# HIPAA Privacy WorkGroups®

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## Teleconference

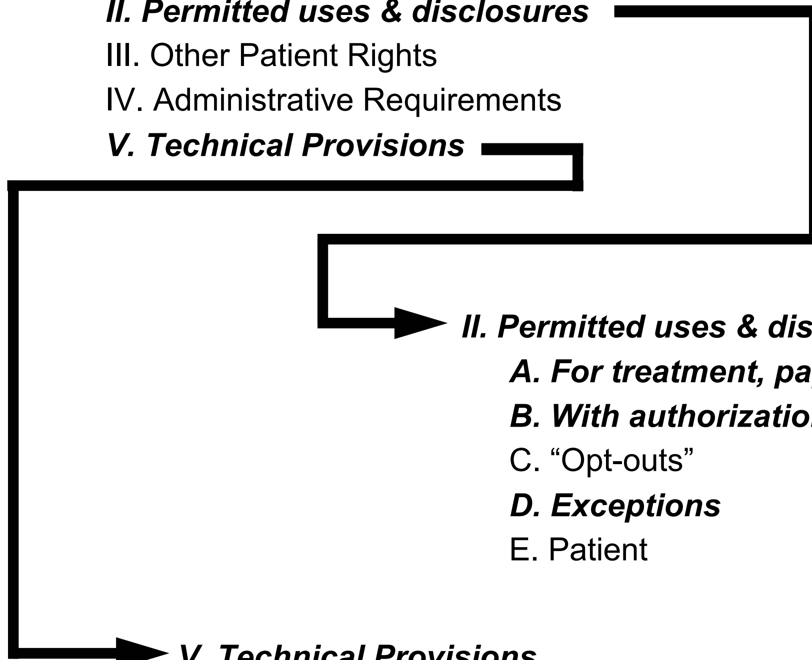
# Advanced Preemption and Disclosure Issues

*[Ver 3.0]*

## Rules, Statutes and Resources

Wednesday, January 21, 2004
10:00 a.m. – 11:00 a.m., CST

## **"Advanced Preemption & Disclosure Issues "**
## **– Setting the Stage –**



**Five Basic Features of Privacy Regulations**

I. Basic Rule and general concepts
***II. Permitted uses & disclosures***
III. Other Patient Rights
IV. Administrative Requirements
***V. Technical Provisions***

***II. Permitted uses & disclosures***

***A. For treatment, payment and healthcare operations***
***B. With authorizations***
C. "Opt-outs"
***D. Exceptions***
E. Patient

***V. Technical Provisions***

***A. Preemption of state law***
B. Compliance and enforcement
C. Transition provisions

**Session Description**

*This advanced session explores some of the most common Louisiana disclosure provisions and the extent to which they are preempted by the privacy standards. Included in this discussion are subpoenas, law enforcement requests, coroners, patient and family access, copy costs, HIV testing, public health reporting, genetic testing, licensure, and more.*

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**Subpart B—Preemption of State Law**

**§ 160.201 Applicability.** The provisions of this subpart implement section 1178 of the Act, as added by section 262 of Public Law 104–191.

**§ 160.202 Definitions.** For purposes of this subpart, the following terms have the following meanings:

*Contrary,* when used to compare a provision of State law to a standard, requirement, or implementation specification adopted under this subchapter, means:

(1) A covered entity would find it impossible to comply with both the State and federal requirements; or

(2) The provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of part C of title XI of the Act or section 264 of Pub. L. 104–191, as applicable.

*More stringent* means, in the context of a comparison of a provision of State law and a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter, a State law that meets one or more of the following criteria:

(1) With respect to a use or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under this subchapter, except if the disclosure is:

(i) Required by the Secretary in connection with determining whether a covered entity is in compliance with this subchapter; or

(ii) To the individual who is the subject of the individually identifiable health information.

(2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.

(3) With respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information.

(4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.

(5) With respect to recordkeeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration.

(6) With respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

*Relates to the privacy of individually identifiable health information* means, with respect to a 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:

(a) A determination is made by the Secretary under § 160.204 that the provision of State law:

(1) Is necessary:

(i) To prevent fraud and abuse related to the provision of or payment for health care;

(ii) To ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation;

(iii) For State reporting on health care delivery or costs; or

(iv) For purposes of serving a compelling need related to public health, safety, or welfare, and, if a standard, requirement, or implementation specification under part 164 of this subchapter is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or

(2) Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.

(b) The provision of State law relates to the privacy of individually identifiable health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.

(c) The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(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.

United States District Court, E.D. Louisiana.

UNITED STATES OF AMERICA ex rel. Mary Jane Stewart et al.
v.
THE LOUISIANA CLINIC et al.

**No. Civ.A. 99-1767.**
Dec. 12, 2002.
2002 WL 31819130 (E.D.La.)

*ORDER AND REASONS*

WILKINSON, Magistrate J.

This is a qui tam action in which relators, Mary Jane Stewart, Jr. and Margaret Catherine McGinity, seek to recover damages on behalf of themselves and the United States under the False Claims Act. 31 U .S.C. § 3729. Relators allege that defendants defrauded the federal government by presenting false claims for reimbursement for medical services provided to Medicare and Medicaid participants.

Defendant, Dr. Stephen Flood, filed a motion for protective order, which addresses the confidentiality of nonparty patients' medical records that relators have asked defendants to produce. Dr. Flood's motion also requests that the United States, which has previously declined to intervene in this action, be prohibited from receiving copies of any nonparty patient records produced by the parties. Record Doc. No. 94. Dr. Flood received leave to file a supplemental memorandum. Record Doc. Nos. 95, 96. The remaining defendants, Dr. Stuart I. Phillips, Dr. Bernard L. Manale, Dr. Ida Fattel and Dr. John Watermeier, and a former defendant, The Louisiana Clinic,[1] also moved for a protective order on the same legal grounds but requested a slightly different protective order. Record Doc. No. 99.

Relators filed a timely opposition memorandum. Record Doc. No. 103. The United States filed a memorandum in response to the two motions for protective order. Record Doc. No. 104. Dr. Flood received leave to file another supplemental memorandum. Record Doc. Nos. 105, 106.

Having considered the complaint, as amended; the record; the submissions of the parties; and the applicable law, and for the following reasons, IT IS ORDERED that defendants' motions for a protective order are GRANTED IN PART AND DENIED IN PART, as discussed below.

*ANALYSIS*

Defendants seek a protective order concerning disclosure of nonparty patient billing and medical records in response to relators' requests for production of documents. Defendants argue that if they are compelled to produce such records without concealing individual identifying information, they may incur civil liability to the nonparty patients under Louisiana law for unauthorized disclosure of confidential medical information. They seek an order allowing them to produce the documents only after all patient identifying information has been

[1] Although the Louisiana Clinic was dismissed from this action, it joins in the motion because it asserts that it, not the physicians, controls the patient records at issue. It also asserts that it has never been served with any discovery requests for the records. The instant motions are not motions to compel and the court makes no order respecting any outstanding discovery requests.

redacted. Dr. Flood suggests that the redacted information be replaced with a system that identifies each patient only by a number. Defendants rely on the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub.L. No. 104-191, § § 261-264, 110 Stat.1936 (1996), and its implementing regulations to argue that the Louisiana health care provider/patient privilege is *not* preempted by HIPAA and that the court must therefore follow Louisiana privilege law in deciding how the documents should be produced.

Defendants also argue that the United States, which has elected not to intervene in this action and is therefore technically a nonparty, is not entitled to receive copies of nonparty patient records. They argue alternatively that if the government is entitled to receive copies, it must be prohibited from using those records for any purpose other than this litigation.

A. *There Is No Doctor/Patient Privilege in Federal Question Cases*

* * *

B. *HIPAA Does Not Require the Court to Apply Louisiana Privilege Law*

HIPAA delegates to the Secretary of Health and Human Services broad authority to promulgate Standards for Privacy of Individually Indentifiable Health Information ("Standards"), with which health care providers must comply. 42 U.S.C. § § 1320d-1(d), 1320d-3(a)(b), 1320d-4(b). The Standards generally permit a health care provider (called a "covered entity") to disclose nonparty patient records during a lawsuit, *subject to an appropriate protective order,* without giving notice to the nonparty patients.

