This regulation does not create a mandatory reporting law. In states that have mandatory reporting laws, the Privacy Rule requires that a disclosing provider to consider the circumstances of the victim prior to reporting any information to the appropriate authority.

For disclosures expressly authorized by statute or regulation (as opposed to required), the provider may only disclose that which is authorized under the law and must believe that the disclosure is necessary to prevent serious harm to the individual or other victim.

Covered entities are not required to inform an individual of the disclosure if: (1) they believe that informing the individual would place the individual at serious risk of harm, (2) or the entity would be informing a personal representative (such as the abusive partner) and the entity reasonably believes that the personal representative is responsible for the abuse, neglect or other injury. The entity also must believe that informing the personal representative would not be in the interest of the individual.