

9/21/16: Overview of HIPAA Guidance

Presenter:

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Relevant Attachments:

- Data Driven Justice HHS HIPAA Guidance

The following serves merely as a summary of the presentation that took place on 9/21 and does not constitute legal advice. Users are advised to seek professional legal counsel to ensure organizational compliance with Health Insurance Portability and Accountability Act requirements.

Key Takeaway: *HIPAA disclosure to law enforcement entities acting in the medical interest of an individual in custody is generally permissible.*

The focus of this guidance is limited to actions taken by health care entities – HIPAA covered entities. Interested parties can go to OCR’s general website FAQ’s section for professionals for more information. The guidance clarifies that under HIPAA health care providers are permitted to combine health care data and criminal justice data. But organizations must be aware that other state and local laws and ethics regulations may apply. However once criminal justice information is merged with health information covered by HIPAA, it becomes protected by HIPAA and must be safeguarded in the manner outlined under HIPAA.

In most instances, information sharing among providers and between HIPAA covered entities and third parties acting on behalf of covered entities is permitted under the rules for disclosures for purposes of treatment, payment, and health care operations. Additionally, a business associate agreement should be in place between a covered entity and a third party using or disclosing health information on behalf of the covered entity.

HIPAA generally permits the disclosure of HIPAA protected information by covered health care entities to law enforcement agencies concerning an individual who is in law enforcement custody (*i.e.*, not free to leave but is detained for investigatory purposes) when needed for the health or safety of the individual but it is noted that HIPAA does not apply to disclosures of information by law enforcement, which are not generally covered entities under HIPAA.

It is also noted that disclosures from covered health care entities to social services entities are handled differently than disclosures to other health care entities. Please look to guidance from the attached slides for additional information.

Q&A:

Q. Can you define what custody is?

A. Please look to the definition section of the rule for guidance but generally there is some flexibility to the interpretation of the definition of “custody.” In other words, the rule is not very

prescriptive on the meaning or scope of the term “custody.” There is some language in the preamble to the HIPAA Privacy Rule that generally ties custody to detention based on criminal activity. Generally, agencies should consult with legal counsel to ensure compliance.