HIPAA and the Standards promulgated by the Secretary expressly "supercede [sic] any contrary provision of State law," 42 U.S.C. § 1320d- 7(a)(1) (implemented by 45 C.F.R. § 160.203 (2002)), *except* as provided in 42 U.S.C. § 1320d-7(a)(2) (implemented by 45 C.F.R. § 160.203(b)). Under that exception, HIPAA and its Standards expressly do *not* preempt contrary state law, *id.* § 1320d-7(a)(2), *if* the state law "relates to the privacy of individually identifiable health information," *id.* § 1320d- 7(a)(2)(B) (implemented at 45 C.F.R. § 160.203(b)), and is "more stringent" than HIPAA's requirements. Pub.L. 104-191, § 264(c)(2), 110 Stat.1936 (published in the Historical and Statutory Notes to 42 U.S.C. § 1320d-2; implemented at 45 C.F.R. § 160.203(b)).

Defendants contend that HIPAA's disclosure provision is less stringent than Louisiana law. Louisiana law requires notice to the patient and a contradictory hearing that includes the patient before a health care provider can produce nonparty patient records without the patient's consent. Thus, defendants argue that Louisiana law is more stringent than HIPAA in this area, that HIPAA does not preempt Louisiana law and that Louisiana privilege law must be applied.

The Secretary has promulgated final Standards under HIPAA. *United States v. Sutherland,* 143 F.Supp.2d 609, 612 (W.D.Va.2001) (citing 65 Fed.Reg. 82,462 (Dec. 28, 2000)). Although those regulations were effective on April 14, 2001, full compliance by health care providers is not required until April 14, 2003. *Id.* (citing 66 Fed.Reg. 12,434 (Feb. 26, 2001)); 45 C.F.R. § 164.534.

In the instant case, relators and the United States argue that the HIPAA Standards do not apply because the final compliance date for health care providers is April 14, 2003. In this regard, I agree with District Judge Jones of the Northern District of Virginia, who stated:

> Nevertheless, the Standards indicate a strong federal policy to protect the privacy of patient medical records, and they provide guidance to the present case. In [45 C.F.R.] § 164.512(e), the regulations define when and how disclosures are permitted for judicial and administrative proceedings. .... Although not presently binding on the Hospital or this court, I find these regulations to be persuasive in that they

demonstrate a strong federal policy of protection for patient medical records.

*Sutherland,* 143 F.Supp.2d at 612. Moreover, the Standards will require full compliance in a mere four months, at a time when this lawsuit will still be ongoing (trial is set for October 2003) and the patient records at issue will be in full use by the parties.

Thus, the court will analyze the HIPAA regulatory scheme. 45 C.F.R. § 164.512 allows a health care provider to disclose protected health information during judicial proceedings under certain circumstances without the written authorization of the patient or an opportunity for the patient to agree or object to the disclosure.

Section 164.512(e) provides in relevant part:

(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 not accompanied by an order of a court or administrative tribunal, if:

(A) The covered entity receives satisfactory assurance ... from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request;[2] *or*

(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from *the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order* that meets the requirements of paragraph (e)(1)(v) of this section.[3]

* * *

(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

* * *

(B) *The party seeking the protected health information has requested a qualified protective order* from such court or administrative tribunal.

* * *

(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, *if the covered entity* makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section *or to seek a qualified protective order*[4] sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.

(2) Other uses and disclosures under this section. The provisions of this paragraph *do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures* of protected health

[2] No such notice or assurances have been given in the instant case.
[3] Relators have attached a proposed protective order to their opposition memorandum. The definition of "qualified protective order" is discussed below.
[4] The health care providers seek a protective order in this case.

information.

45 C.F.R. § 164.512(e)(1), (2) (emphasis added).

Defendants argue that HIPAA does *not* preempt Louisiana law concerning disclosure of nonparty patient records without patient consent. As previously noted, HIPAA and its Standards expressly "supercede [sic] any contrary provision of State law," 42 U.S.C. § 1320d-7(a)(1); 45 C.F.R. § 160.203, *unless* the contrary state law "relates to the privacy of individually identifiable health information" and is "more stringent" than HIPAA's requirements. *Id.* § 160.203(b). Thus, to fall under this exception, Louisiana law must (1) be "contrary" to HIPAA or its Standards, (2) relate to the privacy of individually identifiable health information *and* (3) be "more stringent" than federal law.

Defendants focus solely on the "more stringent" element of this regulatory test and on paragraph (4) of the definition of "more stringent." "More stringent" means a State law that meets one or more of the following criteria:....

> (4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable. *Id.* § 160.202.

Defendants argue that the Louisiana health care provider/patient privilege law is more stringent than the federal regulations. They contend that the Louisiana statute increases the privacy protections afforded to individual patients by requiring either patient consent for the disclosure or, in the absence of consent, that a "court shall issue an order for the production and disclosure of a patient's records ... only: after a contradictory hearing with the patient ... and after a finding by the court that the release of the requested information is proper." La.Rev.Stat. § 13:3715.1(B)(5).

Defendants' argument fails because this provision of Louisiana law does not address "the form, substance, or the need for *express legal permission from an individual,"* as required by 45 C.F.R. § 160.202 for the exception to apply. Rather, the Louisiana statute provides a way of negating the need for such permission. In other words, although the individual patient may attend the contradictory hearing, the Louisiana provision states that the court *shall* issue an order for disclosure (despite the patient's lack of consent), if the court finds that release of the information is proper. Because the Louisiana statute does not fit within the exception from preemption cited by defendants, it *is preempted* by the HIPAA regulations. Therefore, Louisiana law does not apply in this pure federal question case.

I find that both relators and defendants have complied with the HIPAA regulations at issue by seeking an appropriate protective order and that the court has the authority to order disclosure of nonparty patient information, subject to such a protective order, without conducting a contradictory hearing or having the parties obtain the patients' consent. All parties agree (and I strongly agree) that there is good cause for entry of a protective order concerning the medical records of nonparty patients in this case, Fed.R.Civ.P. 26(c), and that the order should at the very least comply with 45 C.F.R. § 164.512(e)(v).

> (v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
>
> (A) Prohibits the parties from using or disclosing the protected health information for any purpose other

than the litigation or proceeding for which such information was requested;[5] and

(B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

45 C.F.R. § 164.512(e)(v).

However, defendants want all patient-identifying information redacted before they produce the documents to relators. Dr. Flood suggests that the redacted information be replaced with a system that identifies each patient by a number. Relators propose an alternative method to protect patient records by proposing a "twofold" production in which defendants would produce a set of unredacted documents to be marked "confidential, for counsel's eyes only." Relators propose that the unredacted documents be used only by counsel and their staff (which I find is too broad, as further discussed below), and a second set of redacted documents that may be used by any party for any pretrial purpose.

I find that relators' suggestion for a "twofold" production serves the interests of all parties and of the nonparty patients whose records will be produced. The issue in this case is whether the defendants submitted false claims to the government for reimbursement for services rendered to Medicare and Medicaid patients. Relators must be allowed to see the patient names so that they can investigate the validity of the claims for services rendered to those patients. Restricting such information only to counsel of record, no more than two paralegals and one expert for each party, coupled with the other protections, will satisfactorily protect this confidential information from being disseminated by the non-government parties, outside this litigation.

Accordingly, I find that a form of the "twofold" production proposed by relators, but with disclosure somewhat more restricted than they suggest, should be incorporated in the protective order to be entered herein. To enhance the protection of these sensitive materials while also making them available for the legitimate adjudicative and government oversight functions discussed below, the protective order to be submitted by the parties in accordance with this order must also include the following language:

> All information produced in accordance with this order must be kept confidential and used only for purposes of this litigation and must not be disclosed to any one except parties to this litigation, the parties' counsel of record, no more than two paralegals employed by counsel of record and one expert per party retained in connection with this litigation. All persons to whom such information is disclosed must sign an affidavit that must be filed into the record, agreeing to the terms of the protective order and submitting to the jurisdiction of this Court for enforcement of those terms.

