Privacy & Confidentiality of Medical Information and Records

A Guide and Workshop Toolkit
To Help You Understand and Decide
If, When and How To Disclose Protected and Confidential Health, Mental Health and Substance Abuse Information

HIPAA Privacy Rule
Iowa Code Chapter 228
42 CFR Part 2

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Privacy & Confidentiality of Medical Information and Records

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Introduction

The Johnson County System of Care Group is a network of individuals and organizations that treat and provide services and supports to individuals who have multiple, complex medical, mental health and substance abuse disorders. Our clients are often poor decision-makers, overwhelmed in their lives, and are one crisis, one wait list, or one moment away from an acute episode, homelessness, arrest, institutionalization or worse.

Another hurdle our clients face is the need to utilize multiple providers in order to have their needs met. They have to see different people at different places for therapy, counseling, routine check-ups, peer support, rehabilitation and recovery, and help with parenting, food, shelter and housing, funding, and public and private programs and benefits. Sometimes it is the referral network itself that causes harm. People can get lost between programs and referrals, placed on wait lists and left to fend for themselves. In other instances, providers gather an incomplete picture of clients and the root cause of their problems, which can also lead to poor outcomes.

Our overarching goal is to move towards a “system of care” model in which services are coordinated across the many providers and agencies that our clients and other individuals encounter. The ability to efficiently exchange health information while maintaining appropriate patient privacy protections is a key element of improving and ensuring client safety and quality of care. From experience, we have learned that misunderstandings and myths about federal and state privacy laws create a gap in services that might result in lethal consequences. By developing a more effective and efficient system of information sharing—bolstered by training and this practical guide about privacy laws—we hope to fill the gap, foster collaboration, and create a comprehensive, integrated system of care.

The University of Iowa Law and Policy in Action Project:

We recruited the University of Iowa Clinical Law Program to help us answer, understand, and unravel the three laws of greatest concern to our members: the Health Insurance Portability and Accountability Act (HIPAA), Iowa Code Chapter 228 about mental health and psychological information and records, and 42 CFR Part 2, the federal regulations that govern alcohol and drug abuse records. Our members were also interested in learning more about the privacy and security requirements of the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009.

The Clinical Law Program’s mission was to answer recurring questions that baffle us or frustrate our attempts to communicate with each other and provide the best possible treatment for clients. Student Legal Interns in the Law and Policy In Action Project supervised by Professor Len Sandler created this Guide. They conducted a literature search
and extensive legal research, read numerous reports on healthcare privacy laws in the
digital age, compared and evaluated policies and practices, attended our meetings,
interviewed experts, and developed outlines and matrices of each law and regulation. They
have pilot tested the materials and conducted a workshop with Dr. Michael Flaum at the
University of Iowa Hospital & Clinics’ (UIHC) Department of Psychiatry Grand Rounds.

The basic inquiry was whether federal and state laws pose barriers to our sharing
information that could identify a specific client. From a practical standpoint, the number one
question is when can a provider ask for or obtain information from another provider for
treatment, payment or administrative purposes without first obtaining the client’s written
informed consent? The answers to these and other questions appear in this Guide and
Toolkit in various sections and formats.

Disclaimer

These materials are intended for educational use and training. The materials, which apply
Iowa and federal law, contain a general summary of the law and are not meant to fully
explain any topic or furnish legal advice. The documents use terms of art as well as
common language for ease of use. We use the term “client” to refer to individuals you might
consider a patient, consumer or customer to appeal to the widest possible audience.

There is no substitute for reviewing the laws, regulations and guidance issued for HIPAA,
Iowa Code Chapter 228, and 42 CFR Part 2. The content of the Guide and Toolkit was
correct when it was written; however, the law often changes, so do not assume that what
you read is still correct when you read it.

There are many other health care and privacy laws and situations that are not covered or
mentioned in the Guide and Toolkit. We do not discuss practices or standards required by
specific institutions, accreditation organizations, licensing boards or other entities. Our
primary audience is comprised of providers involved in diagnosis, treatment, referral and
related activities. As a result, the scenarios are not all-encompassing and do not address
data collectors, research, peer review, insurance claims, reporting or internal dissemination
of information.

Acknowledgements:

The Johnson County System of Care Group conceived of this project. Its members include:

University of Iowa Hospitals & Clinics               Mercy Hospital Iowa City
Johnson County Mental Health & Disability Services  MECCA Services
Johnson County Jail Alternatives                    Crisis Center of Johnson County
Shelter House                                        Chatham Oaks
Community Mental Health Center of Mid-Eastern IA     Veteran’s Administration
University of Iowa Public Safety                     Builders of Hope
6th Judicial District Department of Correctional Services Successful Living
Horizons

JCSOCG members who went beyond the call of duty to assist us and direct our efforts
include Dr. Michael Flaum, Jessica Peckover, Stephen Trefz, Donna Valiga, Jan Shaw, Ron
Berg, Keri Neblett, Kristen Artley, Rita Offutt, Alton Poole, Phoebe Trepp and Lowell Yoder.
Dr. Flaum was a vital presence and key contributor, insisting on clarity, accuracy, and
readability. He was instrumental in our bridging the gap between the medical and legal
cultures; our apologies if we were unable to eliminate uncertainty. We also gratefully acknowledge the assistance of Brian A. White, Senior Assistant Director & Legal Counsel, UIHC; Jeanine Freeman, JD, Deputy Executive Vice President, Legal Affairs and Policy Development, Iowa Medical Society; Jo Ellen Whitney, senior shareholder of the Davis Brown Law Firm, Des Moines; William R. Ganschow, Compliance Specialist, UIHC; Becky Yoder, Clinical Law Program administrator; and countless other people and organizations who so generously shared their expertise, insights, questions and suggestions.

Our special thanks go to Mishelle Eckland, Clinical Law Program Secretary, who worked harder than anyone and with great patience and skill, to help us prepare and revise these materials.

Basic Principles Governing Protection of Clients’ Health Information

The David L. Bazelon Center is the premier mental health legal rights, advocacy and education organization in the United States. Its fact sheet, “Health-Information Sharing for Collaboration among Agencies,” at www.bazelon.org, which incorporates HIPAA basics, recommends that you craft and implement policies and practices according to the following principles:

- Health care information in the record belongs to the person.
- Consent should be sought, in writing, to share personal health information.
- Individuals should be allowed to revoke their consent at any time.
- The health record that is shared should contain the minimum amount of information needed for the purpose.
- Information should be shared only with those who need to know, and only what they need to know should be shared.
- Privacy policies should be explained to the individual in language and form that is understandable to the person.
- Policies on sharing information with other parties should be clearly explained, including why the information will be shared.
- Individuals should be allowed to see their personal health information if they choose and should be allowed to correct the record.

Creating a Welcoming Environment:

The most effective treatment plans and recovery programs focus and build upon a client’s strengths, skills, attitudes, goals and support systems. These programs foster trust and respect by creating an environment that is inviting, safe, and authentic. Doing so often may necessitate a change in the prevailing culture or a renewed organizational commitment to translate and integrate recommended practices into every facet of day to day operations.

One technique is to greet, acknowledge and welcome clients—at each and every interaction and contact—whether they bring their “A Game,” are in relapse, or are unable or unwilling to comply with a treatment regimen. A follow-up approach is to share and validate the
experiences, challenges, skills and strengths of clients. This client-centered model reinforces respect for individuality, dignity and autonomy. It also reminds clients that they are more resilient and capable than they might believe. More importantly, perhaps, the model motivates clients to evaluate and make choices about their mental health and other critical aspects of their lives.

“We don’t want to lose you,” should be a core value and theme conveyed to clients. Another is to emphasize that staff are allies and partners, not caretakers.

Alameda County Behavioral Health Care Services publishes a toolkit that lists and describes policies, strategies and actions to take to make clients feel welcome. It covers nearly every dimension of practice, from the physical environment, to preparation of brochures and fact sheets, to staff training and client consent. The toolkit, which is available online at http://www.acbhcs.org/providers/QI/docs/news/Welcoming_Toolkit.pdf, suggests implementing these standards and practices to establish and improve relationships with clients:

Staff communicate to clients that they “are here to walk with you as you learn, listen to you, support you in your choices, support you in learning how to manage your challenges, and support you in connecting with people who are traveling the same path.”

Staff is skillful in encouraging clients/consumers and family members to take on new challenges; and offer support when trying new things that seem out of their reach.

Staff asks, “You have developed skills that have helped you get to where you are today – what are they?”

Staff makes space for the client to explain his or her gifts and strengths and figure out how to use them to work through challenges. “I am part of the solution.”

Staff welcomes the client no matter what shape the client is in when s/he shows up.

