HIPAA and Release of Information to Law Enforcement Professionals

HIPAA (the Health Insurance Portability and Accountability Act of 1996) generally requires health care entities such as hospitals, practitioners, and health care programs and clearinghouses to maintain confidentiality of a patient's protected health information (PHI). This includes not disclosing information about or records concerning a patient's past, present, or future medical or mental health condition, history, diagnosis, or treatment. It also covers payments for care. Covered health information includes any record created or received by a covered entity whether electronic, oral, or written. If information is released, the patient must be notified. Violations are subject to criminal and civil actions. 45 C.F.R. §164.501.

The following information is drawn from http://healthprivacy.answers.hhs.gov/cgi-bin/hipaa.cfg/php/enduser/std_adp.php?p_faqid=505, retrieved August 24, 2005.

HIPAA permits the disclosure of PHI to law enforcement without the patient's written authorization in various situations. These include:

1) In compliance with a court order, judicially authorized warrant, a subpoena or summons issued by a judicial officer, or a grand jury subpoena. 45 C.F.R. §164.512(f)(1)(ii)(A)-(B)
2) In response to an administrative request, including a written request from a law enforcement official. The request must include a written statement that ***the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used.*** 45 C.F.R. §164.512(f)(1)(ii)(C)
3) In response to a request for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person. The information that can be provided without a warrant or court order is limited. See 45 C.F.R. §164.512(f)(2).

   The same limited information can be reported to law enforcement by a health care provider if it concerns a perpetrator of a crime and the reporter is the victim who is an employee of that entity; or to identify or apprehend a person who has admitted participating in a violent act that the entity believes may have caused serious physical harm and the admission was not made in the course of therapy, counseling, or treatment related to the propensity to commit this kind of violent act.
4) With victim/patient consent
5) If the victim, because of the emergency or incapacity, the victim/patient cannot agree, the provider can provide PHI to law enforcement after assurances that the information will not be used against the victim/patient, is needed to determine if a crime has been committed, delay to await consent would materially and adversely affect the investigation and the health care

provider believes that compliance is in the best interest of the individual about whose PHI is requested. 45 C.F.R. §164.512(f)(3)

6) Child abuse reports may be made to any law enforcement official authorized by law to receive such reports (this includes state or local law enforcement officials) 45 C.F.R. §164.512(b)(i)(ii)
7) Adult abuse (including elder abuse) and domestic violence may be made to any law enforcement official authorized by law to receive such reports if the individual agrees; the report is required by law; or when expressly authorized by law and the professional believes that reporting is necessary to prevent serious harm to the individual or others.
   45 C.F.R. §164.512(c)(1)(iii)(B)
8) When disclosure is required by law, such as gunshot wounds, injuries caused by violent attacks. 45 C.F.R. §164.512(f)(1)(i)
9) To notify law enforcement of a suspicious death (can also share information with a medical examiner or coroner). 45 C.F.R. §164.512(f)(4)
10) When responding to an off-site emergency when necessary to alert law enforcement about criminal conduct. 45 C.F.R. §164.512(f)(6)
11) When consistent with applicable law and ethical standards, such as to prevent or lessen a serious and imminent threat to the health or safety of the public or an individual or to identify or apprehend someone who has escaped from lawful custody.
12) Requests from correctional or custodial facilities for information necessary to provide health care to an inmate or to meet health, safety, and good order needs of other inmates and staff.

For more information, see the web site for the United States Department of Health and Human Services, Office of Civil Rights, www.hhs.gov. See also www.healthprivacy.org.

For specific effect on domestic violence matters, see Hudson, Rodney (June 4, 2003) "Summary of New Federal Medical Privacy Protections for Victims of Domestic Violence," retrieved from www.endabuse.org; and "Disclosures to Law Enforcement" www.endabuse.org/programs/healthcare/files/hipaa/lawenforcement.pdf retrieved August 24, 2005.