C. *The United States Is a Real Party in Interest Entitled to Receive Discovery*

* * *

D. *The United States May Use Information Gained Through Discovery for Purposes of Its Health Oversight Function*

***[Health Oversight]*** The final question that the court must address is whether the United States should be limited to using the nonparty patient records only in the context of this litigation, as defendants argue, again without citation to any authority. The government asserts that the HIPAA Standards specifically permit disclosure of such documents to the Department of Justice pursuant to its function as a "health oversight agency."

[5] The United States does not agree that it should be prohibited from using the information disclosed for purposes outside this litigation. This issue is discussed in the following section.

In this regard, the Standards permit disclosure of

> 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;*
>
> (ii) *Government benefit programs* for which health information is relevant to beneficiary eligibility;
>
> (iii) Entities subject to government regulatory programs for which health information is necessary for determining
> compliance with program standards; or
>
> (iv) *Entities subject to civil rights laws* for which health information is necessary for determining compliance.

45 C.F.R. § 164.512(d)(1) (emphasis added). The final rule implementing the Standards specifically names the Department of Justice as a health oversight agency with respect to its conduct of oversight activities relating to the health care system and its civil rights enforcement activities. 65 Fed.Reg. 82462, 82492 (Dec. 28, 2000).

These regulations are clear and unambiguous, and they wholly undermine defendants' arguments to the contrary. Accordingly, I find that the United States may use any information it obtains through discovery in this action in connection with its legitimate governmental health oversight activities, and not solely for purposes of this litigation. I further find that paragraphs (13) and (14) of the government's proposed protective order (Record Doc. No. 104, Government Exh. A to its memorandum in response to defendants' motions), should be included in the protective order to be entered herein.

*CONCLUSION*

For the foregoing reasons, IT IS ORDERED that defendants' motions for protective orders are GRANTED IN PART AND DENIED IN PART. The motions are granted to the extent that they request that a protective order as outlined above be entered. The motions are denied in all other respects.

IT IS FURTHER ORDERED that the parties must submit to the court within ten (10) days of entry of this order a motion for a "qualified protective order" that incorporates (1) the provisions of 45 C.F.R. § 164.512(e)(v), (2) the "twofold" production procedure proposed by relators, but with access limited only to counsel of record in this action, no more than two paralegals employed by them and one expert for each party, and (3) the paragraphs currently numbered (13) and (14) in the government's proposed protective order.

In addition, the redrafted protective order must include the language cited on page 14 of this opinion concerning the execution of and filing with the court an affidavit by all those with access to the documents, in a form of affidavit to be annexed as an exhibit to the protective order.

The protective order must also provide that, although the burden is on the party who challenges the validity or necessity of any redactions to bring that challenge to the court through a motion, the burden is on the party who resists discovery, *i.e.,* the party making the redactions, to demonstrate that the redaction is proper.

Finally, the protective order shall provide that all parties must seek leave of court before filing any pleading or document under seal. This court's record is presumptively a public record, and the Clerk of Court has limited

storage space for maintaining documents under seal. Only truly confidential, proprietary, trade secret or other similar materials should be sealed in a public record. Thus, the court will not permit the wholesale filing under seal of pleadings, motion papers, depositions and exhibits that contain only limited amounts of truly confidential information. Counsel are instructed to try to "write around" confidential information in their memoranda and to request sealing only of those parts of memoranda and exhibits that are truly confidential.

**Exceptions**

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

*(a) Uses and disclosures required by law.*

*(b) Uses and disclosures for public health activities.*

*(c) Disclosures about victims of abuse, neglect or domestic violence.*

*(d) Uses and disclosures for health oversight activities.*

*(e) Disclosures for judicial and administrative proceedings.*

*(f) Disclosures for law enforcement purposes.*

*(g) Uses and disclosures about decedents.*

*(h) Uses and disclosures for cadaveric organ, eye or tissue donation purposes.*

*(i) Uses and disclosures for research purposes.*

*(j) Uses and disclosures to avert a serious threat to health or safety.*

*(k) Uses and disclosures for specialized government functions.*

*(l) Disclosures for workers' compensation*

## Accounting

**§ 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[6] of protected health information made by a covered entity in the six years prior to the date on which the accounting is requested, except for disclosures:

(i) To carry out treatment, payment and health care operations as provided in § 164.506;

(ii) To individuals of protected health information about them as provided in § 164.502;

(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, as provided in § 164.502[7];

(iv) Pursuant to an authorization as provided in § 164.508[8];

(v) For the facility's directory or to persons involved in the individual's care or other notification purposes as provided in § 164.510;

(vi) For national security or intelligence purposes as provided in § 164.512(k)(2);

(vii) To correctional institutions or law enforcement officials as provided in § 164.512(k)(5);

(viii) As part of a limited data set in accordance with § 164.514(e)[9]; or

(ix) That occurred prior to the compliance date for the covered entity.

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[6] "… including disclosures by or to a business associate of the covered entity, for purposes other than treatment, payment, and health care operations, subject to certain exceptions …" Preamble to final rule, 65 FR 82560.

[7] Added in August 14, 2002 amendments.

[8] Added in August 14, 2002 amendments.

[9] Added in August 14, 2002 amendments.

## Public Health

**§ 164.512 Uses and disclosures for which an authorization, or opportunity to agree or object is not required.** [10]

* * *

(b) Standard: uses and disclosures for public health activities.

(1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority[11] that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority[12];

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect[13];

* * *

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or

* * *

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[10] "[W]e have distinguished between laws that mandate uses or disclosures and laws that merely permit them. In the former case, jurisdictions have determined that public policy purposes cannot be achieved absent the use of certain protected health information, and we have chosen in general not to disturb their judgments. On the other hand, where jurisdictions have determined that certain protected health information is not necessary to achieve a public policy purpose, and only have permitted its use or disclosure, we do not believe that those judgments reflect an interest in use or disclosure strong enough to override the Congressional goal of protecting privacy rights." Comments, page 82667-8.

[11] Examples of "public health authorities listed in the Preamble are "the Food and Drug Administration, the Occupational Safety and Health Administration, the Centers for Disease Control and Prevention, as well as state and local public health departments, for public health purposes as specified …." Preamble, page 82526.

"[I]n the absence of some nexus to a government public health authority or other underlying legal authority, it is unclear upon what basis covered entities can determine which ['nonprofit entities… such as disease-specific registries'] or collections are "legitimate" and how the confidentiality of the registry information will be protected.… Broadening the exemption could provide a loophole for private data collections for inappropriate purposes or uses under a "public health" mask." Comments, page 82668.

[12] "For example, we allow covered entities to disclose protected health information to a foreign government agency that is collaborating with the Centers for Disease Control and Prevention to limit the spread of infectious disease." Preamble, page 82525.

[13] "State laws continue to apply with respect to child abuse, and the final rule does not in any way interfere with a covered entity's ability to comply with these laws." Preamble, page 82527.

**R.S. 40:1300.14 Confidentiality of HIV test result; Disclosure**

* * *

E. (1) A physician may disclose confidential HIV test results under all of the following conditions:

(a) Disclosure is made to a contact, or to a public health officer for the purpose of making the disclosure to said contact.

(b) The physician reasonably believes disclosure is medically appropriate, and there is a significant risk of infection to the contact.

(c) The physician has counseled the patient regarding the need to notify the contact, and the physician reasonably believes the patient will not inform the contact.

(d) The physician has informed the patient of his or her intent to make such disclosure to a contact and has given the patient the opportunity to express a preference as to whether disclosure should be made by the physician directly or to a public health officer for the purpose of said disclosure. If the patient expresses a preference for disclosure by a public health officer or by the physician the physician shall honor such preference.

(2) When making such disclosures to the contact, the physician or public health officer shall provide or make referrals for the provision of the appropriate medical advice and counseling for coping with the emotional consequences of the knowledge of the information and for alteration of behavior to prevent transmission or contraction of HIV infection. The physician or public health officer shall not disclose the identity of the patient or the identity of any other contact. A physician or public health officer making a notification pursuant to this Subsection shall make such disclosure in person, except where circumstances reasonably prevent doing so.

