



UNDERSTANDING HIPAA: What Parents Need to Know About Privacy & Their Adult Child's Health Information

When does HIPAA allow healthcare providers to disclose protected health information to parents involved in their adult child's care?

WHAT YOU NEED TO KNOW

- The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is a federal law that sets national privacy standards limiting the use and disclosure of individuals' health information (known as "protected health information" or "PHI").

KEY POINT

As your child grows into adulthood, both your rights and the rights of your child under HIPAA change.

- HIPAA sets limits and conditions on when and what information healthcare providers may disclose about your adult child's medical or mental health treatment. HIPAA seeks to protect the privacy of individuals seeking care and treatment, while also recognizing that the sharing of health information with family, friends, and caregivers may be necessary and appropriate in certain situations.

A CLOSER LOOK:

This document answers frequently asked questions (FAQs) about when parents can access their adult child's protected health information. [Click here](#) for information about parent's rights to access their minor child's protected health information.

Q What information is protected by HIPAA?

A HIPAA protects the privacy of a broad range of general health information in any form that can identify an individual and relates to past, current, or future physical or mental health conditions or the provision of healthcare services.¹ Examples of protected health information include names, social security numbers, addresses, email addresses, phone numbers, fingerprints, diagnoses, clinical notes, laboratory results, and prescription histories.

Q Who must follow HIPAA?

A HIPAA applies to covered entities and their business associates. “Covered entities” include almost all healthcare providers, health plans, and healthcare clearinghouses. “Business associates” include entities or individuals who are not members of the covered entity but who receive, maintain, generate or transmit protected health information on behalf of the covered entity.²

Q When can a healthcare provider share an adult child’s health information with parents or other family members who are involved in the patient’s care?

A HIPAA recognizes the important role parents and other family members play in a patient’s care. HIPAA also gives adult patients the right to decide what health information can be shared about them and with whom, including health information that was created when they were minors. A provider can share health information with family members involved in a patient’s health care or payment in certain circumstance, including:

- **When the Patient Consents** – HIPAA always permits the disclosure of health information when a patient authorizes their provider to share information with family or friends.
- **When the Patient does not Object** – A provider may disclose health information to a family member or others involved in a patient’s care when the patient is present during the disclosure and the individual has the opportunity to object to the disclosure. A provider may also share information if, using professional judgment, the provider determines that the patient does not object.
- **When the Patient is not Present or Incapacitated** – If a patient is not present or lacks the capacity to make healthcare decisions (for example, if they are unconscious, sedated, severely intoxicated, or disoriented), then a healthcare provider may contact parents or other individuals involved in the patient’s care if the provider determines, in their professional judgment, that doing so is in the patient’s best interests. For example, if a patient is incapacitated following an overdose, a provider may use their professional judgment to share information about the overdose with the parents of an adult patient, and may include other related medical information. However, the provider may not share information unrelated to the overdose without the patient’s permission.³ If the patient regains capacity to make healthcare decisions, the provider must offer them the opportunity to agree or object before any additional information is shared.⁴ Also, it is important to remember that state laws or professional ethics rules may impose stricter limitations on sharing protected health information. The Department of Health and Human Services (HHS) Office for Civil Rights (OCR) has published [this guidance](#) explaining how HIPAA allows healthcare providers to share health information with family members during certain crisis situations.
- **When there is a Threat of Serious Harm** – If there is a threat of serious and imminent harm to a patient or to others, HIPAA allows healthcare providers to share information with anyone who the provider reasonably believes is in a position to prevent or lessen the threat.⁵

When a serious and imminent threat of harm exists, a patient's age or legal relationship to a family member is not a barrier to sharing information. For example, if a patient threatens to commit suicide with a firearm located in a parent's home, a provider may notify the parent to enlist their assistance with removing the firearm and discuss plans for obtaining a higher level of care. The Office for Civil Rights has published [this guidance](#) for parents explaining disclosures of HIPAA protected information in various situations including when there is a threat of serious harm.

HELPFUL LINK:

[Click here](#) for additional guidance from the Office for Civil Rights about disclosures of PHI to family and friends.

KEY POINT

In most cases, adult patients have the right to decide who receives their protected health information.