Individuals and families with co-occurring issues are welcomed for care. “I wasn’t turned away if I was using.”

Putting out the welcome mat in a sincere, genuine fashion empowers clients and sets the tenor for the therapeutic relationship and provision of care. It is also a pre-requisite to talking with clients about the need to share information with other health care professionals, family members, service organizations and other support systems. These issues are discussed in more detail in the section about Client Consent and Model Consent Form.

A Word about Client Consent and Our Model Consent Form
Discussing and obtaining written informed consent to release or obtain confidential information is a pivotal event. The end result could dictate or narrow the scope and course of treatment, referrals, service provision and level of integrated care. As noted earlier, the efficient exchange of client information among providers who treat clients with mental illness, alcohol and drug abuse disorders, and other conditions is a laudable goal. The intention is to coordinate and optimize care and communication; however, our clients are often stigmatized or targets of workplace and other forms of discrimination. Fearful of accidental or inappropriate disclosures, they might resist or refuse to give consent, withhold information, or stop seeking treatment altogether.
Establishing a welcoming environment paves the way for holding the conversation in a safe, secure and private setting. Ideally, the client should receive privacy policies and forms in advance that are easy to read and understand. They should be given sufficient time and opportunities to ask questions, understand options, and make a decision. Providers should underscore the importance of sharing information—“we don’t want to lose you”—the safeguards in place, the ability to revoke or limit disclosure in the future, and provide accurate information.

Some commentators suggest that you get rid of the clipboard, don’t bombard the client with paperwork, and explore consent in the context of the treatment or wellness plan, goals, successes, strengths and challenges. You might want to take advantage of the moment by suggesting that the client consider completing medical and financial powers of attorneys, authorizations to release information, living wills and other advance directives authorizing someone else to make decisions in the event of incapacity.

The Model Consent and Authorization form is just that, a model for you to review and decide if you can adopt or adapt any provision to suit your organization and its clients, partners, business associates, contract agencies and other entities. The multiparty form is a single page, if only to demonstrate that releases don’t have to be lengthy.

While preparing this guide we learned once again that one size does not fit all, and that each organization has its own rules and policies. Follow yours to the letter, no matter what you read in this Guide and Workshop Toolkit. For example, the Iowa Targeted Case Management program currently forbids the use of multiparty releases, despite the obvious efficiencies and the benefits to clients involved. Other providers do not mention or allow clients to authorize redisclosure of information and records. The form lists the entities that comprise the Johnson County System of Care Group listed by provider type; some people prefer to list entities alphabetically, the choice is yours to make. Each key law details the required language, form and content of consent forms. The Q&A sheets provide a summary of the mandated elements, which are incorporated into the model form.

Taking a medical history and gathering information about providers, family, insurers, housing, public and private benefits, and other needs, services and supports is a continuing process that begins at intake. Conducted properly, the conversation that occurs when the form is being prepared or completed should pay dividends for both the provider and the client. Reciprocity is essential. First, it encourages clients to identify and validate critical information to be incorporated into the consent form, such as 1) health care, mental health, substance abuse, counseling and other providers, 2) family members and other individuals who are caregivers, advocates, knowledgeable about their circumstances or important to their healing and recovery, 3) employment, benefits, income and services they receive from public or private programs and, 4) future needs and goals.

Second, the conversation allows the provider to 1) explain the organization’s privacy and record-keeping policies and procedures, 2) emphasize the value of receiving holistic care in an integrated system, 3) help the client predict possible current and future needs and, 4) identify the agencies and individuals in their system of care group and discuss the role they might play to secure or provide income, benefits, crisis intervention, therapy, counseling, treatment, food or shelter. Technology-savvy providers might consider creating an application that imports information derived from interviews into a consent form. Software programs and touch screen technology could provide a practical and relatively inexpensive platform. We believe that clients are more likely to sign a form developed with information they furnished than a preprinted form with a lengthy list of providers with which they are unfamiliar. That said, it is the conversation with the client that is of paramount importance, not the form itself.
MODEL: CONSENT AND AUTHORIZATION TO RELEASE, OBTAIN AND REDISCLOSE CONFIDENTIAL AND PROTECTED HEALTH INFORMATION

Name: ________________________________ Date of Birth: ___/___/____ SSN: _______________

I, _____________________________________, of ________________________, hereby authorize the __________________________, to release or obtain information and records about me (check all that apply):

TYPES OF CONFIDENTIAL INFORMATION
☐ Name and other identifying information
☐ Diagnoses, histories, treatments, assessments, hospitalization, and other health care information
☐ Medications ☐ Laboratory results
☐ Test results ☐ Consultation reports
☐ Discharge Summaries
☐ Other: ________________________________
☐ All health-related information without exception

INCLUDING CONFIDENTIAL INFORMATION AND RECORDS PROTECTED BY STATE AND FEDERAL LAWS
☐ Psychological, Psychiatric and Mental Health
☐ Alcohol and Substance Abuse
☐ HIV/AIDS-Related Diagnosis, Treatment, Tests
☐ Genetic Testing
☐ Psychotherapy Notes

FOR THE FOLLOWING PURPOSES:
☐ Treatment ☐ Referral ☐ Benefits Eligibility
☐ Other: ________________________________

I AUTHORIZE REDISCLOSURES OF THIS INFORMATION:
☐ Yes ☐ No ☐ As Follows: _________________

ACKNOWLEDGMENT OF PRIVACY RIGHTS AND PROTECTIONS

I am giving my consent voluntarily. I know that I do not have to complete this form in order to receive treatment. I also have the right to revoke or cancel this authorization in writing by contacting _________________ at _________________. Cancellation will take effect when the program receives my written revocation, except to the extent action has already been taken based on my authorization. I may revoke consent orally for federally assisted drug and alcohol abuse programs. I understand that I may inspect or copy the information to be used or disclosed, unless access is restricted by law. Information regarding my health care, including payment for health care, is protected by federal laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the Confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R. Part 2). Persons and programs are not allowed to re-disclose alcohol and drug abuse treatment information without my written consent unless permitted to do so by law. Iowa Code Chapter 228 and other laws prohibit re-disclosure of mental health, alcohol and drug abuse treatment, HIV/AIDS and other confidential information without my written consent except in certain circumstances. I understand that not every organization that may receive a record is required to follow the rules governing use and disclosure of confidential information; in that circumstance, the information will no longer be protected by law and may be re-disclosed without my consent. This authorization will expire one (1) year from the date it is signed, unless I revoke it in writing.

_________________________________________________      ______________
Signature of Individual Consenting               Dated

_________________________________________________   _______________
Signature and Title of Individual Authorized to Sign in Lieu of Individual Dated
Sample Protocol for Handling Requests for Information

Most providers and organizations have developed a privacy policy, a notice of privacy policy to give to clients, and protocols and procedures for handling and resolving requests for client information from internal and external sources. We recommend that you ask colleagues and other professionals for examples of these documents and tailor policies to your needs and operations. This sample protocol is one example you can use when designing or updating your policy and conducting orientation and continuing education sessions for staff, including volunteers.

When someone visits, calls, emails, faxes, etc. asking for information:

1. Take information about the individual or entity making the request and the person who is the subject of the request. Verify the identity of the individual asking for information or records. Do not acknowledge the individual is a client of yours.

2. Refer request to appropriate personnel within your organization.

3. Ask for and check to see if there is valid written consent or authorization signed by the client that a) is current, b) has not expired, and c) authorizes disclosure of the particular type of information to the individual requesting it.

4. Release only information necessary for the intended purpose or to address the specific situation in accord with the scope and limitations of the consent or authorization.

5. If needed, try to identify other individuals who are authorized by law to provide consent or authorization. Is there a parent, health care agent, court-appointed guardian, family member or other individual available and willing to act?

6. If you are uncertain about what to do, refer to your policy manual and privacy protocols or seek advice from supervisors, lawyers and others within your organization.

7. If you do not have written consent or authorization refer to the Toolkit and ask and answer these questions:

   a. What type of information am I being asked to disclose or share?
   
   Personal identifying information: name, SSN, etc.
   The fact that the person is a patient or client of yours
   Physical health or condition
   Mental, emotional or psychological health or records
   Alcohol, drugs, substance abuse treatment

   b. Why is the information being requested?
   
   Treatment, payment, health care operations
   To respond to criminal or violent behaviors
   To respond to requests from family, friends and service organizations
   To address medical or other emergencies
   To respond to judicial orders or warrants, etc.

   c. Which key laws cover the type of information being requested?
   
   HIPAA
   Chapter 228 mental & emotional health and psychological records
   42 CFR Part 2 Alcohol or Drug Abuse Records
Other subject specific laws

d. Which key laws must I comply with?