(3) A physician shall have no obligation to identify or locate any contact.

(4) A physician may, upon the consent of a parent or guardian, disclose confidential HIV test results to a state, parish, or local health officer for the purpose of reviewing the medical history of a child to determine the fitness of the child to attend school.

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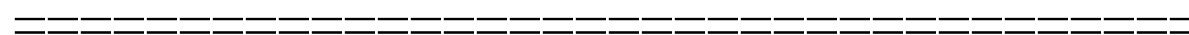
**R.S. 40:1299.84 Participation in Program (Cancer Registry)**

A. Any health care provider or radiation center diagnosing or providing treatment to cancer patients shall report each case of cancer to the president in a format prescribed by the president within six months of admission or diagnosis. If the facility fails to report in a format prescribed by the president, the president may enter the facility, obtain the information, and report it in the appropriate format. In these cases, the facility shall reimburse the president for the cost of obtaining and reporting the information.

B. Any health care provider or radiation center diagnosing or providing treatment to cancer patients shall report each cancer case. In addition, health care providers shall furnish follow-up data on each cancer patient when requested.

C. Any health care provider or radiation center which provides diagnostic or treatment services to patients with cancer shall report any additional demographic, diagnostic, or treatment information requested by the president concerning any person presently or previously receiving services who has or had a malignant tumor. Additionally, the president shall have physical access to all records which would identify cases of cancer or

would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified cancer patient.



**R.S. 40:1299.87 Disclosure of Medical Records to Cancer Registries**

A. Notwithstanding any other provision of law to the contrary, all health care providers and radiation centers shall release an abstract of the patient's record reflecting the past or present physical condition of a patient upon request of the Louisiana cancer registry program established pursuant to the provisions of this Part. The cancer registry shall take strict measures to assure that all identifying information contained in patient record abstracts will be kept confidential.

B. The president may enter into agreements to exchange confidential information with other cancer registries in order to obtain complete reports of Louisiana residents diagnosed or treated in other states and to provide information to other states regarding their residents diagnosed or treated in Louisiana. However, before releasing confidential information the president shall obtain from such state registries, agencies, or researchers an agreement in writing to keep nonaggregate, case-specific information confidential and privileged. In no event shall either cancer registry bear liability for loss, expense, attorney fees, or claims for injury or damages arising out of acts or omissions in the performance of this agreement on the part of the other registry.

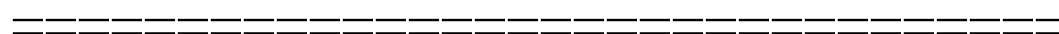
C. The office of the president shall promulgate rules and regulations in accordance with the Administrative Procedure Act to specify the extent to which confidential data may be disclosed to other local, state, or federal public health or environmental agencies, or to corroborating medical researchers, when the confidential information is necessary to carry out the duties of the agency or researchers in the investigation, control, or surveillance of disease, as determined by the office of the president. Before releasing confidential information to the researchers, the president shall obtain an agreement in writing from the researchers that they will keep nonaggregate, case-specific information confidential and privileged and that neither the office of the president nor the other entity shall bear liability for loss, expense, attorney fees, or claims for injury or damages arising out of acts or omissions in the performance of this agreement on the part of the other.

D. Any disclosure authorized by this Part shall include only the information necessary for the stated purpose of the requested disclosure, and shall be made only upon written agreement that the information will be kept confidential and will not be further disclosed without written authorization of the office of the president.

E. The furnishing of confidential data in accordance with this Part shall not expose any person, agency, or entity furnishing data to liability and shall not be considered to be in violation of any privileged or confidential relationship, provided the participant has acted in good faith in the reporting as required in this Part.

F. No case specific data shall be available for subpoena nor shall it be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding, nor shall such records be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason. Nothing in this Section shall supersede the provisions of R.S. 40:3.1(A) through (H).

G. Nothing in this Part shall be construed to apply to the unauthorized disclosure of confidential or privileged information when such disclosure is due to gross negligence or willful misconduct.



**R.S. 40:1099 Infectious Diseases; Notification**

A. (1) If, while treating or transporting an ill or injured patient to a hospital, an emergency medical technician, paramedic, firefighter, police officer, or other person who is employed by or voluntarily working with a firm, agency, or organization which provides emergency treatment or transportation comes into direct contact with a patient who is subsequently diagnosed as having untreated pulmonary tuberculosis or acute meningococcal meningitis, or comes in contact with the blood or body fluid of a person who is subsequently diagnosed as having acute hepatitis virus B infection, or is a chronic hepatitis B carrier, or is infected with human immunodeficiency virus, the hospital receiving the patient shall notify the appropriate firm, agency, or organization which shall notify its emergency medical technician, paramedic, firefighter, police officer, emergency medical transportation service employer, or other person treating or transporting the patient of the individual's exposure to the infectious disease within forty-eight hours of confirmation of the patient's diagnosis and shall advise same of the appropriate treatment, if any. Notification shall be made in a manner that protects the confidentiality of the patient and the emergency medical technician, paramedic, police officer, or other person treating or transporting the patient.

* * *

## Abuse

**§ 164.512 Uses and disclosures for which an authorization, or opportunity to agree or object is not required.** [14]

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section[15]. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) Standard: uses and disclosures required by law.

(1) A covered entity may[16] use or disclose protected health information to the extent that such use or disclosure is required[17] by law[18] and the use or disclosure complies with and is limited to[19] the relevant requirements of such law.[20]

(2) A covered entity must meet the requirements described in paragraph (c)[21], (e)[22], or (f)[23] of this section for uses or disclosures required by law.

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[14] "[W]e have distinguished between laws that mandate uses or disclosures and laws that merely permit them. In the former case, jurisdictions have determined that public policy purposes cannot be achieved absent the use of certain protected health information, and we have chosen in general not to disturb their judgments. On the other hand, where jurisdictions have determined that certain protected health information is not necessary to achieve a public policy purpose, and only have permitted its use or disclosure, we do not believe that those judgments reflect an interest in use or disclosure strong enough to override the Congressional goal of protecting privacy rights." Comments, page 82667-8.

[15] The Preamble makes three important points regarding "the applicable requirements of the section." First, it is clear that, in situations where more than one exception could potentially apply, as long as the use or disclosure meets the requirements of one of those exceptions, it is irrelevant that it fails to meet the requirements of any other that might apply. See Preamble, page 82524.

Secondly, the preamble adds the additional, implicit requirement of §164.514 that "covered entities verify the identity and authority of persons to whom they made disclosure under the section." Preamble, page 8254.

Thirdly, the Preamble notes that the patient's right to request restrictions under § 164.522 and the consent requirements of § 164.506 can't be used by the patient to prevent uses and disclosures under this section. Preamble, page 82524

[16] "The final rule does not create any new duty or obligation to disclose protected health information." "The rule's approach is simply intended to avoid any obstruction to the health plan or covered health care provider's ability to comply with its existing legal obligations." Comments, page 82666, 82668.

[17] Examples listed in the Comments include "topics addressing national security (uses and disclosures to obtain security clearances), to public health (reporting of communicable diseases), to law enforcement (disclosures of gun shot wounds)." Comments, page 82667.

[18] "'[L]aw' is intended to be read broadly to include the full array of binding legal authority, such as constitutions, statutes, rules, regulations, common law, or other governmental actions having the effect of law. However, for the purposes of § 164.512(a), law is not limited to state action; rather, it encompasses federal, state or local actions with legally binding effect, as well as those by territorial and tribal governments." Comments, page 82668.

"Required by law" is defined in §164.501, Rules, page 82805.

[19] "We note that the minimum necessary requirements of § 164.514(d) do not apply to disclosures made under this paragraph." – BUT – "Uses and disclosures permitted under this paragraph must be limited to the protected health information necessary to meet the requirements of the law that compels the use or disclosure." Preamble, page 82525.

[20] "[N]othing in the final rule provides authority for a covered entity to restrict or refuse to make a use or disclosure mandated by other law." Preamble, page 82524.

