Are Forensic Evaluations "Health Care" and Are They Regulated by HIPAA?

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Abstract

Forensic mental health providers (FMHPs) typically do not release records to the examinee. The Health Insurance Portability and Accountability Act (HIPAA) federal regulations might change this position, given that they have created a basic right of access to health care records. This legislation has led to a disagreement regarding whether HIPAA regulates forensic evaluations. The primary argument (and the majority of scholarly citations) has been that such evaluations do not constitute "health care." Specifically, in this position, the nature and purpose of forensic evaluations are not considered related to treatment (amelioration of psychopathology) of the patient. In addition, it asserts that HIPAA applies solely to treatment services; thus, forensic evaluations are inapplicable to HIPAA. We describe the evidence for and against this argument, the strengths and limitations of the evidence, and recent court decisions related to it. The weakest part of the "HIPAA does not regulate forensics" argument is that HIPAA has no exclusion criteria based on type of services. It only creates an inclusion criteria for providers; once "covered," all services provided by that provider are thence forward "covered." Authoritative evidence for patient access can be found in the HIPAA regulations themselves, the US Department of Health and Human Services' commentaries, additional statements and disciplinary cases, the research literature, other agency opinion, and legal opinion. It appears that the evidence strongly suggests that, for those forensic mental health practitioners who are covered entities, HIPAA does apply to forensic evaluations. The implication is

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that FMHPs potentially face various federal, state, and civil sanctions for refusing to permit patient access to records.

Introduction

Forensic mental health providers (FMHPs) sometimes refuse to release records to evaluees (Bush, Connell, Denny, 2006b), third parties (Bush & Martin, 2006a, Barsky & Gould, 2002; Bush & Martin, 2006a; Frankel & Alban, 2011), the courts (Lees-Haley & Courtney, 2000), non-psychologists (Kaufmann, 2005), and attorneys (Lees-Haley, Courtney, & Dinkins, 2005), sometimes enlisting the Court in their efforts (Beal, 2010), although courts are rarely supportive (Stiles & Petrila, 2011). Denial of access is a top Health Insurance Portability and Accountability Act[i] (HIPAA) complaint against healthcare providers (Tossell, Stewart,& Goldman, 2006) and is the top such complaint defended by the American Psychiatric Association[2].

It has been an ongoing controversy, at least since release of the 1992 APA Ethical Principles (COPTAA, 1996; Erard, 2004; Lees-Haley & Courtney, 2000). Refusing patient access appears to be common practice / the majority view (Fisher, 2009), as expressed by recent comments on forensic listservs[3]. The reason(s) for this view are unclear, but we do note that patient access rights are a recent phenomenon. We have described various arguments for and against patient access and the rise of patient access rights (Borkosky, Pellet, & Thomas, *unpublished manuscript*). The current APA Forensic Specialty Guidelines echo this ethos, ascribing the right of access to the referral source: "…forensic examinees typically are not provided access to the forensic practitioner's records without the consent of the retaining party…" and "…access to records by anyone other than the retaining party is governed…by explicit consent of the retaining party" (APA, 2013, guideline 8.02.)

The APA Forensic Specialty Guidelines (APA, 2013, guideline 8.03) and the Forensic Psychiatric Ethics (AAPL, 2005) (Guideline IV) suggest that FMHPs include collateral information as a source of data. If FMHPs refuse to provide evaluation records to professionals providing subsequent services, the quality of treatment and/or evaluative opinion might be negatively affected.

Ethics codes are of little help to FMHPs in arriving at decisions about the issue at hand because the guidelines appear to offer conflicting advice. For example, the 2002 APA

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Ethics Code (APA, 2002) both does not prohibit FMHPs from withholding records (Standard 4.05), yet requires them to release test data (Standard 9.04).[4] One interpretation might be that psychologists must release test data, but are permitted to withhold reports, consent forms, and financial records, a view that seems both logically inconsistent and ethically unjustifiable.