HIPAA
Chapter 228 mental & emotional health and psychological records
42 CFR Part 2 Alcohol and Drug Abuse Records

Other subject specific laws

e. Who is asking for the information?

Medical Personnel
Mental Health Professional or Facility
Substance Abuse Program
Law enforcement
Family member
Lawyer, Judge or Court Officer
Emergency Responder
Other individual or organization

f. Which law or laws apply to this specific situation?

g. Can you disclose?

h. Must you disclose?

i. Are you prohibited from disclosing?

j. Should you disclose knowing or believing that doing so violates a law, regulation, ethical rule, professional obligation, accreditation or other standard?

k. How much information must you or could you release to fulfill the request and address the situation or intended purpose?

l. What form must the disclosure take?

m. What notice or language must accompany the disclosure?

n. What record must you make of the disclosure?

o. Do you have to advise the client of the disclosure?
Privacy & Confidentiality of Medical Information and Records

A Guide to Help You Understand and Decide If, When and How To Disclose Protected and Confidential Health, Mental Health and Substance Abuse Information

HIPAA Privacy Rule
Iowa Code Chapter 228
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WORKSHOP TOOLKIT

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How the Workshop Toolkit Is Organized

The workshop toolkit is structured around the following questions, which should assist you in deciding how to balance clients’ rights and expectations of privacy while sharing information critical to their health, well-being, safety and recovery. The Q&A Charts are organized in the same manner. We recommend that you ask and answer each question in sequence when working your way through each scenario.

1. **WHO MUST COMPLY WITH EACH KEY PRIVACY LAW?**

2. **WHAT TYPE OF INFORMATION IS PROTECTED BY EACH KEY LAW?**

3. **DO YOU NEED CLIENT CONSENT TO DISCLOSE INFORMATION RELATING TO TREATMENT, PAYMENT OR HEALTH CARE OPERATIONS?**

4. **WHO CAN PROVIDE OR REVOKE CONSENT TO THE USE AND DISCLOSURE OF CONFIDENTIAL AND PROTECTED HEALTH INFORMATION?**

5. **WHEN CAN INFORMATION BE SHARED WITH FAMILY MEMBERS OR DURING EMERGENCIES?**

6. **WHEN CAN INFORMATION BE DISCLOSED TO LAW ENFORCEMENT, JUDICIAL OR ADMINISTRATIVE OFFICIALS WITHOUT CONSENT?**

7. **WHAT NOTICE AND INFORMATION MUST BE PROVIDED TO CLIENTS?**

8. **WHAT PROVISIONS MUST BE INCLUDED IN CONSENT OR AUTHORIZATION FORMS UNDER EACH KEY PRIVACY LAW?**

9. **WHAT ARE SOME OF THE POSSIBLE CONSEQUENCES AND PENALTIES FOR VIOLATING PROVISIONS OF EACH KEY PRIVACY LAW?**

These questions are more thoroughly explored through scenarios that illustrate the different rights, responsibilities and restrictions imposed by the key laws upon adults, minors, family members, medical providers, mental health providers, and federally assisted alcohol and substance abuse programs. Sample answers to Real World Scenarios One and Two are provided in text and diagram format.

The Appendix includes flowcharts to help you determine if you, your practice or institution is covered by, or must comply with, any or all of the three key laws, HIPAA, Chapter 228, and Part 2. A Selection of Internet Resources, Model Consent Form and Basic Flow of Information Chart are also included.

The Johnson County System of Care Group and the University of Iowa Clinical Law Program intend to make the Guide and Toolkit available on the Internet and in other formats for use in training workshops for providers and clients around the State of Iowa. We welcome your comments, criticisms and feedback.

**Privacy Laws and the Exercise of Professional and Medical Judgment**

Before you wade into the fine grain details and real world scenarios, a few words are in order about the guide and toolkit. The materials were developed to acquaint you with privacy laws that govern your activities, provide you with a framework for navigating the laws when you need to request or share confidential client information, and help you anticipate barriers or problems that might arise in your practice. They are not intended to undermine or override the exercise of professional medical judgment or to dictate a
particular outcome, especially when you are confronted with life and death scenarios that do not fit squarely within the laws and regulations.

As noted, the laws are sometimes unclear, contradictory and illogical. Oftentimes they don’t make sense to clients or practitioners. For example, audience members at the UIHC grand rounds presentation were surprised to learn that mental health professionals had less latitude than medical providers to contact family caregivers, even in some emergencies. We learned valuable lessons from audience members about clients might that might harm or threaten to harm themselves or others. Their advice is to: First, talk with your client. Second, explain the reasons why it is important for the client’s wellbeing that you ask for or share information with other providers or individuals. Third, if the client does not consent, deliver a reality check and explain the limited options available to you. For example, the choice might be between the client’s agreeing to allow you to notify caretakers or family members to assist in care or having you institute commitment proceedings to prevent harm to the client. Fourth, whatever decision you make about disclosing information, consult your compliance officer, attorney or supervisor before you act, if possible, for guidance and direction.

In any case, it is a good professional practice to explain and document your decision making process, the facts, circumstances and options you considered, and other reasons and factors that justify or support the disclosure or communication.

Who Must Comply with Each Key Law – Three Domains and Players

These materials include definitions and more detailed information about individuals and organizations that must comply with the HIPAA Privacy Rule, Iowa Code Chapter 228, and 42 CFR Part 2. For ease of use and reference, we separate the universe of providers into three domains, as follows:

(1) Medical providers who must comply with HIPAA

(2) Mental health providers who must comply with HIPAA and Chapter 228, and

(3) Substance abuse providers who must comply with HIPAA and 42 CFR Part 2.

Medical Provider means an individual, facility, organization or entity that must comply with the Health Insurance Portability and Accountability Act (HIPAA). The HIPAA Privacy Rule governing Protected Health Information appears in the Code of Federal Regulations, 45 CFR 164.500. The privacy and security rules apply to health care providers who transmit information in electronic form for filing and administrative purposes, healthcare plans and clearinghouses. For purposes of this guide every doctor, clinic, dentist, psychologist, pharmacist, chiropractor, health professional, substance abuse program, and health facility is a Medical Provider. Compliance Note: All Medical Providers Must Comply with HIPAA.

Mental Health Provider means any individual, facility, agent or employee of a facility that must comply with Iowa Code Chapter 228 relating to Mental Health and Psychological Information. Examples include mental health professionals and agents and employees of community mental health centers, hospitals, clinics, offices, health care facilities, infirmaries or similar places in which diagnostic or treatment services for a mental or emotional condition are provided by a mental health professional. Compliance Note: All Mental Health Providers Must Comply with HIPAA and with Iowa Code Chapter 228.

Substance Abuse Provider means a federally assisted alcohol or drug abuse program that must comply with federal regulations enumerated in 42 CFR Part 2 “Alcohol & Drug Abuse Patient Records” (Part 2). These include community-based alcohol and substance abuse clinics, rehabilitation centers, facility-based specialty clinics and offices, inpatient and
outpatient chemical dependency programs, substance abuse evaluation centers. For purposes of this guide, every individual or facility that provides or holds itself out as providing diagnosis, treatment or referral for alcohol or substance abuse is a Substance Abuse Program. Compliance Note: All Substance Abuse Providers Must Comply with HIPAA and with 42 CFR Part 2.

**General Rules for Applying HIPAA, Chapter 228, and 42 CFR Part 2 in Iowa**

All three laws are intended to protect the confidentiality, integrity and availability of sensitive personally identifiable information. They are also designed to provide clients with access, oversight, and some control over the use and disclosure of health-related information and records. Clients must be notified and given copies of privacy practices regarding protected health information, mental health information and alcohol and drug abuse records.

A word about personal identifiers: The laws do not restrict dissemination of information or records that are stripped of all identifiers and information that could reasonably lead to the identification of an individual. Examples of identifiers include the person’s name, full address, names of relatives, names of employers, birth date, telephone number, fax number, email address, Social Security number, medical record number, health plan beneficiary number, account number, certificate or license number, vehicle or other device serial number, web universal resource locator (website address or URL), finger or voice print, photographic images or any other unique identifying number, characteristic, or code that could be used to identify the patient. On November 26, 2012, DHHS provided guidance on this topic at [http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/De-identification/guidance.html](http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/De-identification/guidance.html)

Each situation merits close attention and might involve a trip to a law library, your policy and procedures guide, the Internet or your general counsel to resolve. Unfortunately, the laws, regulations, guidance, and public and private sector materials on the topic are far too numerous, voluminous and specific for most of us to remember or master. Several grey areas exist, and there are exceptions to just about every rule. Keeping in mind these qualifiers and disclaimers, there are some basic, general rules governing the release and dissemination of client information for each law.

