

HIPAA PRIVACY GUIDELINES AND SEXUAL ASSAULT CRISIS CENTERS

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CONTACTS



Texas Association Against Sexual Assault

Victoria (Torie) Hilton

Special Projects Director
vhilton@taasa.org
(512)474-7190 ext. 7008

www.taasa.org

CONTACTS



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

Office of the Attorney General

Lisa Maling

*Crime Victims Services Division-Sexual Assault
Prevention*

Sexual Assault Contract Specialist
Lisa.Maling@oag.state.tx.us
(512)936-1272

Sheri Nevins, RN

*Crime Victims Services Division-Sexual Assault
Prevention*

SANE Administrator
Sheri.Nevins@oag.state.tx.us
(512)936-1278

Crime Victim Service Division

(800)983-9933 Statewide
(512)936-1200 Austin

www.oag.state.tx.us

For more information concerning HIPAA, please refer to www.oag.state.tx.us or www.taasa.org.

HIPAA Fact Sheet #1

HIPAA PRIVACY GUIDELINES AND THEIR IMPACT ON SEXUAL ASSAULT PROGRAMS

Recently, questions have arisen regarding the application of the Health Insurance Portability and Accountability Act (“HIPAA”) to sexual assault programs. Specifically, some programs are concerned that the Privacy Rule may limit their ability to provide advocacy services to survivors of sexual assault. This fact sheet is designed to help sexual assault programs determine whether they are required to comply with the Privacy Rule.

Similarly, some hospital personnel may have concerns about whether they can continue to notify local sexual assault programs when a survivor is in the emergency room and about whether, once an advocate is in the emergency room, the hospital personnel can disclose private health information about the survivor to the advocate. Two separate facts sheets—*HIPAA Privacy Guidelines and Notifying Crisis Centers* and *HIPAA Privacy Guidelines and Victim Advocates in the Emergency Room*—deal with those issues.

Q: Who is Required to Comply with HIPAA?

COVERED ENTITIES. The Privacy Rule sets out practices that certain entities must implement to comply with HIPAA. Those entities are referred to in the Privacy Rule as “covered entities.” There are three types of covered entities: (1) health plans; (2) health care clearinghouses; and (3) health care providers. A health plan provides or pays the cost of medical care. Health plans include, for purposes of HIPAA, insurance companies and health maintenance organizations. The second type of covered entity—a health care clearinghouse—processes or aids the processing of health information received from another entity. Included in this category are billing services and repricing companies. The final type of covered entity is a health care provider. A health care provider is “a provider of services, a provider of medical or health services, and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business,” and

who transmits health information in electronic form in connection with certain transactions. Hospitals and physicians are health care providers for purposes of the Privacy Rule.

Q: Is a Sexual Assault Program a Covered Entity?

MAYBE. Sexual assault programs are neither “health plans” nor “health care clearinghouses.” However, a program may be considered a “health care provider,” and thus a covered entity. To be considered a health care provider, a program must do all of the following: (1) furnish, bill, or receive payment for health care or health care services in the normal course of business; (2) conduct covered transactions; and (3) transmit those transactions in electronic form.

(1) Furnish, Bill, or Receive Payment for Health Care or Health Care Services in the Normal Course of Business:

To be eligible for Office of the Attorney General funding, a sexual assault program must provide the following basic services: a 24-hour hotline; crisis intervention; advocacy and accompaniment to medical facilities, law enforcement offices and prosecutor’s offices; community and professional education; and volunteer training. Some of these services may be considered counseling, which is a health care service. Thus, sexual assault programs may “furnish . . . health care services in the normal course of business” to survivors of sexual assault as contemplated in the Privacy Rule.

(2) Conduct Covered Transactions:

The provision of health care services is not enough to bring sexual assault programs within the definition of “health care provider,” and thus within scope of the Privacy Rule’s regulation of covered entities; advocates, as providers, also must conduct covered transactions. Covered transactions are as follows:

1. health care claims transaction;
2. eligibility for a health plan transaction;
3. referral certification and authorization transaction;
4. health care claim status transaction;

5. enrollment and disenrollment in health care plan transaction;
6. health care payment and remittance advice transaction;
7. health care premium payment transaction;
8. coordination of benefits transaction.

(3) Transmit those Transactions in Electronic Form:

Finally, to be considered a covered entity health care provider, a sexual assault program must electronically transmit any information in connection with these transactions. Programs that bill insurance companies and Medicaid or Medicare for their services are the most likely of all sexual assault programs to fall into the health care provider category.

The following link to the U.S. Department of Health and Human Services, Civil Rights Office website includes interactive tools that may help a sexual assault program identify whether it is a covered entity.