In contrast, confidentiality of patient records and avoidance of confidentiality breaches (a concept originally set out by Hippocrates) has been one of the primary foci of the mental health profession (Cameron & Shepel, 1981; DeKraai & Sales, 1984). Requirements to release records, pursuant to patient authorization, have received relatively little attention. Furthermore, the inception of Health Insurance Portability and Accountability Act (HIPAA) regulation has increased both concerns and confusion over privacy of health care records (Bush, Connell, & Denney, 2006a; Bush & Martin, 2006a, b; Stiles & Petrila, 2011). Gold et al. stated, "One practice, associated with employment-related evaluations, affected by HIPAA in ways that are not yet entirely clear, involves evaluees' access to reports" (Gold et al., 2008, p. 1880). "The privacy rule has also caused confusion concerning the extent to which it applies to forensic services" (Bennett et al., 2006). For FMHPs, HIPAA could mean a new examinee right and lead to a change in traditional practice; in fact, denial of access continues to be one of the top five complaints (alleging violations of HIPAA health information privacy rights by covered entities) raised with US Department of Health and Human Services (HHS) (Tossell, Stewart,& Goldman, 2006).

In contrast, many FMHPs do not view HIPAA as increasing patient rights; they seem to "…use the rules to avoid disclosure, especially to counter malpractice claims …," despite the fact that "…courts typically have not supported such use of the rule…" (Stiles & Petrila, 2011, p. 350).[5] Likewise, in our discussions with other FMHPs, their focus has been almost entirely on various methods to avoid giving patients access to their records.

FMHPs who perform psychological injury evaluations are often confronted with issues of records release, both as a part of discovery and subsequent to the disposition of a case. Examinees may request release to a subsequent evaluator or treating source or may simply request their own copy of the records. For those practitioners who are HIPAA covered entities, refusal to comply with a records request may result in HIPAA violations. FMHPs may find themselves in violation of state statutes that mirror HIPAA requirements.[6]

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[4] Assuming no "substantial harm or misuse or misrepresentation of the data."

[5] e.g., US v. Zamora, 408 F.Supp.2d 295 (SD Tx. 2006); Protection & Advocacy System v. Freudenthal, 412 F.Supp.2d 1121 (D. Wy. 2006); US v. Grace, 401 F.Supp.2d 1103 (D. Mont. 2005).

[6] A survey of state statutes found patient access rights in all but three (Iowa, North Carolina, and Wyoming).

The present paper investigates whether forensic evaluations are regulated by, or exempt from, HIPAA. The evidence supports the conclusion that HIPAA regulates forensic evaluations and so mandates an examinee's right to records. As such, it appears that HIPAA requires FMHPs to produce a copy of the records, at the examinee's request, or risk violating legal requirements governing their fields, and all the attendant risks.

The Arguments For Exemption From HIPAA

Connell and Koocher (2003) are most often cited as the original source of the "not HIPAA" argument. The authors argued that HIPAA might not[7] apply to forensic evaluations because such services are not "health care" (as defined by HIPAA), reasoning that:

(a) The purpose of the evaluation is not "treatment focused."

(b) The payment source is not a health insurance plan.

(c) The evaluation is requested by a third party.

Bush and his coauthors are the most prolific citers (Bush, 2007, 2008; Bush et al., 2006a, b; Bush, Connell, & Denney, 2006b; Bush, Grote, Johnson-Greene, & Macartney-Filgate, 2008; Bush & Lees-Haley, 2005; Bush, MacAllister, & Goldberg, 2012; Bush & Martin, 2005, 2006a, b, 2010; Bush & NAN Policy & Planning Committee, 2005; Rapp, Ferber, & Bush, 2008). Others (Blase, 2008; Chadda & Stein, 2005; Foote & Goodman-Delahunty, 2005; Kane & Dvoskin, 2011; Lewis et al. 2006; Pickar & Kahn, 2011; Stock, 2006) also cite Connell and Koocher (2003). Others assert that examinees are "not patients" (Blase, 2008) or that forensic evaluations are "not health care" (Malina, Nelson, & Sweet, 2005) and that HIPAA is itself wrong headed because there are potentially negative consequences to release of records (Smith & Evans, 2004). This view has been articulated as: "because such records and reports are not generated within a treatment relationship, and no clinical treatment is provided, psychiatrists generally have not considered them to be medical records in the traditional sense that could be accessed solely at the evaluee's request" (Gold & Metzner, 2006, p. 1880).