**When Consent is Needed and When It Is Not**

**HIPAA Privacy Rule**

Medical Providers are permitted to use and disclose protected health information with each other for treatment, payment and healthcare operations—without the client’s permission or written consent or authorization. Clients must, however, provide written authorization for the release of psychotherapy notes. Any protected health information can be exchanged for treatment purposes; for other purposes, disclosures must be limited to the minimum amount necessary to accomplish the intended purpose of the use or disclosure. In Iowa, clients under age 18 are considered minors and cannot consent or revoke consent to disclosures unless otherwise authorized by law.

**Iowa Code Chapter 228**

Mental Health Providers are permitted to use and disclose mental health and psychological information with each other for purposes of diagnosis, treatment, referral and administration—without the client’s permission or written consent or authorization. Disclosures should be made if and to the extent necessary to facilitate the provision of professional and administrative services. In Iowa, clients under age 18 are considered minors and cannot consent or revoke consent.
42 CFR Part 2 and Iowa Code Chapter 125

Substance abuse providers are NOT permitted to disclose alcohol and drug abuse information about a client or individual seeking services, except in medical emergencies and other limited circumstances—without the client’s or individual’s written informed consent. Any disclosure must be limited to the information necessary to carry out the purpose of the disclosure. In Iowa, clients under age 18, although minors, CAN consent to substance abuse treatment and rehabilitation and consent or revoke consent to disclosures of alcohol and drug abuse information without the knowledge, permission or consent of the client’s parents or legal guardians. Parents whose minor children seek or obtain substance abuse treatment or services cannot access substance information without their child’s specific written consent. 42 CFR Part 2 and Iowa Code Chapter 125.
## Q&A 1: WHO MUST COMPLY WITH EACH KEY PRIVACY LAW?

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<th>HIPAA Privacy Rule 45 CFR 164.500 Protected Health Information</th>
<th>IOWA CODE CHAPTER 228 Mental Health &amp; Psychological Information</th>
<th>42 CFR PART 2 Alcohol &amp; Drug Abuse Patient Records</th>
</tr>
</thead>
</table>
| **Who must comply with each key privacy law?** | Health Care Providers who transmit information in electronic form for filing and administrative purposes.  
**Examples:** Doctors, Clinics, Dentists, Psychologists, Pharmacies, Chiropractors, Nursing Homes, Hospitals. | Employees and Agents of Mental Health Facilities: Community mental health centers, hospitals, clinics, offices, health care facilities, infirmaries or similar places in which diagnostic or treatment services for a mental or emotional condition are provided by a mental health professional.  
**Mental Health Professionals and their employees and agents:** Physicians and surgeons or osteopathic physicians and surgeons who have two years of post-degree clinical experience supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services and  
Individuals holding at least a Master’s degree in a mental health field, including but not limited to, psychology, counseling and guidance, nursing, and social work, who hold a current Iowa license if practicing in a field covered by an Iowa licensure law, who have two years of post-degree clinical experience supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services.  
**Data Collectors and their employees and agents:** persons other than those mentioned above who regularly assemble or evaluate mental health information. | Part 2 Programs, which are  
Federally assisted and are comprised of:  
**Individuals or entities** that hold themselves out as providing, and actually provide, alcohol or drug abuse diagnosis, treatment, or referral for treatment or  
An identified unit within a general medical facility which holds itself out as providing, and actually provide alcohol or drug abuse diagnosis, treatment, or referral for treatment or  
**Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment and who are identified as such providers.**  
**Examples:** Community-based alcohol and substance abuse clinics, rehabilitation centers, facility-based specialty clinics and offices, inpatient and outpatient chemical dependency programs, substance abuse evaluation centers. |
| **What are some examples of individuals and organizations that must comply with each key privacy law?** | Health Plans  
**Examples:** Health insurance companies, HMOs, company health plans, government programs that pay for care, such as Medicare, Medicaid, military and veterans’ health care programs.  
**Health Care Clearinghouses,** entities that process nonstandard health info they receive from another entity into a standard electronic format or data content. | | |
### Q&A 2: WHAT TYPE OF INFORMATION IS PROTECTED BY EACH KEY PRIVACY LAW?

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>What Type Of Information Is Protected Or Covered By Each Key Privacy Law?</td>
<td>Protected Health Information (PHI), which is:</td>
<td>Mental Health Information, which includes:</td>
<td>Patient Identifying Information, which includes any type of information:</td>
</tr>
<tr>
<td></td>
<td>Individually identifiable health information, in any form or media, electronic, paper or oral, including demographic data --</td>
<td>All oral, written or recorded information --</td>
<td>That identifies or could reasonably be used to quickly and directly or indirectly identify --</td>
</tr>
<tr>
<td></td>
<td>That relates to an individual’s past, present or future physical or mental health condition; the provision of health care to the individual, or the past, present or future payment for the provisions of health care to the individual and --</td>
<td>Which indicates the identity of an individual receiving professional services and</td>
<td>Any individual or client who has applied for or received substance abuse assessment or treatment services at a federally assisted program, including --</td>
</tr>
<tr>
<td></td>
<td>That identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. There are ways to code or otherwise de-identify information.</td>
<td>Which relates to the diagnosis, course, or treatment of the individual’s mental or emotional condition.</td>
<td>Any individual or client who after arrest on a criminal charge is identified as an alcohol or drug abuser in order to determine the individual’s eligibility to participate in a program.</td>
</tr>
<tr>
<td></td>
<td>Examples: Name, address, birth date, Social Security Number, family history or genetic info, X-rays, laboratory and pathology reports.</td>
<td>Psychological Test Materials</td>
<td>Examples: Name, address, Social Security Number, fingerprints, photographs and similar information that could be used to determine identity.</td>
</tr>
</tbody>
</table>
**Q&A 3: DO YOU NEED CLIENT CONSENT TO DISCLOSE INFORMATION RELATING TO TREATMENT, PAYMENT AND HEALTH CARE OPERATIONS?**

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>What is the preferred practice before using, sharing or disclosing client information?</td>
<td>The recommended practice is to obtain the written informed consent of each client whenever possible at intake or before providing services.</td>
<td>The recommended practice is to obtain the written informed consent of each client whenever possible at intake or before providing services.</td>
<td>Part 2 Programs must obtain the written informed consent of clients except in extremely limited circumstances.</td>
</tr>
</tbody>
</table>

**Do You Need Consent To Disclose Information Relating To Treatment, Payment or Health Care Operations?**

- **No client consent is needed** to use or disclose individually identifiable protected health information used for purposes of treatment, payment, case management, care coordination, and other health care operations from one HIPAA covered entity to another.

  **Written authorization is needed** for psychotherapy notes in most instances.

  Note: Reasonable steps must be taken to disclose only the minimum amount of information necessary to achieve the intended purpose.

  Note: Clients must be notified or informed of these policies as described in Q&A 7.

- **No client consent is needed** for one mental health professional or agent or employee of a mental health facility to disclose mental health information to another provider of professional services such as diagnostic or treatment services for a mental or emotional condition.

  Note: Disclosures should be made if and to the extent necessary to facilitate the provision of professional and administrative services.

  Note: Clients must be notified or informed of these policies as described in Q&A 7.

- **Specific written consent is needed** for disclosures for treatment, payment and health care operations except in extremely limited circumstances.

  **Non-consensual disclosures** can be made for operational and administrative matters:

  - To qualified personnel conducting scientific research, management audits, financial audits, or program evaluation or
  - To and between programs and entities that have direct administrative control over programs and between a program and a qualified service organization.

  Note: Internal disclosures must be limited to those persons who have a need for the information in connection with their duties that arise out of the diagnosis, treatment or referral for treatment for alcohol or drug abuse.

  Note: Clients must be notified or informed of these policies as noted in Q&A 7.
### Q&A 4: WHO CAN PROVIDE OR REVOKE CONSENT TO THE USE AND DISCLOSURE OF CONFIDENTIAL AND PROTECTED HEALTH INFORMATION?

