



THE HIPAA PRIVACY RULE AND OHIO NURSING LAW

Since the adoption of the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), employers and healthcare systems continue to have questions about reporting information and providing records to the State of Ohio Board of Nursing (Board). This information provides clarification that covered entities can submit protected health information (PHI) as part of their reports provided to the Board and not violate the HIPAA Privacy Rule.

Privacy Rule Requirements

The HIPAA Privacy Rule establishes standards that covered entities must meet to assure protection of their patients' personal health information. The general rule is that covered entities may only use protected health information (PHI) for health purposes, however, the regulations authorize the disclosure of PHI for public policy purposes. Two public policy purposes for which information and records may be provided to the Board are for "oversight activities authorized by law" and "law enforcement purposes."

The Privacy Rule, 45 CFR 164.512(d), authorizes covered entities to disclose PHI, without obtaining consent, authorization, or verbal agreement, to a health oversight agency for oversight activities authorized by law. A health oversight agency, as defined in 45 CFR 164.501, means, among other things, a governmental agency that is authorized by law to oversee the healthcare system (whether public or private) or government programs where health information is necessary to determine eligibility or compliance. Health oversight activities may include civil, administrative, or criminal investigations; licensure or disciplinary actions; or other activities for oversight of entities that are part of the healthcare system and/or subject to government regulatory programs. In addition, 45 CFR 164.512(f), authorizes covered entities to disclose PHI, without obtaining consent, authorization, or verbal agreement, for a law enforcement purpose to a law enforcement official pursuant to an administrative request, including an administrative subpoena, or an authorized investigative demand, provided the information sought is relevant and material, specific and limited in scope, and de-identified information cannot reasonably be used.

Ohio Nursing Law

Under the Ohio Revised Code (ORC), the Board is authorized to conduct investigations and review patient records (Section 4723.28, ORC); subpoena patient record information (Section 4723.29, ORC); investigate practice deficiencies (Section 4723.282, ORC); investigate criminal background (Section 4723.28(F), ORC); and investigate physical/mental impairment, including chemical dependency (Sections 4723.28 and 4723.35, ORC) The law mandates that covered entities submit information and records to the Board, including responding to Board investigative requests and subpoenas. The Board is required by law to protect patient confidentiality and may share investigative information only with law enforcement officials and other regulatory Boards and investigators.

Summary

Covered entities, under Ohio law, must submit certain information and records to the Board, and often PHI is part of the information or record required. Because the Board is considered a health oversight agency and law enforcement official under the Privacy Rule, release of PHI included in such reports or information is a permitted disclosure without verbal or written authorization of the patient. Therefore, providers can submit PHI as part of the record and information provided to the Board and not violate the HIPAA Privacy Rule.

For additional information or questions, please email disciplinary@nursing.ohio.gov.

For an analysis of the HIPAA Privacy Rule that compares HIPAA and Ohio law, developed by the Ohio State Bar Association and the Ohio State Medical Association, see:

http://hispc.pbworks.com/f/HIPAA_PreemptionOSBA_FinalPublication_H0248008.pdf.