(b) Standard: uses and disclosures for public health activities.

(1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

* * *

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect[24];

* * *

(c) Standard: disclosures about victims of abuse, neglect or domestic violence.[25]

(1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect[26], or domestic violence[27] to a government authority[28], including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

(ii) If the individual[29] agrees to the disclosure[30]; or

(iii) To the extent the disclosure is expressly authorized by statute or regulation[31] and:

(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate

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[21] "Disclosures about victims of abuse, neglect or domestic violence", Rules, page 82814. The provisions §164.512(c) supersede the provisions of this paragraph "to the extent that those provisions address the subject matter" §164.512(c) ("Victims of Abuse, Neglect or Domestic Violence"). Preamble, page 82527.

[22] "Disclosures for judicial and administrative proceedings", Rules, page 82814.

[23] "Disclosures for law enforcement purposes", Rules, page 82815.

[24] "State laws continue to apply with respect to child abuse, and the final rule does not in any way interfere with a covered entity's ability to comply with these laws." Preamble, page 82527.

[25] "The provisions of this paragraph supersede the provisions of § 164.512(a) ["required by law"] and § 164.512(f)(1)(i) [reports to law enforcement required by law] to the extent that those provisions address the subject matter of this paragraph." Preamble, page 82527.

[26] "[E}.g., abuse of nursing home residents or residents of facilities for the mentally retarded." Preamble, page 82527.

[27] "[E}.g., spousal abuse." Preamble, page 82527.

[28] Other examples of government authority include "state survey and certification agencies, ombudsmen for the aging or those in long-term care facilities, and law enforcement or oversight." Preamble, page 82527.

[29] "In this paragraph, references to "individual" should be construed to mean the individual believed to be the victim." Preamble, page 82527.

[30] "When considering the possibility of disclosing protected health information in an abuse situation pursuant to this section, we encourage covered entities to seek the individual's agreement whenever possible." Preamble, page 82527.

[31] "[A] covered entity may make a report only if the specific type or subject matter of the report (e.g., abuse or neglect of the elderly) is included in the law authorizing the report, and such a disclosure may only be made to a public authority specifically identified in the law authorizing the report." Preamble, page 82527.

enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform[32] the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

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**Ch.C. Art. 610 Reporting Procedure (Child Abuse Reporting and Investigation)**

A. Reports of child abuse or neglect or that such was a contributing factor in a child's death, where the abuser is believed to be a parent or caretaker, a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or a person living in the same residence with the parent or caretaker as a spouse whether married or not, shall be made immediately to the local child protection unit of the department. Reports in which the abuse or neglect is believed to be perpetrated by someone other than a caretaker, a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or a person living in the same residence with the parent or caretaker as a spouse whether married or not, and the caretaker is not believed to have any responsibility for the abuse or neglect shall be made immediately to a local or state law enforcement agency.

B. The report shall contain the following information, if known:

(1) The name, address, age, sex, and race of the child.

(2) The nature, extent, and cause of the child's injuries or endangered condition, including any previous known or suspected abuse to this child or the child's siblings.

(3) The name and address of the child's parent(s) or other caretaker.

(4) The names and ages of all other members of the child's household.

(5) The name and address of the reporter.

(6) An account of how this child came to the reporter's attention.

(7) Any explanation of the cause of the child's injury or condition offered by the child, the caretaker, or any other person.

[32] "We allow covered entities to provide this information orally. We do not require written notification, nor do we encourage it, due to the sensitivity of abuse situations and the potential for the abuser to cause further harm to the individual if, for example, a covered entity sends written notification to the home of the individual and the abuser. Whenever possible, covered entities should inform the individual at the same time that they determine abuse has occurred and decide that the abuse should be reported. In cases involving patient incapacity, we encourage covered entities to inform the individual of such disclosures as soon as it is practicable to do so." Preamble, page 82528.

(8) Any other information which the reporter believes might be important or relevant.

C. The report shall also name the person or persons who are thought to have caused or contributed to the child's condition, if known, and the report shall contain the name of such person if he is named by the child.

D. If the initial report was in oral form by a mandatory reporter, it shall be followed by a written report made within five days to the local child protection unit of the department or, if necessary to the local law enforcement agency.

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**R.S. 14:403.2. Abuse and neglect of adults; reports; investigation; waiver of privileges; penalties; immunity**

A. (1) The purpose of this Section is to protect adults who cannot physically or mentally protect themselves and who are harmed or threatened with harm through action or inaction by themselves or by the individuals responsible for their care or by other parties, by requiring mandatory reporting of suspected cases of abuse or neglect by any person having reasonable cause to believe that such a case exists. It is intended that, as a result of such reports, protective services shall be provided by the adult protection agency. Such services shall be available as needed without regard to income.

(2) It is the further intent of the legislature to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's need for services and to require that due process be followed in imposing such restrictions.

B. For the purposes of this Section, the following definitions shall apply:

* * *

(2) "Adult" is any person sixty years of age or older, any disabled person eighteen years of age or older, or an emancipated minor.

* * *

(5.1) "Disabled person" is a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for his own care or protection.

* * *

C. Any person, including but not limited to a health, mental health, and social service practitioner, having cause to believe that an adult's physical or mental health or welfare has been or may be further adversely affected by abuse, neglect, or exploitation shall report in accordance with Subsection D of this Section.

D. (1) Reports reflecting the reporter's belief that an adult has been abused or neglected shall be made to any adult protection agency or to any local or state law enforcement agency. These reports need not name the persons suspected of the alleged abuse or neglect.

(2) All reports shall contain the name and address of the adult, the name and address of the person responsible for the care of the adult, if available, and any other pertinent information.

(3) All reports received by a local or state law enforcement agency shall be referred to the appropriate adult protection agency.

(4) When the appropriate adult protection agency receives a report of sexual or physical abuse, whether directly or by referral, the agency shall notify the chief law enforcement agency of the parish in which the incident is alleged to have occurred of such report. Such notification shall be made prior to the end of the business day subsequent to the day on which the adult protection agency received the report. For the purposes of this Paragraph, the chief law enforcement agency of Orleans Parish shall be the New Orleans Police Department.

* * *

J. (1) Any person who knowingly and willfully fails to report as provided by Subsection C, shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(2) Any person who knowingly files a false report of abuse or neglect shall be fined not more than one thousand dollars, imprisoned with or without hard labor for not more than one year, or both.

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**Health Oversight**

**§ 164.512 Uses and disclosures for which an authorization, or opportunity to agree or object is not required.** [33]

* * *

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

(1) Permitted disclosures.[34] A covered entity may disclose[35] protected health information to a health oversight agency[36] 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;

(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards[37]; or

(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

(2) Exception to health oversight activities.[38] For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which

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[33] "[W]e have distinguished between laws that mandate uses or disclosures and laws that merely permit them. In the former case, jurisdictions have determined that public policy purposes cannot be achieved absent the use of certain protected health information, and we have chosen in general not to disturb their judgments. On the other hand, where jurisdictions have determined that certain protected health information is not necessary to achieve a public policy purpose, and only have permitted its use or disclosure, we do not believe that those judgments reflect an interest in use or disclosure strong enough to override the Congressional goal of protecting privacy rights." Comments, page 82667-8.

[34] "[T]he final rule does not establish any new administrative or judicial process prior to disclosure for health oversight, nor does it prohibit covered entities from making any disclosures for health oversight that are otherwise required by law. Like the NPRM, it does not create any new right of access to health records by oversight agencies and it cannot be used as authority to obtain records not otherwise legally available to the oversight agency." Preamble, page 82528.

[35] "The final rule does not require covered entities to establish business associate contracts with health oversight agencies when they disclose protected health information to these agencies for oversight purposes." Comments, page 82671.

"We note that covered entities are permitted to initiate disclosures that are permitted under this paragraph. For example, a covered entity could disclose protected health information in the course of reporting suspected health care fraud to a health oversight agency." Preamble, page 80529.

[36] See definition in §164.501, Rules page 82804

[37] "[H]ealth oversight disclosure rules apply generally in health care fraud investigations (subject to the exception described [in (d)(2), below])." Preamble, page 82529.

