



MEMORANDUM

To: Senate Judiciary Committee
From: John H. Wallace
Date: February 9, 2023
Re: S. 36 Workplace Violence - Response to Committee Questions

This comment seeks to address questions raised at the February 7, 2023 hearing regarding disclosures of health information to law enforcement, and provide a proposal to authorize such disclosures.

Question: Is it lawful for a health care provider to disclose to law enforcement information regarding a patient's medical condition, and whether the patient is stable for discharge?

Answer: A HIPAA covered entity may not disclose information to law enforcement for the purpose of communicating to law enforcement whether a patient is stable for discharge. Section 164.512(f) of the Privacy Rule provides six conditions under which a covered entity may disclose protected health information to a law enforcement officer. None of the conditions would permit disclosures for the purposes of having an individual removed from a facility.

- *Crime on the premises:* A covered entity may disclose information related to a crime on the premises. However, in disclosing information regarding a crime on the premises, a covered entity may only disclose the minimum amount of information that is necessary that constitutes evidence of criminal conduct that occurred on the premises. Disclosing information regarding a patient's medical condition, and their stability for discharge would not be related to evidence of a crime.
- *Disclosures required by law:* Covered entities may disclose information to law enforcement where such disclosure is required by law.¹
- **Proposal:** Add a new section 2 to S. 36 to amend Title 18, Chapter 42B: Health Care Privacy to add a new section 1883, which, as provided for by HIPAA, require a covered entity to disclose certain information to law enforcement to ensure a safe arrest.

§ 1883. Disclosures of protected health information

(a) In the event that an authorized representative of a health care facility that operates as a covered entity, requests that a law enforcement officer respond to, and potentially arrest a patient for an alleged crime committed on the premises, the facility shall disclose to the law enforcement agency information that is sufficient to confirm whether the individual is medically cleared so that they may be removed from the facility, and disclose such other information that will be necessary for the relevant agencies to safely assume custody of the patient.

¹ 45 CFR § 164.512(f)(1)(i)(disclosures required by law)



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