At the inception of HIPAA regulation, the Veterans Benefit Administration (VBA) argued that Compensation and Pension (C&P) evaluations were not regulated by HIPAA. They primarily based this opinion on the definition of the word assessment in the final

[7] Contrary to most citations, which assert the authors unequivocally state that HIPAA does not apply (Connell, personal communication, 10/26/2011).

rule.[8] They ruled that C&P evaluations, even those performed by contractors, are not covered by HIPAA.[9]

The American Psychological Association Insurance Trust (APAIT) has published (online) a sample forensic contract (Harris et al. 2001). The APAIT maintains that HIPAA does not regulate forensic evaluations.[10]

The Arguments For HIPAA Regulation

Although it has been argued that Connell and Koocher (2003) unequivocally assert HIPAA does not apply to forensic evaluations, their article contained arguments both against and for the applicability of HIPAA. Furthermore, the authors now appear to have a different opinion on the matter. Connell has retracted those portions of the article, stating that she believes that HIPAA does apply to forensic evaluations (Connell, personal communication, 10/26/2011). Koocher, although he has not responded directly to the question, does agree that patients should have access to the records generated by their evaluation (Koocher, personal communication, 4/30/2012). Furthermore, those who cite Connell and Koocher (2003) do nothing more than use the citation as ultimate authority; they provide no additional bases, citations, explanation, or reasoning for their argument. Others such as Blase (2008) and Malina, Nelson, & Sweet (2005) make assertions without any foundation at all.

The main problem with the "not HIPAA" argument

The biggest problem with this claim is that HHS' criteria for regulatory jurisdiction is based on the provider of services, not the services performed. In other words, once a provider becomes a HIPAA "covered entity,"[11] there is no secondary analysis regarding the nature, quality, or purpose of the services performed. Yet, this is the very argument made by the exclusion proponents. They aver that HIPAA applies only to treatment services, yet they do not cite any section of HIPAA that creates criteria for the exclusion of certain services. HIPAA regulates providers; once "covered," all professional services performed by that FMHP are regulated (see, e.g., American Psychological Association, 2007).

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[8] Opinion #VAOPGCADV 3–2003, dated 3/17/2003, which can be found at http://1.usa.gov/PJLtnK

[9] We observe multiple problems with this early opinion; additional advice has since been proffered by HHS (IME evaluators who denied patient access have been found in violation of HIPAA), and the courts have rendered numerous opinions. We believe that the OIG took the word assessment out of context; the purpose of adding this word was so that an additional two professions could be included as covered entities – not to exclude 'nontreatment' services from the definition of health care

[10] Note: it was published prior to the enactment of HIPAA.

[11] Most often by having, at least once, electronically billed an insurance company for services rendered.