[38] " This section indicates that health oversight activities do not include an investigation or activity in which the individual is the subject of the investigation or activity ***and*** the investigation or activity does not arise out of and is not directly related to health care fraud. In this rule, … where the individual is the subject of the investigation and the investigation does not relate to health care fraud, … the rules regarding disclosure for law enforcement purposes (see § 164.512(f)) apply.

"Where the individual is not the subject of the activity or investigation, or where the investigation or activity relates to health care fraud, a covered entity may make a disclosure pursuant to § 164.512(d)(1), allowing uses and disclosures for health oversight activities. " (emphasis added) Comments, page 82673.

the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:[39]

(i) The receipt of health care;

(ii) A claim for public benefits related to health; or

(iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

(3) Joint activities or investigations. Notwithstanding paragraph (d)(2) of this section, if a health oversight activity or investigation is conducted in conjunction with[40] an oversight activity or investigation relating to a claim for public benefits not related to health[41], the joint activity or investigation is considered a health oversight activity for purposes of paragraph (d) of this section.

(4) Permitted uses. If a covered entity also is a health oversight agency[42], the covered entity may use protected health information for health oversight activities as permitted by paragraph (d) of this section.

**R.S. 40:2009.13 Health Care Provider Complaints; Procedure; Immunity**

* * *

B. Any person who has knowledge that a state law, minimum standard, rule, regulation, plan of correction promulgated by the department, or any federal certification rule pertaining to a health care provider has been violated, or who otherwise has knowledge that a consumer has not been receiving care and treatment to which he is entitled under state or federal laws, may submit a report regarding such matter to the department. The report may be submitted to the department in writing, by telephone, or by personal visit.

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***Stewart* on health Oversight Disclosures**

See page 9, above.

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[39] "[W]e intend for investigations regarding issues [(i)] through [(iii) below] to mean investigations of health care fraud." Preamble, page 82529.

[40] "[F]or example, when a state Medicaid agency is working with the Food Stamps program to investigate suspected fraud involving Medicaid and Food Stamps …." Preamble, page 82529.

[41] "[E].g., claims for Food Stamps" Preamble, page 82529.

[42] "For example, if a state insurance department is acting as a health plan in operating the state's Medicaid managed care program, the final rule allows the insurance department to use protected health information in all cases for which the plan can disclose the protected health information for health oversight purposes." Preamble, page 82528.

## Discovery

**§ 164.512 Uses and disclosures for which an authorization, or opportunity to agree or object is not required.** [43]

* * *

(e) Standard: disclosures for judicial and administrative proceedings.

(1) Permitted disclosures. A covered entity may disclose[44] protected health information[45] 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[46]; or

(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal[47], if:

(A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or

(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.[48]

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[43] "[W]e have distinguished between laws that mandate uses or disclosures and laws that merely permit them. In the former case, jurisdictions have determined that public policy purposes cannot be achieved absent the use of certain protected health information, and we have chosen in general not to disturb their judgments. On the other hand, where jurisdictions have determined that certain protected health information is not necessary to achieve a public policy purpose, and only have permitted its use or disclosure, we do not believe that those judgments reflect an interest in use or disclosure strong enough to override the Congressional goal of protecting privacy rights." Comments, page 82667-8.

[44] "[C]overed entities should redact any information about third parties before disclosing an individual's protected health information." Comments, page 82676.

[45] "Where a disclosure made pursuant to this paragraph is required by law, such as in the case of an order from a court or administrative tribunal, the minimum necessary requirements in § 164.514(d) do not apply to disclosures made under this paragraph. A covered entity making a disclosure under this paragraph, however, may of course disclose only that protected health information that is within the scope of the permitted disclosure…. . A covered entity is not required to second guess the scope or purpose of the request, or take action to resist the request because they believe that it is over broad. In complying with the request, however, the covered entity must make reasonable efforts not to disclose more information than is requested." Preamble, page 82530

[46] "When a request is made pursuant to an order from a court or administrative tribunal, a covered entity may disclose the information requested without additional process." Preamble, page 82529.

[47] "In these cases, the covered entity must disclose only the protected health information that is the minimum amount necessary to achieve the purpose for which the information is sought." Comments, page 82676

[48] "The Secretary believes notice is not necessary in these instances because a court or administrative tribunal is in the best position to evaluate the merits of the arguments of the party seeking disclosure and the party who seeks to block it before it issues the order and that imposing further procedural obstacles before a covered entity may honor that disclosure request is unnecessary." Comments, page 82676.

(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and

(C) The time for the individual to raise objections to the court or administrative tribunal[49] has elapsed[50], and:

(*1*) No objections were filed; or

(*2*) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or

(B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

(v) For purposes of paragraph (e)(1) of this section, a *qualified protective order* means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and

(B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of

[49] "By restricting disclosure of protected health information to only that information specified in a court or administrative order or released pursuant to other types of lawful process only if the individual had notice and an opportunity to object or if the information was subject to a protective order, individuals who are concerned about disclosure of information concerning third parties will have the opportunity to raise that issue prior to the request for disclosure being presented to the covered entity. We are reluctant to put the covered entity in the position of having to resolve disputes concerning the type of information that may be disclosed when that dispute should more appropriately be settled through the judicial or administrative procedure itself." Comments, pages 82676-7.

[50] "Unless required to do so by other law, the covered entity is not required to explain the procedures (if any) available for the individual to object to the disclosure. Under the rule, the individual exercises the right to object before the court or other body having jurisdiction over the proceeding, and not to the covered entity." Preamble, page 82530.

paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.[51]

(2) Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.[52]

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| **R.S. 13:3715.1. Medical or hospital records of a patient; subpoena duces tecum and court order to a health care provider; reimbursement for records produced** | | | |
|---|---|---|---|
| A. | As used in this Section, the following terms shall have the respective meanings ascribed thereto:<br>(1) Patient "records" shall not be deemed to include x-rays, electrocardiograms, and like graphic matter unless specifically referred to in the subpoena, summons, or court order.<br>(2) "Health care provider" shall mean a person, partnership, corporation, facility, or institution defined in R.S. 40:1299.41(A)(1). | Compatible<br><br>Note: HIPAA privacy broader, but definitions are inclusive, not exclusive, so not preempted. | |
| B. | The exclusive method by which medical, hospital, or other records relating to a person's medical treatment, history, or condition may be obtained or disclosed by a health care provider, shall be pursuant to and in accordance with the provisions of R.S. 40:1299.96 or Code of Evidence Article 510, or a lawful subpoena or court order obtained in the following manner: | Compatible<br><br>Note: Other statutes actually provide other methods. | |
| B(1) | A health care provider shall disclose records of a patient who is a party to litigation pursuant to a subpoena issued in that litigation, whether for purposes of deposition or for trial and whether issued in a civil, criminal, workers' compensation, or other proceeding, but only if: the health care provider has received an affidavit of the party or the party's attorney at whose request the subpoena has been issued that attests to the fact that such subpoena is for the records of a party to the litigation and that notice of the subpoena has been mailed by registered or certified mail to the patient whose records are sought, or, if represented, to his counsel of record, at least | More stringent | §164.512(e) |

[51] "We intend this to be a permissible activity for covered entities: we do not require covered entities to undertake these efforts in response to a subpoena, discovery request, or similar process (other than an order from a court or administrative tribunal). If a covered entity receives such a request without receiving the satisfactory assurances described above from the party requesting the information, the covered entity is free to object to the disclosure and is not required to undertake the reasonable efforts itself." Preamble, page 82530.

[52] "For example, the fact that protected health information is the subject of a matter before a court or tribunal does not prevent its disclosure under another provision of the rule, such as §§ 164.512(b), 164.512(d), or 164.512(f), even if a public agency's method of requesting the information is pursuant to an administrative proceeding." Preamble, page 82530.