<table>
<thead>
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</tr>
</thead>
</table>
| **Who Can Provide Or Revoke Consent to The Use And Disclosure Of Confidential and Protected Health Information?** | The Client age 18 or older. The Client’s Personal Representative, including:  
  - An individual designated in a written authorization or release executed by the client,  
  - An agent or attorney in fact designated in a valid power of attorney,  
  - The client’s court-appointed legal guardian, or  
  - The parents of a child under age 18, in most cases.  
  Note: Written *authorization* is needed for psychotherapy notes and for certain other purposes.  
  Note: Authorization and Revocation must be in writing.  
  Note: Revocation is effective upon receipt except to the extent action has already been taken based on the authorization.  
  Note: A client must be allowed to request that disclosures be restricted. You need not comply, except when a client pays a bill in full out of pocket and asks that the insurer not receive information about the service for payment purposes.  
  Note: Disclosure must be made in a certain format or means if the client request is reasonable.  
  Note: An individual can provide or revoke authorization to one or more parties named in a multi-party consent form while leaving the rest of the form in effect. | The Client age 18 or older. The Client’s Legal Representative, including:  
  - An individual designated in a written authorization or release executed by the client,  
  - An agent or attorney in fact designated in a valid power of attorney,  
  - The client’s court-appointed legal guardian, or  
  - The parents of a child under age 18, in most cases.  
  Note: Consent must be in writing.  
  Revocation may be made orally or in writing.  
  Note: Revocation is effective after a specific time or occurrence in accordance with the consent form, except to the extent the recipient has already taken action based on the consent or authorization.  
  Note: A client can provide or revoke consent to one or more parties in a multi-party consent form while leaving the rest of the consent form in effect. | The Client age 17 or younger. The Client age 18 or older. A person authorized in writing by the client. A person authorized by state law to act on the client’s behalf, such as an agent or attorney-in-fact designated in a valid power of attorney. The client’s court-appointed legal guardian.  
  Note: Consent and Revocation must be in writing.  
  Note: Written revocation is effective upon receipt except to the extent action has already been taken based on the consent or authorization.  
  Note: A client can provide or revoke consent to one or more parties named in a multi-party consent form while leaving the rest of the consent form in effect.  
  Note: A client cannot forbid or revoke consent for disclosures relating to treatment, payment or administrative use. Q&A 3. |
### Q&A 5: WHEN CAN INFORMATION BE SHARED WITH FAMILY MEMBERS OR DURING EMERGENCIES?

<table>
<thead>
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</thead>
<tbody>
<tr>
<td>When Can Information Be Shared With A Client’s Family Members?</td>
<td>Protected information can be shared with family members who are the client’s personal representative as noted in Q&amp;A 4. Clients can also be asked to give informal oral consent to share relevant information with family, relatives, friends or others directly involved in the client’s health care or payment for care. If the client objects, no contact can be made unless otherwise permitted. Note: You can exercise professional judgment and share limited information with a caregiver if a client is not present, or the opportunity to agree or object to the use or disclosure to a caregiver cannot practically be provided because of the client’s incapacity or because of emergency. Note: Disclosures to caregivers must in the client’s best interests.</td>
<td>A mental health professional or an employee of or agent for a mental health facility can share mental health information with family members who are the client’s guardian or other legal representative noted in Q&amp;A 4. Mental health information about an individual with a chronic mental illness can be shared with the individual’s spouse, parent, adult child or adult sibling if: The disclosure is necessary to assist in the provision of care or monitoring of the individual’s treatment, and The family member is directly involved in providing care or monitoring the individual’s treatment, and The family member’s direct involvement is verified by the attending mental health professional, attending physician or by a person, other than the family member, who is responsible for providing treatment to the individual. Note: Information is limited to a summary of diagnosis and prognosis, a list of medications, a record of compliance for the previous six months, and treatment plan.</td>
<td>Identifying information can only be shared or released with written client consent, or when a family member is a court-appointed guardian, or other individual described in Q&amp;A 4.</td>
</tr>
<tr>
<td>What Information Can Be Disclosed In Emergency Situations?</td>
<td>Any and all identifiable protected health information necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public. To anyone you believe can prevent or lessen the threat.</td>
<td>Mental health information may be transferred at any time in cases of medical emergency.</td>
<td>Only identifying information necessary for medical personnel to treat a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.</td>
</tr>
<tr>
<td>Who Can I Disclose Information To In Emergency Situations?</td>
<td>Mental health information may only be transferred or disclosed to another facility, physician or mental health professional.</td>
<td>Identifying information may only be disclosed to medical personnel.</td>
<td></td>
</tr>
</tbody>
</table>
Q&A 6: WHEN CAN INFORMATION BE DISCLOSED TO LAW ENFORCEMENT, JUDICIAL AND ADMINISTRATIVE OFFICIALS WITHOUT CLIENT CONSENT?

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>When Can Information Be Disclosed To Law Enforcement, Judicial and Administrative Officials Without Client Consent?</td>
<td>Disclosures without client consent are authorized in direct response to:</td>
<td>Disclosures without client consent are authorized:</td>
<td>Disclosures without client consent are authorized in direct response to:</td>
</tr>
<tr>
<td></td>
<td>A request by a law enforcement officer to identify or locate a suspect, fugitive, material witness or missing person.</td>
<td>To initiate or complete commitment proceedings.</td>
<td>Crimes committed by a client on the program’s premises or against program personnel or to a threat to commit such a crime, provided information is limited to the circumstances of the incident, the patient status of the individual committing or threatening to commit the crime, and the individual’s name, address and last known whereabouts.</td>
</tr>
<tr>
<td></td>
<td>A request by a law enforcement officer for information about a victim or suspected victim of a crime.</td>
<td>To meet compulsory reporting or disclosure requirements of state and federal laws relating to the protection of human health and safety.</td>
<td>Court Orders</td>
</tr>
<tr>
<td></td>
<td>To alert law enforcement to a person’s death if you suspect criminal activity caused the death.</td>
<td>When a court orders the disclosure in a civil, criminal or administrative proceeding.</td>
<td>Subpoenas issued by a court of competent jurisdiction that enters an authorizing order that complies with Part 2 regulations.</td>
</tr>
<tr>
<td></td>
<td>When you believe that protected health information is evidence of a crime committed on your premises.</td>
<td>As otherwise required by federal or state law.</td>
<td>A state law that requires reporting of incidents of suspected child abuse and neglect to state or local authorities.</td>
</tr>
<tr>
<td></td>
<td>Court orders, subpoenas and warrants.</td>
<td></td>
<td>As otherwise required by federal or state law.</td>
</tr>
<tr>
<td></td>
<td>In emergency situations described in Q&amp;A 6.</td>
<td></td>
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</tr>
</tbody>
</table>
### Q&A 7: WHAT NOTICE AND INFORMATION MUST BE PROVIDED TO CLIENTS?

<table>
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</table>
| **What Notice Must Be Given to Clients When Services Are Provided?** | Notice of privacy practices must be furnished to the client using all of the following means:  
Handing the written notice to the client at the first service encounter;  
Sending an immediate electronic copy when service is provided electronically, such as through the Internet, or promptly mailing the notice when service is provided by phone; and  
Posting the notice in a clear and prominent place where people seeking service may reasonably be expected to be able to read the notice; and  
In emergency treatment situations, as soon as practicable after the emergency abates. | Clients must be informed that mental health information may be disclosed to employees or agents of the same mental health facility or other providers of professional services, or their employees or agents, if and to the extent necessary to facilitate professional or administrative services. | Clients must be informed that Federal law and regulations protect the confidentiality of alcohol and drug abuse patient records at the time of admission or as soon thereafter as the client is capable of rational communication.  
**Clients must be given a** summary in writing of the Federal law and regulations. |
| **What Notice or Information Must Be Provided After Information Has Been Disclosed?** | Upon request, the client must be provided with an accounting of disclosures made. No immediate notice must be communicated to the client unless the client requests.  
Note: The accounting does not include disclosures made for treatment, payment, or health care operations, or for disclosures authorized by the client. | Competent persons with chronic mental illness must be notified by the person verifying the family member’s involvement when mental health information is disclosed to family members, as noted in Q&A 6. | The following statement must accompany each disclosure made with the client’s written consent:  
This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. |
### Q&A 8: WHAT PROVISIONS MUST BE INCLUDED IN CONSENT OR AUTHORIZATION FORMS UNDER EACH KEY PRIVACY LAW?