HIPAA regulations specifically include forensic evaluations

It seems logical that if HHS meant to exclude forensic evaluations from its purview, that it would either so state, or would fail to mention forensic evaluations. However, HIPAA specifically includes forensic evaluations in its regulatory text: CEs are permitted to require disclosure for third party evaluations [§164.508(b)(4)(iii)] and are permitted to disclose, without written authorization, court ordered evaluations [such as competency to stand trial—§164.512(a) and (e)], evaluations procured through a subpoena [such as personal injury or malpractice—§164.512(e)], evaluations of military personnel and veterans for benefits determinations and medical suitability [§164.512(k)], and workers compensation evaluations [§164.512(L)]. Furthermore, HHS states that both pre-employment and fitness-for-duty evaluations are regulated by HIPAA.[ii] HHS' disciplinary cases include FMHPs who refused to permit patient access. These include IME evaluations[12] and collateral records collected as part of forensic evaluations.[13]

Scholarly counterpoint

Others concur that HIPAA regulates examinee rights to records created during forensic evaluations. For example, Gold and Metzner (2006) noted that HIPAA "does not distinguish information generated by employment-related mental health evaluations from records of treatment. Nor does the Privacy Rule explicitly make the purpose for which the information was created of any consequence" (p. 37). Corey, (2011) noted that FMHPs "… who meet HIPAA's definition of health care provider are obligated to comply with the Privacy Rule's requirements for disclosure of PHI" (protected health information) (p. 274). The American Psychiatric Association's Professional Risk Management Services program states, "for psychiatrists who are covered providers under HIPAA, the privacy rule's requirements apply to all disclosures of protected health information, regardless of the purpose for which the protected health information was created. Once a provider meets the regulatory definition of a health care provider subject to the HIPAA regulations, then that provider must comply with the privacy rule's requirements for all uses and disclosures of protected health information" (Vanderpool, 2011, p. 202).

Other agency opinion

The Federal Aviation Administration (regarding fitness for duty evaluations of pilots, in the Guide for Aviation Medical Examiners (AME), (2012), item 6b) states that FMHPs

[12] http://www.hhs.gov/ocr/privacy/hipaa/enforcement/examples/allcases.html#case10
[13] http://www.hhs.gov/ocr/privacy/hipaa/enforcement/examples/allcases.html#case6

must comply with HIPAA.[14] The Social Security Administration (SSA) considers Consultative Examinations subject to HIPAA;[15] "it is SSA's assessment that the nature of the work performed by a health care professional who conducts a CE for SSA does fall within the range of functions included in the definitions of "healthcare provider"[§160.103] and "treatment" [§164.501]." Various sources have concurred with these opinions (Bennett et al., 2006; Gold et al., 2008; Gold & Shuman, 2009). Although the VA's initial policy was that the VBA was not regulated by HIPAA, the VA recently stopped withholding records that might be harmful to the veteran and now places all veteran health records on a secure, internet-based account.[16]

Are Forensic Evaluations "Health Care"?

Those who believe that forensic evaluations are not regulated by HIPAA assert that only treatment services (amelioration of problems) should be considered health care. However, HIPAA's definitions of *health care* and related terms [§160.103] appear to contradict this definition.

Health Information means "…any information…that…relates to the…mental health or condition of an individual …".

Health care includes "…diagnostic [or]… assessment [services]… with respect to the…mental condition or functional status of an individual …" [§160.103].

Healthcare provider "…means a provider of… health services [as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)], or any other person…who furnishes … healthcare …."[17]

"*Treatment* means the provision…of health care and related services by one or more health care providers…" [§164.501]. It appears that these definitions cast a wide net.

The APAIT states, "the privacy rule defines protected health information so broadly that it would be very difficult to argue that forensic psychological services should not involve protected health information" (Bennett et al., 2006, p. 121).

Various scholars consider forensic evaluations to be health care. Gold and Metzner (2006) argued that HIPAA applies to forensic evaluations; "the privacy rule's requirements apply to all disclosures of protected health information, regardless of the purpose for which the information was created. The type of service rendered and the existence of

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[14] http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/media/guide.pdf
[15] http://www.ssa.gov/disability/professionals/hipaa-cefactsheet.htm
[16] VA memorandum VAIQ 7307898, dated 1/17/2013, reversing VA regulation 38 CFR 1.577(d), and referencing the "Blue Button" electronic health record.
[17] This is the Social Security Act, which defines health care providers as anyone who is licensed.