<http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp>

If a program determines it is a covered entity, it must comply with the Privacy Rule. The regulations containing the Privacy Rule can be found at Volume 45, Code of Federal Regulations, sections 160 and 164.

Q: What is a Business Associate?

The Privacy Rule also contemplates the transmission of protected health information from covered entities to their business associates. Before a covered entity may share protected health information with its business associates, the covered entity must enter into a written agreement with its business associate assuring that the business associate will appropriately safeguard the information. To be considered a “business associate” of a covered entity under HIPAA, an entity must do one of two things: (1) provide specific services to a covered entity; or (2) act on the covered entity’s behalf.

Q: Is a Sexual Assault Program a Business Associate of a Covered Entity?

NO. Sexual assault programs do not provide any of the services specifically enumerated under HIPAA to covered entities. Furthermore, programs do not act on a covered entity’s behalf. Instead, they act on the behalf of survivors. Because sexual assault programs are not considered “business associates” of health care providers, covered entities are not bound to enter into business associate agreements with sexual assault programs. Nevertheless, a program may determine that entering into an agreement to protect information with providers is in the program’s and a survivor’s best interests. The U.S. Department of Health and Human Services, Office for Civil Rights has provided a sample business associate agreement on its website. You can access that sample at the following web address:

<http://www.hhs.gov/ocr/hipaa/contractprov.html>

HIPAA Fact Sheet #2

HIPAA PRIVACY GUIDELINES AND NOTIFYING CRISIS CENTERS

There has been a great deal of publicity recently about the new privacy rules governing patient health information under the federal Health Insurance Portability and Accountability Act (“HIPAA”). The HIPAA privacy rules went into effect April 14, 2003, and many hospitals are still struggling to understand the new law. In particular, some hospital emergency rooms (“ER”) may have concerns about whether they can still notify the local crisis center when a sexual assault survivor is in the ER, and what information they can reveal, if any, about the survivor.

Some hospital personnel may have concerns about how HIPAA affects the whole concept of victim advocates in the emergency rooms. That issue is dealt with in a separate fact sheet, *HIPAA Privacy Guidelines and Victim Advocates in the ER*.

Q: Can a hospital notify a sexual assault program that a survivor is in transport to, or is currently present in, an emergency room?

YES. A hospital may notify the program of a survivor’s presence in the ER. The hospital may do so as long as it provides only “de-identified information” to the program. At a minimum, the hospital can tell the crisis center the following information about the survivor:

1. Gender;
2. Ethnic or racial background;
3. Age, if the survivor is 89 or less (if the survivor is older than 89, use the term “elderly”); and
4. Primary language

We encourage you to make arrangements to receive such information from your local hospital as soon as possible. An agreement between the hospital and your program will not only facilitate the exchange of such information between the hospital and your

program, but will also ensure that the survivor receives the best possible service and care.

Q: What type of information is a hospital prohibited from sharing without patient authorization?

HIPAA was drafted by Congress to protect patient privacy while still allowing a hospital to do what is necessary to give the patient the proper care. Despite the initial cautiousness of some hospitals, HIPAA allows hospitals to release a patient’s protected health information *after it has been made anonymous or, in other words, de-identified*. Once the following identifiers have been removed, a hospital may share freely a patient’s health information:

1. Names;
2. Address, including city, county, and zip code;
3. All dates that could be used to identify the patient, like a birthday or admission/discharge dates, and ages for patients over 89;
4. Phone numbers;
5. Fax numbers;
6. E-mail addresses;
7. Social security numbers;
8. Health record numbers;
9. Account numbers;
10. Certificate/license numbers;
11. License plate numbers, vehicle identifiers, and serial numbers;
12. Device identifiers and serial numbers;
13. URL address;
14. Internet Protocol address numbers;
15. Biometric identifiers, including finger and voice prints;
16. Full face photographs; and
17. Any other unique identifying number, except one created by the hospital or health care provider to re-identify the patient’s information.

Q: Our local hospital is still insisting that HIPAA prevents them from calling us when they get sexual assault survivors in the ER. What can I do?

You can set up a meeting with the hospital employee responsible for HIPAA compliance. (HIPAA requires the hospital to have someone in charge of privacy policies and procedures.) TAASA and OAG staff can help you get ready for this meeting. You may provide copies of these fact sheets to the hospital employee at your meeting.

Q: Does HIPAA affect how our crisis center works with law enforcement?

NO. HIPAA only applies to information held by hospitals and other health care providers. Law enforcement is free to work with the crisis center, especially in an active criminal investigation. If your local hospital is being uncooperative, ask local law enforcement to call the crisis center before the survivor arrives at the hospital.

Q: What can the advocate expect upon arrival at the ER?