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</tr>
</thead>
<tbody>
<tr>
<td><strong>What Provisions Must be Included in Consent or Authorization Forms Under Each Key Privacy Law?</strong></td>
<td>A consent or authorization must include all nine provisions required for consent listed in 42 CFR Part 2, the alcohol and substance abuse regulations, as noted in the far right column. In addition, HIPAA requires the following: Individual must be given a copy of the signed consent or authorization. Copies of signed consent and authorization forms must be retained for six years from the form’s date of expiration.</td>
<td>The written authorization must: Specify the nature of the mental health information to be disclosed, the persons or type of persons authorized to disclose the information, and the purposes for which the information may be used both at the time of the disclosure and in the future, and Advise the individual of the individual’s right to inspect the disclosed mental health information at any time, and State that the authorization is subject to revocation and state the conditions of the revocation, and Specify the length of time for which the authorization is valid, and Contain the date on which the authorization was signed. In addition, the client or legal representative must be provided with a copy of the authorization and include a copy in the client’s record of mental health information.</td>
<td>A written consent must include: The name or general designation of the program or person permitted to make the disclosure, and The name or title of the individual or organization to receive the information, and The name of the client, and The purpose of the disclosure, and How much and what kind of information is to be shared, and The signature of the client and, when required for a minor client, the signature of a person authorized to consent, when a client is incompetent or deceased, the signature of a person authorized to consent, and The date signed, and A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it, and The date, event, or condition upon which the consent will expire if not revoked before. The consent must last no longer than reasonably necessary to serve the purpose for which it is given.</td>
</tr>
</tbody>
</table>
### Q&A 9: WHAT ARE SOME OF THE POSSIBLE CONSEQUENCES AND PENALTIES FOR VIOLATING PROVISIONS OF EACH KEY PRIVACY LAW?

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<tr>
<td>What Are Some Of The Possible Consequences and Penalties for Violating Provisions of Each Key Privacy Law?</td>
<td>The Office for Civil Rights of the U.S. Department of Health and Human Services enforces the civil and administrative provisions of HIPAA’s privacy standards. DHHS can impose civil monetary penalties and take other enforcement action. The U.S. Department of Justice is authorized to prosecute individuals and entities that “knowingly” obtain or disclose individually identifiable health information. Conviction can result in fines and imprisonment. While HIPAA protects the health information of individuals, it does not create a private cause of action. This means that an individual cannot file a lawsuit under HIPAA or its regulations. State law, however, may provide other theories of liability. Note: HIPAA is intended to safeguard against systemic abuses of privacy rights. Isolated and incidental violations are generally outside the scope of HIPAA regulations, especially when made in good faith.</td>
<td>Civil damages and criminal penalties may be applicable to the unauthorized disclosure of mental health information. An employee or agent of a third-party payor or a peer review organization who willfully uses or discloses mental health information in violation of Chapter 228 is guilty of a serious misdemeanor, punishable by a fine not to exceed $500 for the first offense and $5,000 for each additional offense. An individual may file a lawsuit based on unauthorized disclosures or other violations of Chapter 228.</td>
<td>The local United States Attorney’s office is responsible for prosecuting cases involving improper or unauthorized disclosure of client records. Convictions can result in fines of not more than $500 for first offenses and not more than $5,000 in the case of each subsequent offense. Part 2 does not create a private cause of action. This means that an individual cannot file a lawsuit under the law or regulations. State law, however, may provide other theories of liability. Note: Because a criminal penalty may be imposed, the law is to be construed strictly in favor of the potential violator. Note: The regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. Note: The regulations are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.</td>
</tr>
</tbody>
</table>
Workshop Real World Scenarios

Workshops offer people the opportunity to explore theory and practice, learn from each other, practice skills, share their own experiences, and forge solutions to common problems. They also enable participants to examine real world dynamics, ethical dilemmas and alternatives available to resolve complications encountered frequently in their practice.

The six real world scenarios are designed to illustrate and contrast the rights and responsibilities imposed on adults, minors, family and providers by state and federal privacy laws. Sample answers and diagrams are furnished for some of the hypotheticals. Our expectation and hope is that you will incorporate the materials into new employee orientation and training and continuing education and refresher classes. Administrators could consult the guide when updating policies, procedures, forms and manuals.

**Disclose or Not Disclose?** From a practical standpoint, the decision to disclose or not disclose can be reached by contemplating a few questions.

- Who would I contact first without regard to the law?
- Which person or organization will have the information I need to treat and meet my client’s current healthcare, mental health or substance problems?
- How quickly can the person or organization respond to my request?
- Who can I obtain information from in emergency or non-emergency circumstances without the client’s written or oral consent?
- What does the law require, allow or forbid me to do?
- What would my client, lawyer or compliance officer say?

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**Real World Scenario 1**

**Normal Course of Treatment**

**Cast of Characters**

- Carla (Adult Client)
- InstaCare (Medical Provider)
- Primary Care Physician (Medical Provider)
- Riverside Recovery (Substance Abuse Program)

**Q&A Charts**

- 1. Who Is Covered?
- 2. What Information Is Protected?
- 3. Consent for Treatment
- 4. Who Can Consent?

Carla wakes up feeling feverish, sick to her stomach, and experiencing sharp pains in her abdomen. She drives to InstaCare, where she presents an insurance card, fills out a patient intake form, and receives a copy of the clinic’s privacy policy. On the intake form, Carla writes the name of her primary care physician, who is unaffiliated with InstaCare, and notes that she is being treated at Riverside Recovery Substance Abuse Center.

The InstaCare doctor examines Carla, puts off her request for prescription pain killers, and orders blood tests. While Carla is getting her blood drawn, the doctor calls the primary care physician to get a better idea of Carla’s treatment and medication history. He then calls Riverside to find out what substances Carla is using or abusing that might be causing her abdominal pains.
Real World Scenario One Sample Answer

InstaCare is a HIPAA medical provider and is permitted to call the primary care physician and Riverside to obtain Carla’s records without her consent. Carla received a copy of the privacy policies and the inquiry relates to her treatment. The primary care physician is also a medical provider regulated by HIPAA, so it can furnish InstaCare with information and records relating to Carla’s health, mental health, and substance abuse unless redisclosure was expressly prohibited. Reasonable steps should be taken to only disclose the minimum amount of information necessary to determine the underlying causes of the abdominal pain and treating the condition.

Riverside is a HIPAA medical provider. It is also a substance abuse provider and as such, it can’t even confirm that Carla is a client or has sought treatment without her written consent. Part 2 requires specific written client consent even for disclosures relating to treatment, payment and operations except in extremely limited circumstances, none of which seem to apply here.
Real World Scenario Two
Medical Emergencies

Cast of Characters

Makayla (Adult Client)
Emergency Room Doctor (Medical Provider)
Substance Abuse Program
Primary Care Doctor (Medical Provider)
Mother and Health Care Agent of Adult Client

Q&A Charts

6. Families and Emergencies
7. What Notice Must Be Given?
1. Who Is Covered?
2. What Information Is Protected?
4. Who Can Consent?

Makayla is airlifted to the hospital emergency room after fracturing her pelvis and suffering other severe injuries in a car crash. Emergency responders find a bottle of pills in her pocket. Her mother explains that Makayla is in a detox program for abuse of Vicodin and other narcotics prescribed for a longstanding back injury. The ER doctors want to know what medications Makayla is taking, the dosage, and her history of compliance, in order to perform surgery and treat her injuries. Makayla is conscious and can communicate, but barely. The ER doctors call Makayla’s primary care doctor and substance abuse program without asking for permission.

Real World Scenario Two Sample Answer

The ER doctor and staff are medical providers who need to perform surgery in emergency circumstances. HIPAA authorizes them to contact and exchange information with the primary care doctor or anyone else they believe can prevent or lessen a serious and imminent threat to the health and safety of a person or the public. Makayla’s consent is not needed; however, she must be given a copy of the ER privacy policies after the emergency. HIPAA would allow the ER and primary care doctor to exchange information without Makayla’s consent in non-emergency circumstances for treatment purposes.

The substance abuse program can only release information necessary to treat a condition that poses an immediate threat to Makayla and requires immediate medical intervention. No client consent is necessary. Part 2 substance abuse providers are only authorized to disclose to medical personnel in such an emergency. Otherwise, Makayla must consent in writing to the disclosure. Makayla’s mother is present at the ER, and no law forbids the doctor or staff from asking her for information about her daughter.
Real World Scenario Two: Makayla’s Medical Emergency

**Medical Provider**
- Must comply with HIPAA

**Mental Health Provider**
- Must comply with HIPAA and Ch. 228

**Substance Abuse Provider**
- Must comply with HIPAA and Part 2

**Family Member**
- No need to comply with HIPAA, Ch. 228 or Part 2

---

**ER**
- Can the ER call the primary care physician to obtain Makayla’s records without her consent?
  - Yes

**Primary Care Physician**

---

**ER**
- Can the ER call the substance abuse program to obtain Makayla’s records without consent?
  - Yes

**Substance Abuse Program**

---

**ER**
- Can the ER give any records to Makayla’s mother?
  - Yes

---

**Makayla’s Mother**
- Can Makayla’s mother ask the ER doctor and staff for information about her daughter?
  - Yes

---

**Makayla’s Mother**
- Can the ER give any records to Makayla’s mother?
  - Yes

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University of Iowa Clinical Law Programs
Real World Scenario Three: Clients Age 17 and Younger

Cast of Characters

Sofia (Client Age 17 A Minor)  
Mental Health Group (Mental Health Provider)  
Iowa Rehab & Recovery (Substance Abuse Program)  
Family Practice Inc. (Medical Provider)  
Parents of Clients

Q&A Charts

4. Who Can Consent?
1. Who Is Covered?
3. Consent for Treatment
8. Content of Consent Forms
2. What Information Is Protected?