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| | seven days prior to the issuance of the subpoena; and the subpoena is served on the health care provider at least seven days prior to the date on which the records are to be disclosed, and the health care provider has not received a copy of a petition or motion indicating that the patient has taken legal action to restrain the release of the records…. | | |
| | … If the requesting party is the patient or, if represented, the attorney for the patient, the affidavit shall state that the patient authorizes the release of the records pursuant to the subpoena…. | Limited.<br><br>Technically, the affidavit should state that the attorney has given notice to his client. | §164.512(e)(1) requires notice or attempted notice to the patient. |
| | … No such subpoena shall be issued by any clerk unless the required affidavit is included with the request. | n/a | |
| (B)(2) | Any attorney requesting medical records of a patient, who is not a party to the litigation in which the records are being sought may obtain the records by written authorization of the patient whose records are being sought or if no such authorization is given, by court order, as provided in Paragraph (5) hereof. | More restrictive. | §164.512(e)(1) |
| (B)(3) | Any attorney requesting medical records of a patient who is deceased may obtain the records by subpoena, as provided in Paragraph (1) hereof, by written authorization of the person authorized under Louisiana Civil Code Article 2315.1 or the executor or administrator of the deceased's estate, or by court order, as provided in Paragraph (5) hereof. | More restrictive and limited<br><br>More restrictive in that HIPAA privacy authorizes less notice.<br><br>Limited in that CC Art. 2315.1 heirs are not always "personal representatives". | §164.512(e) |
| (B)(4) | Any subpoena for medical records issued by the office of workers' compensation administration in the Department of Labor, or by a hearing officer or agent employed by such office, shall for all purposes be considered a subpoena within the meaning of this Section. | N/A | |
| (B)(5) | A court shall issue an order for the production and disclosure of a patient's records, regardless of whether the patient is a party to the litigation, only: after a contradictory hearing with the patient, or, if represented, with his counsel of record, or, if deceased, with those persons identified in Paragraph (3) hereof, and after a finding by the court that the release of the requested information is proper; or with consent of the patient. | More restrictive and limited<br><br>More restrictive in that HIPAA privacy authorizes less notice.<br><br>Limited in that CC Art. 2315.1 heirs are not always "personal representatives". | §164.512(e) |
| C. | No health care provider, employee, or agent thereof shall be held civilly or criminally liable for disclosure of the records of a patient pursuant to the procedure set forth in this Section, R.S. 40:1299.96, or Code of Evidence Article 510, provided that the health care provider has not received a copy of the petition or motion indicating that legal action has been taken | N/A | |

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| | to restrain the release of the records. | | |
| D. | Unless the subpoena or court order otherwise specifies, it shall be sufficient compliance therewith if the health care provider delivers by registered or certified mail, at least forty-eight hours prior to the date upon which production is due, or delivers by hand on the date upon which production is due a true and correct copy of all records described in such subpoena…. | N/A | |
| | … However, no subpoena or court order shall require the production of original, nonreproducible materials and records unless accompanied by a court order or stipulation of the parties and the health care provider which specifies the person who will be responsible for the care of the items to be produced, the date and manner of the return to the provider of the items to be produced, and that the items to be produced are not to be destroyed or subject to destructive testing…. | N/A | |
| | … Any subpoena duces tecum not timely served shall be quashed by the trial court without the necessity of an appearance by the hospital, health care facility, or medical physician. | N/A | |
| E. | The records shall be accompanied by the certificate of the health care provider or other qualified witness, stating in substance each of the following:<br>(1) That the copy is a true copy of all records described in the subpoena.<br>(2) That the records were prepared by the health care provider in the ordinary course of the business of the health care provider at or near the time of the act, condition, or event. | N/A | |
| F. | If the health care provider has none of the records described, or only part thereof, the health care provider shall so state in the certificate, and deliver the certificate and such records as are available. | N/A | |
| G. | The health care provider shall be reimbursed by the person causing the issuance of the subpoena, summons, or court order in accordance with the provisions of R.S. 40:1299.96. | N/A<br><br>Note: §164.524(c)(4) limits charges to patients for their records, but doesn't apply to others or to charges for certification. | §164.524(c)(4) |
| H. | Notwithstanding any other provision of law to the contrary, no health care provider, as defined in R.S. 40:1299.96, shall be required to grant access to or copying of photographs, or both, of any minor or part of a minor's body who is alleged to be the victim of child sexual abuse unless a court of competent jurisdiction, after a contradictory hearing at which the health care provider may but need not be present, orders the health care provider to grant access to or copying of said photographs to the moving party's counsel of record or experts qualified in the medical diagnosis of child sexual abuse, or to both. The court's order granting the access to or copying of said photographs shall be limited to the movant's counsel of record | More restrictive and limited<br><br>More restrictive for non-patient requests.<br><br>Preempted for patient requests. | §164.512(e) |

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| | or the experts qualified in the medical diagnosis of child sexual abuse, or both; shall be limited solely to use of said photographs for the purposes of trial preparation; shall prohibit further copying, reproduction, or dissemination of said photographs; and shall prohibit counsel of record or the experts qualified in the medical diagnosis of child sexual abuse from allowing any other person access to said photographs without court order and for good cause shown. | | |
| I. | A coroner, deputy coroner, or other assistant, while acting in his official capacity relating to a physical or mental investigation and examination or an investigation into the cause and manner of a death, is exempt from complying with the provisions of this Section. | Compatible. | §164.512(g) |
| J. | The Louisiana State Board of Medical Examiners, Louisiana State Board of Dentistry, Louisiana State Board of Psychologists, Louisiana State Board of Nursing, Louisiana Board of Pharmacy, Louisiana State Board of Social Work Examiners, and the Louisiana State Board of Chiropractic Examiners, while acting in an official capacity relating to an investigation of an individual over whom such board has regulatory authority shall be exempt from complying with the notice provisions of this Section when the subpoena clearly states that no notice or affidavit is required. Notwithstanding any privilege of confidentiality recognized by law, no health care provider or health care institution with which such health care provider is affiliated shall, acting under any such privilege, fail or refuse to respond to a lawfully issued subpoena of such board for any medical information, testimony, records, data, reports or other documents, tangible items, or information relative to any patient treated by such individual under investigation; however, the identity of any patient identified in or by such records or information shall be maintained in confidence by such board and shall be deemed a privilege of confidentiality existing in favor of any such patient. For the purpose of maintaining such confidentiality of patient identity, such board shall cause any such medical records or the transcript of any such testimony to be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates. | Compatible | §164.512(d) |
| | K. Any attorney who causes the issuance of a subpoena or court order for medical, hospital, or other records relating to a person's medical treatment, history, or condition and who intentionally fails to provide notice to the patient or to the patient's counsel of record in accordance with the requirements of this Section shall be subject to sanction by the court. | N/A | |
| | L. No provision of this Section shall preclude a patient from personally receiving a copy or synopsis of his medical records as provided by law. | Compatible | §164.524 |

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***Stewart* on preemption of Louisiana's subpoena law**

**See page 6, above.**

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**C.C.P. Art. 1437. Deposition upon oral examination; when deposition may be taken**

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of fifteen days after service of citation upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery, or if special notice is given as provided in Article 1439. The attendance of witnesses may be compelled by the use of subpoena as for witnesses in trials. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes

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**C.C.P. Art. 1460. Option to produce business records**

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

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**C.E. Art. 510. Health care provider-patient privilege**

(F) Medical malpractice.

(1) There shall be no health care provider-patient privilege in medical malpractice claims as defined in R.S. 40:1299.41 et seq. as to information directly and specifically related to the factual issues pertaining to the

liability of a health care provider who is a named party in a pending lawsuit or medical review panel proceeding.

(2) In medical malpractice claims information about a patient's current treatment or physical condition may only be disclosed pursuant to testimony at trial, pursuant to one of the discovery methods authorized by Code of Civil Procedure Article 1421 et seq., pursuant to R.S. 40:1299.96 or R.S. 13:3715.1.

## Law Enforcement

### § 164.512 Uses and disclosures for which an authorization, or opportunity to agree or object is not required. [53]

* * *

(f) Standard: disclosures for law enforcement purposes.[54] A covered entity may disclose protected health information for a law enforcement purpose[55] to a law enforcement official[56] if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1)[57] Permitted disclosures: pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:

(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii)[58] or (c)(1)(i)[59] of this section; or

(ii) In compliance with and as limited by the relevant requirements of:

(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;

(B) A grand jury subpoena; or

(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 reasonably be used.