a physician–patient relationship are irrelevant in the determination of the applicability of privacy rule requirements. HIPAA does not differentiate between evaluations conducted for clinical purposes and those conducted for nontherapeutic purposes. If a nontherapeutic evaluation results in the acquisition of protected health information by a covered provider, then that evaluation is subject to the privacy rule." Furthermore, "… evaluees have the right to access not just the report but the entire file" (Gold & Metzner, 2006, p. 1880). Others concur with this analysis. FMHPs are health care providers, examinees are patients, and the records are health information (Frankel & Alban, 2011). Law enforcement fitness-for-duty evaluations are PHI (Corey, 2011).

Furthermore, we note that the APAIT appears to have changed its opinion on this matter. HIPAA regulations may not completely address forensic evaluations; although evaluators may have a legal basis for denial of access, it will not be until the law is litigated that final answers will be forthcoming (Younggren, J., personal communication, 2011). In the meantime, if a provider is able to obtain a written statement from the referral source's attorney that HIPAA is not applicable, the provider may be able to reasonably rely on that statement (Harris, E., personal communication, 2011). Additionally, in a draft manuscript, entitled "HIPAA UPDATE: Resolving Some Areas of Continuing Confusion," they state that "… given these very broad definitions, it would be very difficult to argue that forensic psychological services are not health care services" (Harris, Bennett, & Bennett, 2003). Finally, APA initiated requests for clarification from HHS attorneys, but quickly discontinued them, after receiving unfavorable opinions, in the interest of forensic psychologists whose practices might have been negatively affected (Nessman, A., personal communication, APA Legal and Regulatory Affairs, 2011)

Case law decisions are supportive of forensic evaluations as "health care" and evaluees as "patients"

There is limited case law related to the question of regulation of forensic evaluations by HIPAA. However, several courts have ruled on related matters.

Frankel and Alban (2011) reviewed ***Cleghorn v. Hess*** (1993), in which the court opined that forensic preemployment evaluations are health care and that examinees should be granted access to their evaluations, stating, "… employees have a right to this information" (p. 1263).[18]

[18] However, the dissent did not agree that the examinees are "patients," arguing that the purpose of an IME is not treatment related, and that the client is the referral source.

Stolar and Koblenz (2005) and Corey (2011) reviewed ***McGreal v. Ostrov*** (2004). Officer McGreal underwent an fitness-for-duty (FFD) evaluation; he was required to sign a consent and a waiver of his rights and the report included more private information than was necessary to answer the referral question. The police department subsequently distributed the report to other officers. The 7th Circuit, in reversing and remanding, reasoned that a forensic psychologist, under Illinois statute, is a health care provider, and FFD evaluations are mental health services, resulting in PHI. Permitting disclosure to the agency did not abrogate the officer's other rights (such as disclosure sans his authorization). Citing Norskog v. Pfiel (2001), the court opined, "the release of information for a limited purpose under the consent provision does not operate as a general waiver of the confidentiality privilege" (p. 689), and "…any agency or person who obtains confidential and privileged information may not redisclose the information without the recipient's specific consent" (p. 689). McGreal was eventually awarded almost $1 million.

In ***Harris v. Kreutzer*** (2006), the court ruled that a forensic neuropsychological evaluation was health care, even though Dr. Kreutzer argued the doctor-patient relationship was adversarial, stating, "we conclude that conduction of the Rule 4:10 examination is 'health care' rendered by a 'health care provider,' in the person of Dr. Kreutzer, to a 'patient', Harris", and "Harris is a 'patient' because she is a "natural person who receives or should have received health care [(the Rule 4:10 examination)] from a licensed health care provider" (p. 31).

Similarly, ***Todd v. Angelloz*** (2003) found that a forensic child custody evaluation met the definition of health care, as defined by the medical malpractice act. The court stated, "although no treatment was rendered, Dr. Angelloz was administering tests used by her profession to evaluate patients. Although Dr. Angelloz was not recommending treatment but reporting her findings to a court for the court's purposes, Dr. Angelloz's involvement was on the basis of rendering professional services involving Mr. Todd" (p. 319).

