HOW DOES MISSOURI LAW PROTECT THESE DISCLOSURES?

In Missouri, there are a number of disclosures that health care providers are required by law to make. **These mandatory disclosures are not changed by HIPAA.** For example, hospitals/physicians must share information with the Missouri Department of Health and Senior Services (DHSS) for: communicable, environmental and occupational disease reporting (19 CSR 20-20.020); epidemiological studies (§192.067, RSMo); information about infant metabolic and genetic screenings (§191.331, RSMo); and information about quality of care and access to care (§192.068, RSMo). These are only a few of the mandatory disclosures that health care providers are required to make.

The information gathered from these required disclosures is still confidential. There are corresponding confidentiality requirements for these disclosures. §192.067, RSMo, requires that DHSS maintain confidentiality of information gathered from patients' medical records. This information can be released *only* in aggregate form that prevents the identification of a patient or physician, unless that information is being shared with another public health authority. §192.317 protects the information DHSS gains about infant metabolic and genetic screenings. Quality of care data is also not classified as public information, and cannot be released in a way that identifies any patient. (*See* §192.068, RSMo.)

RESOURCES

❖ ***Where can I find the full text of the Privacy Standards?***

Health Insurance Portability and Accountability Act of 1996 (HIPAA)
45 CFR Parts 160 and 164
Standards for Privacy of Individually Identifiable Health Information (Privacy Standards)

An unofficial version of the complete regulation text, as modified in August 2002, is available at
http://www.hhs.gov/ocr/hipaa/combinedregtext.pdf

❖ ***Is there a comprehensive internet site that provides additional guidance?***

http://www.hhs.gov/ocr/hipaa/

This links to the U.S. Department of Health and Human Services, Office for Civil Rights (OCR) website. The OCR is the entity charged with enforcing the HIPAA Privacy Standards, and they have issued guidance on this regulation, which can be found at this site.

Missouri Department of Health and Senior Services
P.O. Box 570
Jefferson City, MO 65102-0570
Phone (573) 751-6450
www.dhss.mo.gov

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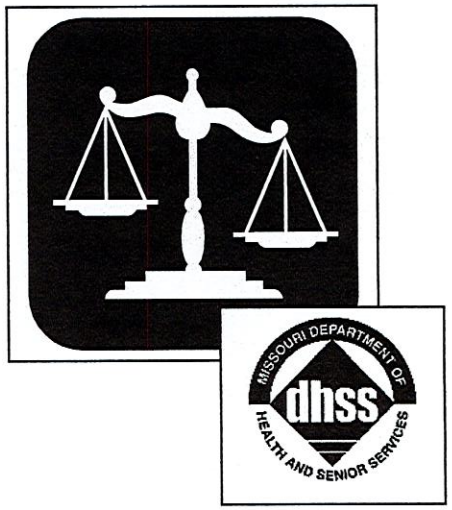
Services provided on a nondiscriminatory basis

This publication may be provided in alternative formats such as Braille, large print or audiotape by calling (573) 751-6005. TDD users can access the above phone number by calling 1-800-735-2966.

Rev. 11/04 acr

PUBLIC HEALTH AND HIPAA:

Legally Sharing Information with Public Health Agencies



This brochure is not intended to serve as legal advice, nor should it be considered an endorsement of the resources provided. If you have questions, be sure to contact your legal counsel to determine your own compliance with the law and appropriate policies and procedures.

HIPAA (the Health Insurance Portability and Accountability Act of 1996) was developed to address the efficiency and effectiveness of the health care system in the United States. Within HIPAA, the Administrative Simplification rules are a series of regulations that establish standards and protections for health care systems. Currently, only the rules for five provisions of the Administrative Simplification portion of HIPAA have been published. The first one is the "Standards for Electronic Transactions" with an effective date of October 16, 2003 for large plans, if they filed an extension. The second is the "Standards for Privacy of Individually Identifiable Health Information" (Privacy Standards) with an effective date of April 14, 2003. The third is the "Standard Unique Employer Identifier" with an effective date of July 30, 2004 for all covered entities, except small health plans. The fourth is the "Security Standards for the Protection of Electronic Protected Health Information" with an effective date of April 20, 2005 for all covered entities, except small health plans. The fifth is the "Standard Unique Health Identifier for Health Care Providers" with a compliance date of May 23, 2007 for all covered entities, except small health plans. Additional provisions will be published in the Federal Register over the coming months.

WHAT DOES THE PRIVACY RULE DO?

