

# HIPAA, Licensed Health Care Providers and The Ohio State Dental Board (Board)

## OVERVIEW SUMMARY

### HIPAA

The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that affects the entire health care industry, including providers, payers, health plans, clearing houses, and individuals. The administrative simplification portion of HIPAA is focused on the transfer of "protected health information". The details of the law are set forth in the Code of Federal Regulations (CFR), specifically 45 CFR and the applicable sub-parts.

"Protected health information " is defined as individually identifiable health information that is transmitted or maintained in any form (whether oral or recorded in any form or medium) by a covered entity.

A "covered entity" is either (a) a health plan, (b) a health care clearinghouse, or (c) a health care provider who transmits any health information in electronic form in connection with a transaction covered in the CFR. A transaction is the transfer of any health data, including medical/patient records, billing information, health care enrollment information, etc.

The purpose of HIPAA is to improve the portability and continuity of health insurance coverage for groups and individuals; to combat waste and fraud; and to simplify the administration of health insurance.

### **Disclosure of Information**

A covered entity is required to protect individually identifiable health information as set forth in the CFR. This section also allows disclosure of the information under certain conditions.

The rules provide for exemptions, setting forth when a covered entity may disclose protected information without consent or authorization. This includes "to the extent required by law," for public health activities, when the covered entity believes the individual is the victim of abuse or neglect; to a health oversight agency for oversight activities; for judicial and administrative proceedings; for law enforcement purposes, etc.

“Health Oversight Agency” means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance or to enforce civil rights for which health information is relevant.

Disclosures for the above reasons do not require written consent or authorization from the individual whose health information is being disclosed.

### **Federal Law and State Law**

The regulations under HIPAA that conflict with state law preempt state law except when state law requires a covered entity to report, or to provide access to, information for the purpose of the licensure or certification of facilities or individuals. (see CFR §160.203(d)).

### Providing Protected Health Information and Accounting for Disclosures (see §160.502(b))

When using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. *However, the Ohio State Dental Board will expect to receive all pertinent patient charts and records necessary to determine the care provided by a licensee. The information provided will be maintained according to the requirements of the confidentiality statutes set forth in Ohio Revised Code 4715.03(D).*

CFR §164.528 states that individuals have a right to receive an accounting of disclosures of protected health information made by a covered entity in the six years prior to the date on which the accounting is requested.

**EXCERPTS FROM HIPAA REGULATIONS THAT IMPACT  
HEALTH LICENSING BOARDS**  
(any emphasis is added)

**PART 160 - GENERAL ADMINISTRATIVE REQUIREMENTS**

**Subpart A - General Provisions**

§160.102 Applicability

Covered Entity means:

- (1) A health plan.
- (2) A health care clearinghouse.
- (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

**Subpart B - Preemption of State Law**

§160.202 Definitions

For purposes of this subpart, the following terms have the following meanings:

“Relates to the privacy of individually identifiable health information” means, with respect to state law, that the state law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way.

“State law” means a constitution, statute, regulation, rule, common law, or other State. action having the force and effect of law.

§160.203 General rule and exceptions.

A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of state law preempts the provision of state law.

This general rule applies, except if one or more of the following conditions is met: ...

- (d) The provision of state law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals.

## PART 164 - SECURITY AND PRIVACY

### Subpart A - General Provisions

#### §164.501 Definitions.

“Health Oversight Agency” means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance or to enforce civil rights for which health information is relevant.

“Law Enforcement Official” means an officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to:

- (1) Investigate or conduct an official inquiry into a potential violation of law; or
- (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

“Public health authority” means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority... that is responsible for public health matters as part of its official mandate.

“Required by law” means a mandate contained in law that compels a covered entity to make a use or disclosure of protected health information and that is enforceable in a court of law. “Required by law” includes, but is not limited to, court orders and or-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand ....

#### §164.502 Uses and Disclosures of Protected Health Information; General Rules

- (a) Standard: A covered entity may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.

(1) Permitted uses and disclosures: A covered entity is permitted to use or disclose protected health information as follows: ...

(vi) as permitted by and in compliance with this section, §164.512 or §164.514(e), (f) (see below).

(b) Standard: Minimum necessary.

(1) Minimum necessary applies. When using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

(2) Minimum necessary does not apply. This requirement does not apply to:

(iv) Uses or disclosures that are required by law, as described by §164.512(a);...

§164.512 Uses and disclosures for which consent, an authorization, or an opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written consent or authorization of the individual as described in §§ 164.506 and 164.508, respectively, or the opportunity for the individual to agree to object as described in 164.510, in the situations covered by this section, subject to the applicable requirements of this section...

(d) Standard: Uses and disclosures for health oversight activities.

(7) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system;

- (e) Standard: Disclosures for judicial and administrative proceedings.
  - (1) Permitted Disclosures.

A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

    - (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or
    - (ii) In response to a subpoena, discovery request, or other lawful process, that is accompanied by an order of a court or administrative tribunal.’ ....

- (f) Standard: Disclosures for law enforcement purposes.

A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable ....

- (ii) In compliance with and as limited by the relevant requirements of..,

- (C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that

- (1) the information sought is relevant and material to a legitimate law enforcement inquiry;
- (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
- (3) De-identified information could not reasonable be used.

§164.528 Accounting of disclosures of protected health information.

- (a) Standard- Right to an accounting of disclosures of protected health information.

- (1) An individual has a right to receive an accounting of disclosures of protected health information made by a covered entity in the six years prior to the date on which the accounting is requested...
- (2) The covered entity must temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official, as provided in §164.512(d) or (f), respectively, for the time specified by such agency or official, if such agency or official provides the covered entity with a written statement that such an accounting to the individual would be reasonable likely to impede the agency's activities and specifying the time for which such a suspension is required.