(2) Permitted disclosures: limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose

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[53] "[W]e have distinguished between laws that mandate uses or disclosures and laws that merely permit them. In the former case, jurisdictions have determined that public policy purposes cannot be achieved absent the use of certain protected health information, and we have chosen in general not to disturb their judgments. On the other hand, where jurisdictions have determined that certain protected health information is not necessary to achieve a public policy purpose, and only have permitted its use or disclosure, we do not believe that those judgments reflect an interest in use or disclosure strong enough to override the Congressional goal of protecting privacy rights." Comments, page 82667-8.

[54] "[T]his section is not intended to limit a covered entity from disclosing protected health information to law enforcement officials where other sections of the rule permit such disclosure …." Preamble, page 82533.

[55] "We eliminate proposed § 164.510(f)(5)(i) regarding health care fraud from the law enforcement section, because all disclosures that would have been allowed under that provision are allowed under § 164.512(d) of the final rule (health oversight)." Preamble, page 82532.

[56] See definition of "law enforcement official" in §164.501, Rules, page 82804.

[57] The provisions §164.512(c) supersede the provisions of this paragraph "to the extent that those provisions address the subject matter" §164.512(c) ("Victims of Abuse, Neglect or Domestic Violence"). Preamble, page 82527.

[58] Reports of child abuse or neglect. Rules, page 82813.

[59] Required reports of abuse, neglect or domestic violence, other than child abuse. Rules, page 82814.

protected health information in response[60] to a law enforcement official's request[61] for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information:

(A) Name and address;

(B) Date and place of birth;

(C) Social security number;

(D) ABO blood type and rh factor;

(E) Type of injury;

(F) Date and time of treatment;

(G) Date and time of death, if applicable; and

(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue[62].

(3) Permitted disclosure: victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response[63] to a law enforcement official's request for such information about an individual who is or is suspected to be a victim[64] of a crime, other than disclosures that are subject to paragraph (b)[65] or (c)[66] of this section, if:

(ii)[67] The individual agrees[68] to the disclosure; or

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[60] "We clarify our intent not to allow covered entities to initiate disclosures of limited identifying information to law enforcement in the absence of a law enforcement request." Preamble, page 82531.

[61] "We allow a " law enforcement official's request" to be made orally or in writing, and we intend for it to include requests by a person acting on behalf of law enforcement, for example, requests by a media organization making a television or radio announcement seeking the public's assistance in identifying a suspect. Such a request also may include a "Wanted" poster and similar postings." Preamble, page 82531.

[62] "… other than blood (e.g., saliva)." Preamble, page 82531.

[63] "This provision does not allow covered entities to initiate disclosures of protected health information to law enforcement; the disclosures must be in response to a request from law enforcement." Preamble, page 82532.

[64] "In some cases, a victim may also be a fugitive or suspect. For example, an individual may receive a gunshot wound during a robbery and seek treatment in a hospital emergency room. In such cases, when law enforcement officials are requesting protected health information because the individual is a suspect (and thus the information may be used against the individual), covered entities may disclose the protected health information pursuant to § 164.512(f)(2) regarding suspects and not pursuant to § 164.512(f)(3) regarding victims. Thus, in these situations, covered entities may disclose only the limited identifying information listed in § 164.512(f)(2) - not all of the protected health information that may be disclosed under § 164.512(f)(3)." Preamble, page 82532.

[65] "Uses and disclosures for public health activities". Rules, page 82813.

[66] "Disclosures about victims of abuse, neglect or domestic violence". Rules page 82814.

[67] Mis-numbering in the original.

[68] "The required agreement may be obtained orally, and does not need to meet the requirements of §164.508 of this rule (regarding authorizations)." Preamble, page 82532.

(iii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

(C) The disclosure is in the best interests of the individual[69] as determined by the covered entity, in the exercise of professional judgment.

(4) <u>Permitted disclosure: decedents.</u> A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) <u>Permitted disclosure: crime on premises.</u> A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith[70] constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

(6) <u>Permitted disclosure: reporting crime in emergencies.</u>[71]

(i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

(A) The commission and nature of a crime[72];

(B) The location of such crime or of the victim(s) of such crime; and

(C) The identity, description, and location of the perpetrator of such crime.

(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.

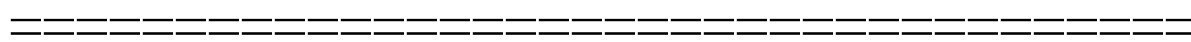
* * *

[69] "We intend that assessing the individual's best interests includes taking into account any further risk of harm to the individual." Preamble, page 82532.

[70] "[I]f the covered entity disclosed protected health information in good faith but was wrong in its belief that the information was evidence of a violation of law, the covered entity would not be subject to sanction under this regulation." Preamble, page 82533.

[71] "This … provision recognizes the special role of emergency medical technicians and other providers who respond to medical emergencies. In emergencies, emergency medical personnel often arrive on the scene before or at the same time as police officers, firefighters, and other emergency response personnel. In these cases, providers may be in the best position, and sometimes be the only ones in the position, to alert law enforcement about criminal activity." Preamble, page 82533.

[72] "A disclosure is not permitted under this section if health care provider believes that the medical emergency is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care. In such cases, disclosures to law enforcement would be governed by paragraph (c) of this section." Preamble, page 82533.



**LA Code of Evidence Art. 510. Health Care Provider-Patient Privilege**

* * *

C. (1) General rule of privilege in criminal proceedings. In a criminal proceeding, a patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself, his representative, and his physician or psychotherapist, and their representatives.

(2) Exceptions. There is no privilege under this Article in a criminal case as to a communication:

(a) When the communication is relevant to an issue of the health condition of the accused in any proceeding in which the accused relies upon the condition as an element of his defense.

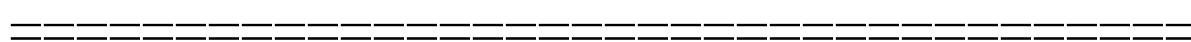
(b) When the communication was intended to assist the patient or another person to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud.

(c) When the communication was made in the course of an examination ordered by the court in a criminal case to determine the health condition of a patient, provided that a copy of the order was served on the patient prior to the communication.

(d) When the communication is a record of the results of a test for blood alcohol level or drugs taken from a patient who is under arrest, or who was subsequently arrested for an offense related to the test.

(e) When the communication is in the form of a tangible object, including a bullet, that is removed from the body of a patient and which was in the body as a result of the crime charged.

(f) When the communication is relevant to an investigation of or prosecution for child abuse, elder abuse, or the abuse of disabled or incompetent persons.



**R.S. 14:403.4. Burn injuries and wounds; reports; registry; immunity; penalties**

* * *

B. In every case of a burn injury or wound in which the victim sustains second or third degree burns to five percent or more of the body or any burns to the upper respiratory tract or laryngeal edema due to the inhalation of super-heated air, and every case of a burn injury or wound which is likely to or may result in death shall be reported to the office of state fire marshal, code enforcement and building safety, hereinafter sometimes referred to as the "office". That office shall then immediately notify the appropriate local or state investigatory agency or law enforcement agency of the receipt of such report and its contents.

C. (1) An oral report shall be made within twenty-four hours of the examination or treatment of the victim. The report shall be made by the physician attending or treating the case, or by the manager, superintendent, director, or other person in charge whenever such case is treated in a hospital, burn center, sanitarium, or other medical facility. The report may be recorded electronically or in any other suitable manner, by the office of state fire marshal, code enforcement and building safety.

(2) The oral report shall contain the following information if known:

(a) Victim's name, address, and date of birth.

(b) Address where the burn injury occurred.

(c) Date and time of the burn injury.

(d) Degree of burns and percent of body burned.

(e) Area of body injured.

(f) Injury severity.

(g) Apparent cause of burn injury.

(h) Name and address of reporting facility.

(i) Name of the attending physician.

* * *