In ***Lee v. Superior Court*** (2009), the district attorney had requested multiple records, including forensic reports, of a sexually violent predator. The Court opined that the trial court did have the authority to relieve Coalinga State Hospital of their HIPAA obligations.

In ***Pettus v. Cole*** (1996) the Court ruled that there was a doctor-patient relationship even though no treatment was provided, and the exam was performed for the benefit of the employer.

Arkansas Atty. General Opinion, Opinion No. 2000-338 (1-21-2001), holding that a person compelled to submit to an independent medical evaluation is a "patients" under Arkansas law.

In ***Simmons v. Rehab Xcel, Inc.***, 731 So.2d 529 (La. App. 1999), the doctor performed an IME regarding Simmons' work capacity. The doctor "… took Plaintiffs medical history … conducted an examination of Plaintiff and … issued a prescription to Rehab Xcel for an FCE, during which examination Plaintiff contends he was injured. Additionally, Defendant interpreted the results of that FCE, opining that, at that time, Plaintiff was 'unable to safely perform the job of top operator.'" …. "We find that, in performing those services, Defendant was involved in rendering 'health care' to Plaintiff within the meaning of the Medical Malpractice Act and that Plaintiff is a 'patient' under that act."

In ***Cremer v. City of Macomb Board of Fire & Police Commissioners***, 260 Ill.App.3d 765, 198 Ill.Dec. 469, 632 N.E.2d 1080 (1994), the Court held that the civil service commission had to release the records of the applicant's pre-employment evaluation records to the evaluee, because Illinois' Administrative Review Act required the commission to file an answer to a plaintiff's complaint.

Finally, there appears to be a case directly on point

In State v. Cote (2010) (remanded and reversed on other grounds), the Cotes were accused of causing their child's death and Elkins had performed the autopsy of the child. Elkins subsequently developed mental health problems, resulting in threats of violence toward self and others; Elkins was thence forensically evaluated. The Cotes' alleged that Elkins' mental health problems impaired the autopsy and requested her records; Elkins argued that HIPAA protected the records from disclosure. The Court opined that the forensic evaluation was PHI, as defined by HIPAA (also observing that HIPAA preempts state law, citing Law v. Zuckerman (2004). The Court observed that, although forensic mental health records are PHI under HIPAA, they are also discoverable, subsequent to an in camera review by the trial court.

Conclusions and Discussion

Limitations

There are several more justifications, asserted by those who wish to withhold records from the evaluee; space will not permit us to address all of them here. Our research finds that these additional arguments also appear to have little basis and are directly contradicted by authoritative sources. One such assertion is that FMHPs are not HIPAA covered entities and, as such, are not required to comply with HIPAA regulations. We note that almost every state (save 3) have statutes or rules that are consistent with, or more stringent than HIPAA records release requirements. One HIPAA/state law preemption analysis was completed by Borkosky (2012). Furthermore, several courts have permitted

HIPAA regulations to be used as evidence of a "standard of care" in malpractice cases (see, e.g., Acosta v. Byrum, (2006). According to Klein, (2011), "the appellate court stated that a HIPAA violation constitutes negligence per se and awarded accordingly to the plaintiff" (p. 576). It is possible that HIPAA may become the standard of care. Most providers already are covered entities (Petrila & Fader-Towe, 2010). Shapiro and Smith (2011) argued that all providers should comply with HIPAA; "although some psychologists claim that their practice is exempt for one reason or another, this is increasingly unlikely and very risky, given the breadth of HIPAA regulations. We recommend, for a variety of reasons, that all practitioners become HIPAA compliant" (p. 66). We also note that patient access rights are primarily determined by statute and may vary from country to country. Although most state statutes require patient access, HIPAA is a US federal regulation. Canadian law,[19] however, prohibits patient access to forensic evaluations.

