

In response to the many requests from Doctors/Providers to supply information regarding HIPAA during an emergency!

The HIPAA laws 'alter' during a national health crisis. The law is detailed, complex and confusing. Resources and assistance, for those who want more detail are outlined at the bottom of this correspondence. In general the HIPAA Privacy Rule allows patient information to be shared to assist in public health emergencies and to assist patients in receiving the care they need, however the RULE is NOT suspended! HHS (health and human services) and OCR (office of civil rights) can waive provisions/fines and that was done recently-mainly for HOSPITALS and NOT for chiropractic, medical, dental offices etc.

This is a change that could affect chiropractors-however, remember you must practice within your scope: The HHS Office for Civil Rights (OCR) announced on March 17, 2020, that it will waive potential HIPAA penalties for good faith use of **telehealth** during the nationwide public health emergency due to COVID-19. NOTE: In general, Doctors' offices must rely on the **existing** HIPAA emergency rules. A brief summary exists below:

1. Covered entities may disclose, **without a patient's authorization**, protected health information as necessary to treat the patient. Treatment includes the coordination or management of health care and related services by one or more health care providers and others, consultation between providers, and the referral of patients for treatment.
2. The Privacy Rule permits covered entities to disclose needed protected health information, **without individual authorization**, in the following circumstances:
 - a. To a public health authority, such as the CDC or a state or local health department.
 - b. There are times when it is ok to share information with Family, Friends, and Others Involved in an Individual's Care. This is allowed when you have a release from the patient, the patient has given verbal permission, you can reasonably INFER the patient would give their consent or you feel it is in the patients' best interest to share the information (especially in the event the patient is incapacitated or unavailable). The information shared should only be 'relevant' information.
 - c. A covered entity may share protected health information with disaster relief organizations like the American Red Cross.
 - d. To Prevent or Lessen a Serious and Imminent Threat consistent with applicable law (such as state statutes, regulations, or case law) and the provider's standards of ethical conduct.. HIPAA expressly defers to the professional judgment of health professionals in making determinations about the nature and severity of the threat to health and safety.
3. Disclosures to the Media or Others- Not Involved in the Care of the Patient- may not be done without the patient's written authorization (or the written authorization of a personal representative who is a person legally authorized to make health care decisions for the patient).
4. Minimum Necessary rules must be followed.
5. Covered entities must continue to **implement safeguards** to protect patient information against intentional or unintentional impermissible uses and disclosures. This means that under HIPAA, your requirements continue: following your written HIPAA policies (about 100 pages in the typical chiropractic office), continuing to protect information as determined by your required risk analysis (including GAP analysis and mitigation plan), ISAR's performed and other appropriate customized procedures must be carried out.

6. These rules apply to Business associates. BAA agreements must be in place with all identified BAA's. This applies to all vendors you work with who are creating, receiving, maintaining, or transmitting protected health information.

One of the true dangers in an emergency is that, while fines might be suspended for actions at the time of the emergency, an action might later be investigated. If it is found at that time that fines were suspended BUT you CANNOT produce your HIPAA plan WHEN DEMANDED BY THE GOVERNMENT (the parts required by law) YOU could still be found to be non-compliant (regardless of what you did or did not do during the emergency and, therefore, could suffer fines due to non-compliance vs. the emergency actions you may or may not have taken. **YOU MUST BE PREPARED TO DELIVER TO THE GOVERNMENT COPIES OF ANY / ALL PARTS OF YOUR HIPAA PROGRAM THAT THEY MAY REQUEST...THIS INCLUDES ALL ITEMS MENTIONED ABOVE PLUS THE REMAINDER OF HIPAA STANDARD REQUIREMENTS!**

There may be other state or federal rules that may apply in emergencies.
STAY SAFE!

- **Resources:**

To assist in establishing a full HIPAA program to help avoid fines:

- DrTytheComplianceGuy.com

Government resources:

- Emergency Preparedness Planning and the Privacy Rule:
 - o [Press Release: HHS Announces New HIPAA Privacy Decision Tool for Emergency Preparedness Planning](#)
 - o [HIPAA Privacy Rule: Disclosures for Emergency Preparedness - A Decision Tool](#)

[March 2020 HIPAA and COVID-19 Bulletin - PDF*](#)

If the President declares an emergency or disaster *and* the Secretary of HHS declares a public health emergency, the Secretary may waive sanctions and penalties against a covered hospital that does not comply with certain provisions of the Privacy Rule. The Privacy Rule remains in effect. The waivers are limited and apply only for limited periods of time