The hospital may require the survivor to fill out a form to authorize disclosure of personal health information to the advocate. The HIPAA authorization form included in this packet has been prepared to allow you to handle this situation. For further details, please consult the fact sheet on *HIPAA Privacy Guidelines and Victim Advocates in the ER*.

HIPAA Fact Sheet #3

HIPAA PRIVACY GUIDELINES AND VICTIM ADVOCATES IN THE EMERGENCY ROOM

There has been a great deal of publicity recently about the new privacy rules governing patient health information under the federal Health Insurance Portability and Accountability Act (“HIPAA”), which went into effect April 14, 2003. Some hospitals have interpreted HIPAA to conflict with Texas law guaranteeing a survivor’s right to **have** an advocate in the emergency room (“ER”). In response to these concerns, TAASA and the Office of the Attorney General have created an authorization form designed to educate survivors about their rights while addressing the legal concerns of hospital personnel.

Some hospital personnel may also have concerns about whether they can still notify the local crisis center when a sexual assault survivor is in the ER. That issue is addressed in a separate fact sheet, *HIPAA Privacy Guidelines and Notifying Crisis Centers*.

Q: At what point will I need this form: when I first get to the ER, when I first meet the survivor, etc.?

It depends on the hospital, and possibly on the person you encounter in the ER. The authorization form contains a check list at the top, which gives survivors a choice among three options:

1. meet the advocate immediately;
2. share contact information for future services; or
3. have no contact with the crisis center.

In general, once you have arrived at the ER and the survivor has asked for you to come in, you should not have problems getting access to the survivor. If the hospital staff is reluctant, you can provide to them the authorization form, and the survivor can use the form to communicate her wishes. However, it is more often the case that hospital personnel are concerned about sharing the survivor’s contact information with the advocate. When appropriate, an advocate can just ask the survivor for the

information. In other circumstances it may be more appropriate to get the survivor’s contact information from hospital personnel, and in that case the hospital may well require the authorization form.

Q: Is it a good idea to meet with our local hospitals ahead of time to discuss this?

YES, absolutely. You can meet with hospital staff on these HIPAA issues and agree on a set policy, so that ER personnel will have a clearer understanding of how to handle these situations. We have also provided a legal memorandum on HIPAA disclosures that will assist you with your local hospitals.

Q: Can we take the authorization form and customize it for our center?

YES, to some extent. The privacy rule requires the authorization form to contain specific information; the provided form meets the Privacy Rule’s requirements. Deleting or changing anything on the form may render it unenforceable. You may, however, personalize the form with your center’s name and address, put the form on your center’s letterhead, or add the name and address of your local hospital.

Q: What if the hospital has its own authorization form, and wants us to use that instead?

As long as the hospital’s form does not put any additional burdens on the survivor, the sexual assault program, or create other problems, you may use that form. The authorization form we have provided contains ALL the information required by state and federal law, and is designed specifically to educate survivors about their right to have an advocate with them in the ER. If you use another form, you will also have to specify what information you need from the survivor, e.g., contact information for follow-up visits with the survivor, etc.

Authorization Form

USING THE HIPAA AUTHORIZATION FORM

The Health Insurance Portability and Accountability Act (“HIPAA”) Authorization Form we have provided is designed to help you gain access to survivors and their health information with ease. We encourage you to arrange to meet with your local hospital’s HIPAA compliance officer to discuss your mutual expectations regarding the exchange of survivors’ health information. At this meeting, we recommend that you present the HIPAA compliance officer with a copy of the HIPAA Authorization Form. Explain to the privacy officer that the authorization frees the hospital to disclose health information about the survivor to an advocate without violating the Privacy Rule. Ask the privacy officer to make arrangements with emergency room (“ER”) personnel to present the authorization to all survivors once they arrive in the ER. Assuming the survivor authorizes the disclosure of her health information to an advocate, the hospital can immediately contact a sexual assault advocate and explain the survivor’s circumstances.

The HIPAA compliance officer may propose that you use the hospital’s authorization form rather than the one we have provided. The authorization form we have provided meets the standards imposed by the HIPAA Privacy Rule. As long as the hospital’s form does not impose additional burdens on the survivor or the advocate, you may agree to use that form.

If your local hospital refuses to present survivors of sexual assault with the authorization form upon their arrival in the ER, you may make arrangements similar to those suggested above with local law enforcement. Or, the advocate may carry the authorization form with her, and present it in person to the survivor. It is important for the advocate to ensure she has a completed authorization form before the survivor leaves the hospital. The survivor herself can fill out the form, or the advocate may fill it out for her, and the survivor or a minor survivor’s parent, guardian, or authorized representative must sign the form for it to be valid and enforceable.

If you have any questions about how to use the form, or would like clarification on its meaning, please do not hesitate to call one of the contacts we have provided you.