Sofia schedules appointments with Mental Health Group and Iowa Rehab & Recovery to deal with her anxiety and cocaine habit. The 17-year-old does not want her parents to learn about her addiction. She signs a multiparty release form authorizing MHG and Iowa Rehab to exchange with each other “any and all information relating to me without exception including alcohol, substance abuse, and mental health information.” Months later, Sofia’s parents discover appointment cards in her backpack and call MHG and Iowa Rehab demanding information about their daughter.

Diagram:

- Can MHG call IR&R to obtain client’s records?  
  - Yes. Client Signed Consent
- Mental Health Group
  - Yes. Client consent specified all three types of records.
  - Can IR&R provide MHG with client info?
  - Iowa Rehab & Recovery
- Client’s Parents
  - Can parents call MHG to obtain daughter’s records without her consent?
  - Yes
- Client’s Parents
  - Yes, to all three types of records.
  - Can MHG provide parents with info?
  - Mental Health Group
- Client’s Parents
  - Can parents call IR&R to obtain Sofia’s records without her consent?
  - Yes
- Client’s Parents
  - No, IR&R cannot even confirm that Sofia is a client without the minor’s written consent.
  - Can IR&R provide parents with daughter’s records?
  - Iowa Rehab & Recovery

University of Iowa Clinical Law Programs
Real World Scenario Three Continued: Clients Age 17 and Younger

Can PCP call MHG to obtain client’s records?

Yes

Can MHG provide PCP with client’s records?

Can PCP call IR&R to obtain client’s records?

Yes

Can IR&R provide PCP with client’s records?

No, IR&R cannot even confirm that Sofia is a client without the minor’s written consent.

Can MHG provide PCP with client’s records?

Yes, MHG can give all 3 types of records.

Medical Provider

Mental Health Provider

Substance Abuse Provider

Family Member

Primary Care Physician

Primary Care Physician

Primary Care Physician

Primary Care Physician
Real World Scenario Four: Consent, Capacity and Service Agencies

Cast of Characters

Nicolas (Elder Client)
Elder Client's Daughter
Oakcrest Elder Health Clinic (Medical Provider)
Oakcrest Alzheimer's Clinic (Mental Health Provider)
Area Agency on Aging

Q&A Charts

4. Who Can Consent?
3. Consent for Treatment
1. Who Is Covered?
2. What Information Is Protected?

Nicolas is being treated for high blood pressure and diabetes at Oakcrest Elder Health Clinic. The physician’s assistant is concerned because Nicolas has missed appointments, cannot remember dates or phone numbers, dresses inappropriately for the weather, and acts confused at times. She wants to refer Nicolas to the Oakcrest Alzheimer’s Clinic for assessment, and the Area Agency on Aging for case management and services. Despite the PA’s best attempts, Nicolas cannot understand Oakcrest’s Consent Form, and he refuses to sign it anyway. Nicolas’s daughter is listed in medical records as the emergency contact and next of kin.

Real World Scenario Five: Consent and Revocation

Cast of Characters

Malik (Adult Client)
Iowa Rehab (Substance Abuse Program)
Mental Health Group (Mental Health Provider)
Family Practice Inc. (Medical Provider)

Q&A Charts

4. Who Can Consent?
1. Who Is Covered?
2. What Information is protected?

Malik received inpatient treatment for alcoholism at Iowa Rehab last year. He regularly attends AA meetings, follows his rehabilitation plan, and is being treated for depression by a licensed psychologist at Mental Health Group. Worried that family, friends and neighbors in his town might learn of his ordeal, Malik refuses to sign release of information forms. Iowa Rehab advises Malik to undergo tests for liver disease at Family Practice Inc. The intake receptionist at Family Practice calls Iowa Rehab and Mental Health Group asking for digital and paper copies of Malik’s medical records. Without a signed release, they won’t speak with Family Practice. Malik calls the substance abuse program and mental health provider and orders them to send his records immediately.

Real World Scenario Six: Mental Health Referrals and Disclosures

Cast of Characters

Gabriella (Adult Client)
Mental Health Group (Mental Health Provider)
Primary Care Physician (Medical Provider)
Local Substance Abuse Program

Q&A Charts

4. Who Can Consent?
1. Who Is Covered?

Gabriella is being treated at Mental Health Group for post-traumatic stress disorder arising from her tour of duty in Iraq. The treating psychiatrist believes Gabriella has other major health problems she won’t discuss which could affect therapy and treatment, including possible drug and alcohol abuse mentioned in her Veteran’s Benefits Administration records. She is a chain-smoker, too, and her cough is getting worse.

The psychiatrist wants to call Gabriella’s primary care physician to obtain records and information to develop a more comprehensive treatment plan, and wants to contact the local substance abuse program to find out if she is a client or to refer her for evaluation. Concerned that her employer or future employers might gain access to this sensitive information, Gabriella has not signed MHG’s consent form and she refuses to do so. She has also told all of her medical, mental health and substance abuse programs not to disclose information about her to anyone.
Privacy & Confidentiality of Medical Information and Records

A Guide to Help You Understand and Decide If, When and How To Disclose Protected and Confidential Health, Mental Health and Substance Abuse Information

HIPAA Privacy Rule
Iowa Code Chapter 228
42 CFR Part 2

APPENDIX

Table of Contents

A Selection of Health Privacy Internet Resources

Model Consent Form

Basic Flow of Patient Information

Are you a Mental Health Professional, Facility or Data Collector that must comply with Iowa Code Chapter 228?

Are you a Federally Assisted Alcohol and Drug Abuse Program that must comply with 42 CFR Part 2?
A Selection of Health Privacy Internet Resources

Laws and Regulations

Iowa Code Chapter 228: Mental Health and Psychological Information
http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm

Federal Alcohol and Drug Abuse Patient Records – 42 CFR Part 2
http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=02b3d31742318b503b8d4ba0111d0e35&tpl=/ecfrbrowse/Title42/42cfr2_main_02.tpl

Federal HIPAA Privacy Rule
http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/index.html

Articles and Policy Guidance

Health Information Privacy, Patient Safety, and Health Care Quality: Issues and Challenges in the Context of Treatment for Mental Health and Substance Abuse
http://hpi.georgetown.edu/pdfs/pritts0208.pdf

Delicate Balance: Behavioral Health, Patient Privacy, and the Need to Know: California Healthcare Foundation
http://www.acmha.org/content/events/critical/Goplerud_PI_Briefing_Paper_060208.pdf

Electronic Health Records: California Healthcare Foundation

Frequently Asked Questions: Substance Abuse and Mental Health Services Administration
http://www.samhsa.gov/healthprivacy/docs/ehr-faqs.pdf

The Confidentiality of Alcohol and Drug Abuse Patient Records Regulation and the HIPAA Privacy Rule: Implications for Alcohol and Substance Abuse Programs: Substance Abuse and Mental Health Services Administration
http://www.samhsa.gov/healthprivacy/

Confidentiality of Patient Records for Alcohol and Other Drug Treatment
http://kap.samhsa.gov/products/manuals/taps/13b.htm

HIPAA Facts: Parents and Minors

Understanding the HIPAA Privacy Rule
http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/index.html

Summary of the HIPAA Privacy Rule: United States Department of Health and Human Services
http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/index.html

Information Sharing in Criminal Justice-Mental Health Collaborations: Working with HIPAA and Other Privacy Laws: Bureau of Justice Center
https://www.bja.gov/Publications/CSG_CJMH_Info_Sharing.pdf
Dispelling the Myths about Information Sharing Between the Mental Health and Criminal Justice Systems, CMHS National Gains Center for Systemic Change for Justice-Involved People with Mental Illness February, 2007

Health Information Technology
http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/healthit/

Health IT, Advancing America’s Health Care
http://www.healthit.gov/?utm_source=google&utm_medium=cpc&utm_campaign=brand

HIPAA Training Materials
http://www.hhs.gov/ocr/privacy/hipaa/understanding/training/index.html

Covered Entity Charts—HIPAA

Health Policy Forms and Policies:

The Judge David L. Bazelon Center: Health Information Privacy Policy Documents and Forms
http://bazelon.org/LinkClick.aspx?fileticket=R9fUUibzuS4%3d&tabid=320

Health Information Scenarios Guide
http://www.health.state.mn.us/e-health/mpsp/mpsprtiscenrev1.pdf