What it means for practice

As a practical matter, compliance with HIPAA does not alter disclosures based on privilege or the rules of discovery or evidence (DHHS, 2000). HIPAA does not preempt disclosures to the legal system. FMHPs may still make appropriate disclosure decisions (without examinee authorization) as required by law (§164.512(a)), to report abuse (§164.512(c)), or in response to a court order as part of a legal proceeding (§164.512(e)). Some states have statutes or rules that, in our opinion, are contrary to HIPAA—such as those that prohibit records release to nonpsychologists or that give decision-making authority to others. Although a psychologist may not be in violation of state law by complying with contrary statutes/rules, the courts may eventually find that HIPAA preempts such laws.[20]

Should assessments be modified by the requirement to disclose?

Some may believe that patient access may result in unreasonable or acrimonious complaints by examinees or that FMHPs may be more susceptible to unfounded licensing complaints or malpractice actions, requiring modification of reports to avoid such undesirable consequences. We disagree. Although the primary audience of a forensic evaluation is the legal system, we believe that the components of a good forensic evaluation will not change. We acknowledge that FMHPs may receive more requests to explain reports.

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[19] S.O. 2004, CHAPTER 3, 52.(1)(c)

[20] See, e.g., *Opis v. Dudek*, (ND Florida 2011), affirmed *Opis v. FL*, No. 12-12593 (11th Cir. 2013), where the court invalidated a Florida statute that required disclosure of PHI belonging to deceased nursing home residents, to the surviving spouse.

The potential consequences of withholding records from patients

Those practitioners who are *covered entities* and who refuse to release records to the patient or to a third party (DHHS, 2013) may find themselves the subject of a HIPAA complaint. The process involved in defending a HIPAA violation may be complex and financially expensive. Furthermore, because state statutes and licensing rules are typically more stringent than HIPAA, FMHPs risk having a licensing complaint filed against them.[21] Finally, although no court has ruled on HIPAA as the standard of care, if such a ruling occurs, there will likely not be a grace period whereby practitioners can become compliant. In extreme cases, state attorneys general may file civil charges against HIPAA violators. For the reasons stated above, we believe that FMHPs are health care providers, forensic evaluations are health care, and both are regulated by HIPAA as well as state law. FMHPs should comply with patient requests for records or risk the attendant consequences.

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181.001 covered entity – any person who
(a) Unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b)(2)(A) … engages, … in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information
(B) comes into possession of protected health information;
(C) obtains or stores protected health information under this chapter; or
(D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C)

181.002. APPLICABILITY. (a) Except as provided by Section 181.205, this chapter does not affect the validity of another statute of this state that provides greater confidentiality for information made confidential by this chapter.
(b) To the extent that this chapter conflicts with another law, other than Section 58.0052, Family Code, with respect to protected health information collected by a governmental body or unit, this chapter controls.

181.004. APPLICABILITY OF STATE AND FEDERAL LAW.
(a) A covered entity, as that term is defined by 45 C.F.R. Section 160.103, shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards.
(b) Subject to Section 181.051, a covered entity, as that term is defined by Section 181.001, shall comply with this chapter.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1126, Sec. 2, eff.

Sec. 181.102. CONSUMER ACCESS TO ELECTRONIC HEALTH RECORDS. (a) … if a health care provider is using an electronic health records system that is capable of fulfilling the request, the health care provider, not later than the 15th business day after the date the health care provider receives a written request from a person for the person's electronic health record, shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.

[i] Office of Civil Rights, Department of Health and Human Services: Standards for Privacy of Individually Identifiable Health Information. Final Rule. Federal Register 2002; 67:157: 53182-53273.

[ii] http://www.hhs.gov/ocr/privacy/hipaa/faq/public_health_uses_and_disclosures/301.html