Health Information &the Law
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MYTH: Mental health information cannot be disclosed for research.

FACT: Mental health information is treated the same as other protected health information in the context of research.

Although the HIPAA Privacy Rule generally does not apply to researchers or Institutional Review Boards (IRBs) unless they are covered entities, it does govern – along with other applicable state laws – the methods by which a covered entity is permitted to use and disclose Protected Health Information (PHI), including mental health information, for research purposes. As with all types of PHI, a covered entity is allowed to use and disclose mental health information for research with valid patient consent; however in limited situations, PHI may be used for research without patient authorization.

Recognizing the public benefits of research, HIPAA attempts to balance these benefits against privacy risks for those who participate in research. Therefore, a covered entity may use or disclose mental health information for research if:

- It obtains the authorization of the individual;
- It obtains documentation that an IRB or privacy board (a type of review board created by the Privacy Rule) has waived the requirement for authorization;
- It discloses a limited data set and enters into a data use agreement with the recipient;
- The review of the data is merely preparatory to research, or
- The research is on a decedent's (deceased individual's) information.

A covered entity may also disclose de-identified PHI to persons doing research without patient authorization. The de-identification of PHI can be achieved by a safe harbor method in which all 18 specified identifiers are removed, or through a statistical method under which some of the specified identifiers may be retained when a statistician makes and documents that the risk of re-identification is very small. If the covered entity wants to disclose PHI that is not de-identified for research purposes, patient authorization is required unless waived by an IRB or privacy board.

Finally, note that states may have laws that govern the disclosure of PHI, which may have special rules for the release of mental health information for research purposes. Any state law that is more protective of health information than HIPAA will apply to the disclosure of PHI in that state. Virtually every state has some statute or regulation protecting the privacy and confidentiality of health information, and sometimes laws are specifically directed to mental health information. These statutes generally provide that an individual's identifiable health information is confidential and may not be disclosed without the individual's authorization. The statute may dictate the format and content requirements of the authorization and usually specifies a number of purposes for which the provider may disclose health information without the individual's authorization. Most comprehensive state health information

confidentiality statutes permit health care practitioners to disclose identifiable health information for research without patient authorization. However, these statutes may impose other restrictions on the use or disclosure of health information for research, such as prohibiting the identification of any individual in the research results or requiring the return of the information to the covered entity upon completion of the research project.

For More Information:

- See the Fast Facts on disclosure of mental health information.
- Learn how HIPAA applies to research.
- Explore about state and federal laws related to health information privacy and confidentiality.

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