Privacy Rights Clearinghouse Fact Sheets, Frequently Asked Questions and Other Materials: Fact Sheet 12 Checklist of Responsible Information-Handling Practices
https://www.privacyrights.org/fs/fs12-infohandling.htm

Alameda County Behavioral Health Care Services Welcoming Toolkit:

Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule
MODEL: CONSENT AND AUTHORIZATION TO RELEASE, OBTAIN AND REDISCLOSE
CONFIDENTIAL AND PROTECTED HEALTH INFORMATION

Name: ______________________________ Date of Birth: ___/___/_____ SSN: ______________

I, __________________________________, of ______________________, hereby authorize the
g __________________________, to release or obtain information and records about me (check all that apply):

☐ Name and other identifying information
☐ Diagnoses, histories, treatments, assessments, hospitalization, and other health care information
☐ Medications ☐Laboratory results
☐ Test results ☐Consultation reports
☐ Discharge Summaries
☐ Other: ______________________________
☐ All health-related information without exception

INCLUDING CONFIDENTIAL INFORMATION AND RECORDS PROTECTED BY STATE AND FEDERAL LAWS
☐ Psychological, Psychiatric and Mental Health
☐ Alcohol and Substance Abuse
☐ HIV/AIDS-Related Diagnosis, Treatment, Tests
☐ Genetic Testing
☐ Psychotherapy Notes

FOR THE FOLLOWING PURPOSES:
☐ Treatment ☐ Referral ☐ Benefits Eligibility
☐ Other: ______________________________

☐ TO RELEASE INFORMATION AND RECORDS TO:
☐ TO OBTAIN INFORMATION AND RECORDS FROM:
☐ Community Mental Health Center for Mid-Eastern Iowa
☐ Crisis Center of Johnson County, Iowa
☐ Iowa City Free Medical Clinic
☐ Johnson County Mental Health & Disability Services
☐ MECCA Services, Iowa City
☐ University of Iowa Hospitals and Clinics
☐ Mercy Hospital, Iowa City
☐ Shelter House
☐ Successful Living
☐ Builders of Hope
☐ Chatham Oaks
☐ Johnson County Jail Alternatives
☐ Individual/Relative: ________________________ ☐ Other:

I AUTHORIZE REDISCLOSURES OF THIS INFORMATION:
☐ Yes ☐ No ☐ As Follows: ________________________

ACKNOWLEDGMENT OF PRIVACY RIGHTS AND PROTECTIONS

I am giving my consent voluntarily. I know that I do not have to complete this form in order to receive
treatment. I also have the right to revoke or cancel this authorization in writing by contacting
_________________ at _______________________. Cancellation will take effect when the program
receives my written revocation, except to the extent action has already been taken based on my
authorization. I may revoke consent orally for federally assisted drug and alcohol abuse programs. I
understand that I may inspect or copy the information to be used or disclosed, unless access is restricted
by law. Information regarding my health care, including payment for health care, is protected by federal
laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”),
and the Confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R. Part 2). Persons and
programs are not allowed to re-disclose alcohol and drug abuse treatment information without my written
consent unless permitted to do so by law. Iowa Code Chapter 228 and other laws prohibit re-disclosure of
mental health, alcohol and drug abuse treatment, HIV/AIDS and other confidential information without my
written consent except in certain circumstances. I understand that not every organization that may
receive a record is required to follow the rules governing use and disclosure of confidential information; in
that circumstance, the information will no longer be protected by law and may be re-disclosed without my
consent. This authorization will expire one (1) year from the date it is signed, unless I revoke it in writing.

Signature of Individual Consenting ______________________________ Dated ______________

Signature and Title of Individual Authorized to Sign in Lieu of Individual ______________________

Dated ______________
<table>
<thead>
<tr>
<th>Provider or Person with the Information and Key Law</th>
<th>Type or content of info requested</th>
<th>Provider or Person Requesting Information</th>
<th>Purpose or Intended Use</th>
<th>Is Consent Needed?</th>
<th>Comments and Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Provider</td>
<td>Health Information</td>
<td>Medical Provider (HIPAA)</td>
<td>Treatment, Payment</td>
<td>No</td>
<td>Psychotherapy notes</td>
</tr>
<tr>
<td>HIPAA</td>
<td>Mental Health</td>
<td>Mental Health Provider (228)</td>
<td>and Operations (TPO)</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Alcohol &amp; Drug Abuse</td>
<td>Substance Abuse Provider (Part2)</td>
<td></td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family or non-relative caregiver</td>
<td>Anyone who can prevent or lessen the threat</td>
<td></td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Mental Health Provider</td>
<td>Health Information</td>
<td>Medical Provider (HIPAA)</td>
<td>Diagnosis</td>
<td>Yes</td>
<td>Consent needed to share info related to diagnosis, course, or treatment of mental or emotional condition with Medical Provider or Substance Abuse Provider.</td>
</tr>
<tr>
<td>Iowa Code Chapter 228 HIPAA</td>
<td>Mental Health</td>
<td>Mental Health Provider (228)</td>
<td>Treatment</td>
<td>No</td>
<td>Spouse, parent adult child or adult sibling</td>
</tr>
<tr>
<td></td>
<td>Alcohol &amp; Drug Abuse</td>
<td>Substance Abuse Provider (Part2)</td>
<td>Payment and Admin</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family caregiver of patient with chronic mental illness</td>
<td>Facility, Physician or Mental Health Professional</td>
<td>Care or History</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Substance Abuse Provider</td>
<td>Health Information</td>
<td>Medical Provider (HIPAA)</td>
<td>Emergencies</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>42 CFR PART 2 HIPAA</td>
<td>Mental Health</td>
<td>Mental Health Provider (228)</td>
<td></td>
<td>Yes</td>
<td>Cannot even disclose identity of minor or adult who seeks or receives treatment or services</td>
</tr>
<tr>
<td></td>
<td>Alcohol &amp; Drug Abuse</td>
<td>Substance Abuse Provider (Part2)</td>
<td></td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family or non-relative caregiver</td>
<td>Anyone who can prevent or lessen the threat</td>
<td></td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Medical Personnel</td>
<td></td>
<td></td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>
Are You A Mental Health Professional, Facility or Data Collector that Must Comply with Iowa Code Chapter 228?

Chapter 228 governs the release of mental health information, oral, written, or recorded, that indicates the identity of a client receiving professional services and which relates to the diagnosis, course, or treatment of the client’s mental or emotional condition. The law applies to mental health professionals, mental health facilities where services are provided by a mental health professional, data collectors and agents and employees of mental health facilities and data collectors.

Answer the questions to determine if you are an individual, facility or entity subject to Chapter 228. If you answer “yes” to any question you must comply with Chapter 228.

Am I a physician and surgeon, osteopathic physician and surgeon, or an individual holding at least a Master’s degree in a mental health field (psychology, social work, counseling, nursing, etc.), Do I hold a current Iowa license, AND do I have two years of post-degree clinical experience with mental health?  

NO

Do I operate a place where diagnostic or treatment services for a mental or emotional condition are provided by a mental health professional (described above)

Am I an agent or employee of a mental health facility?

NO

Do I regularly assemble or evaluate mental health information (and I am other than a mental health professional or an employee of or agent for a mental health facility).

Am I an agent or employee of a data collector?

NO

University of Iowa Clinical Law Programs
Are You A Federally Assisted Alcohol and Drug Abuse (AODA) Program That Must Comply with 42 CFR PART 2?

A TWO-STEP PROCESS

STEP 1: Answer the questions to determine if you are an alcohol and drug abuse program.

If you answer “yes” to any question in Step 1, proceed to Step 2.

If you answer “no” to all questions in Step 1, do not proceed to Step 2. You do not have to comply with 42 CFR Part 2.

STEP 2: Answer the questions to determine if your program is federally assisted.

If you answer “yes” to any question in Step 2, you must comply with 42 CFR Part 2.

<table>
<thead>
<tr>
<th>STEP 1</th>
<th>ARE WE AN AODA PROGRAM?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are you an individual or entity (other than a general medical care facility, such as a hospital, trauma center, federally qualified health center, etc.) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment?</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STEP 2</th>
<th>ARE WE FEDERALLY ASSISTED?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is my program carried out under a license, certification, registration, or other authorization from a federal agency?</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

| | Is my program supported by funds or federal financial assistance from a federal agency, even if the assistance does not directly pay for alcohol or drug abuse services? |
| No | Yes |

| | Does my program have IRS tax-exempt status, or is it allowed tax deductions for contributions? |
| No | Yes |

| | Is my program conducted in whole or in part, whether directly or by contract or otherwise, by any federal department or agency? |
| No | Yes |