Although it does place many limits on the sharing of protected health information, the Privacy Rule allows for the existing practice of sharing protected health information with public health authorities that are authorized by law to collect or receive such information to aid them in their mission of protecting the health of the public.

This practice is described in the preamble to the actual Rule:

"The final rule continues to permit covered entities to disclose protected health information without individual authorization directly to public health authorities, such as the Food and Drug Administration, the Occupational Safety and Health Administration, the Centers for Disease Control and Prevention as well as state and local public health departments, for public health purposes…" [Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,526 (2000) (to be codified at 45 C.F.R. pt. 160 and 164).]

"…section 1178(b) of the Act (Social Security Act) as explained in the NPRM (Notice of Proposed Rulemaking for the Privacy Rule), explicitly carves out protection for state public health laws. This provision states that: "(N)othing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention."…. [Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,624 (2000) (to be codified at 45 C.F.R. pt. 160 and 164).]

IS AN AUTHORIZATION NEEDED TO SHARE INFORMATION WITH PUBLIC HEALTH?

The Privacy Rule [*See* 45 C.F.R. §160 and §164] provides for a number of situations in which protected health information may be shared without a patient's authorization.

The regulations say:

"A covered entity may use or disclose protected health information **without the written authorization of the individual** as described in 164.508 …" (**emphasis added**) in the following situations:

(a) Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law…. (*See* §164.512(a))

(b) Uses and disclosures for public health activities.

(1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

- (i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; …
- (ii) A public health authority … authorized by law to receive reports of child abuse or neglect;
- (iii) A person subject to the jurisdiction of the Food and Drug Administration with respect to an FDA-regulated product or activity… *See* §164.512(b))

Notice of Privacy Practices

This notice describes how the Missouri Department of Health and Senior Services may use and/or disclose medical information about you, and how you can get access to this information. Please review it carefully.

The Department of Health and Senior Services' (DHSS) mission is to protect and promote the health of Missourians. To do this, Missouri has enacted state laws and/or rules that require reporting of individually identifiable protected health information (PHI) to DHSS. These laws detail what data are confidential, under what circumstances the data may be disclosed, and penalties for inappropriate disclosures. DHSS staff and their associates are required to follow these laws. DHSS uses this and other health information to continuously assess the health of the population.

DHSS may disclose your health information to health care providers to carry out treatment, payment or health care operations. This information will only be shared with health care providers that have signed an agreement with DHSS or who have a direct treatment relationship with you. It will not be used for any other purpose except in an aggregate form that does not identify you, without your specific written consent or that of your guardian, durable power of attorney for health care, or parent, if you are a minor. Confidentiality of the information will be maintained as required by applicable state and federal laws. An example of these types of disclosures would be sharing your baby's newborn screening results only with your baby's doctor and not the general public or merchants that have a product they wish to sell you. Another example of a disclosure would be sharing your health information with an in-home services provider in order to coordinate care and services you receive.

The DHSS may contact you to provide appointment reminders or information about health-related benefits and services that may be of interest. DHSS may also disclose protected health information to other state or federal agencies such as MoHealthNet that provide funds for health care benefits an individual receives.

Under 45 CFR 160-164, you have the right to:

- Ask us to limit what we use or share. DHSS is not required to agree, and may say "no" if it would affect your care or if disclosure is required by state or federal law.
- Get a copy of your health care information, including laboratory tests. You may be charged a cost-based fee for copies.
- Ask us to amend or update your health care information if it is inaccurate.
- Get a list of those with whom we have shared information.
- Request confidential communications.
- Get a paper copy of this notice.
- Be notified if a breach occurs that may have compromised the privacy or security of your information.
- File a complaint if you feel your rights are violated.

The DHSS reserves the right to change its privacy practices described in this notice. The revised privacy practices will be effective for all PHI maintained by DHSS. DHSS will publish all revisions on the DHSS website at www.health.mo.gov. You may access and print a copy of the current policies or request a printed copy from DHSS. Requests for copies of your health care information may be sent in writing to DHSS at P.O. Box 570, Jefferson City, MO 65102, and should specify the information requested.

If you think your privacy rights have been violated or have questions about HIPAA, you may contact the Secretary of the U.S. Department of Health and Human Services, Region VII, Office of Civil Rights at 601 East 12th Street, Room 248, Kansas City, Missouri 64106, www.hhs.gov/ocr/privacy/hipaa/complaints/, 1-800-368-1019 (telephone), 1-816-426-3686 (fax). We will not retaliate against you for filing a complaint.

For further information about this notice or if you think DHSS has violated your privacy rights, contact the DHSS Privacy Officer at 1-800-392-0272. This notice is effective as of October 1, 2014.