- Q** *At what age does HIPAA consider my child to be an "adult"?*
- A** **Once a child reaches the age of majority in your state, they are considered a legal adult under HIPAA.⁶ In most states the age of majority is 18 years old. Some states may also consider an individual an adult if they are married, have a child, are in the military, or have been declared emancipated.**
- Q** *Does HIPAA allow healthcare providers to notify family members that a patient has been admitted to a facility?*
- A** **Yes. HIPAA allows healthcare providers to notify family members about an adult patient's location, general condition, or death. Where a patient is present and has the capacity to make healthcare decisions, the provider may notify family members with the patient's permission or when given the opportunity the patient does not object to sharing information. A provider may also notify family if it can reasonably infer from the circumstances, based on professional judgment, that the patient does not object. If the patient is not present or it is impractical because of emergency or incapacity to ask a patient about notifying family members, a provider may notify family if it determines, based on professional judgment, that doing so is in the patient's best interest.**
- Q** *Can a healthcare provider discuss an adult child's health information over the phone with parents, family members, or others involved in the patient's care?*
- A** **Yes. When a provider is authorized to share a patient's health information, that information may be shared face-to-face, over the phone, or in writing.**

HELPFUL LINK: [Click here](#) to learn more about ways healthcare providers may share health information with family members.

- Q** *What is a HIPAA "authorization" form and how can patients use it to authorize disclosures to parents or other family members involved in their care?*
- A** **Many healthcare providers will require individuals to sign a written authorization (sometimes called a HIPAA release or release of information) before disclosing protected health information.⁹ A HIPAA authorization is a detailed document signed by a patient that gives providers permission to use health information for specified purposes, or to disclose protected health information to a third party specified by the patient.¹⁰ It may be helpful to have conversations with adult children about how privacy rights under HIPAA change after a child reaches the age of majority, and why it may be important for parents to be able to discuss and share health information with an adult child's healthcare providers.**

HELPFUL LINK: [Click here](#) to learn more about HIPAA authorizations.

Q *What should be included in a HIPAA “authorization” form and how long does it last?*

A HIPAA authorizations must include the name of the person authorized to make the disclosure, the name of the recipient of the information, a description of the information to be disclosed, the purpose for the disclosure, an expiration date or event (such as patient discharge), and the signature of the patient (or someone authorized to make healthcare decisions on behalf of the patient).¹¹ An authorization remains valid until its expiration date or event unless it is revoked in writing by the patient. HIPAA does not impose specific time limits on authorizations, however more restrictive state laws may control how long a HIPAA authorization remains in effect.

Q *Can parents talk to their adult child’s healthcare providers?*

A **Yes. HIPAA does not prevent providers from listening to concerned parents about the health and well-being of their adult child so that the provider may take that information into account when administering care in the best interests of their patient.**

Q *Do parents have any right to access their adult child’s protected health information if the adult child is living with their parents and/or receives financial support from parents?*

A **No. HIPAA does not grant parents the right to access the protected health information of an adult patient because the patient lives with or is financially supported by parents.**

Q *Can a healthcare provider share health information with parents if they are their adult child’s personal representative?*

A **Yes. Under HIPAA a person authorized under state or other applicable law to act on behalf of an adult in making healthcare decisions is the individual’s “personal representative.”¹² Personal representatives may be established through a written directive, medical power of attorney, court appointment of a guardian or conservator, a determination of incompetency, or other recognition consistent with state laws that would permit a parent to act on their adult child’s behalf in making healthcare decisions. The ability to access health information may depend on the authority granted to the personal representative by law. For example, if the personal representative is authorized by law to make all healthcare decisions, generally they may have broad access to a patient’s health information. However, if the personal representative’s authority is limited to authorizing end of life treatment, then access to health information may be limited to only that information relevant to decisions about end of life care.**

HELPFUL LINK: [Click here](#) to learn more about personal representatives.

A healthcare provider may refuse to recognize a parent as an adult child’s personal representative if:

- A provider has a reasonable belief that a parent may have abused or neglected an adult child, or when recognizing a parent as personal representative may put an adult child’s safety at risk; or
- A provider has determined, in their professional judgment, it is not in the best interest of the adult child to treat a parent as a personal representative.¹³

Q *How does HIPAA interact with other federal and state privacy laws?*

A **HIPAA establishes minimum privacy protections for health information. If another federal or state privacy law provides more privacy protections, the more stringent law applies.¹⁴ For example, the federal privacy law for substance use disorder (SUD) treatment information is generally more stringent than HIPAA and does not permit disclosures to parents unless the patient signs a valid consent form.¹⁵**

Many state laws provide heightened privacy protections for sensitive health information, including SUD and/or mental health treatment records, HIV/AIDS treatment information, and reproductive health records. Parents should consult with a licensed attorney in their state to determine what federal or state laws may be applicable.

Q *What can parents do if they believe a healthcare provider is inappropriately withholding the health information of an adult child in violation of HIPAA?*

A **OCR enforces and investigates HIPAA violations. Parents who believe a healthcare provider has violated their (or their adult child's) privacy rights can file a complaint with OCR within 180 days of the discovery of the alleged HIPAA violation. Parents should consult with a licensed attorney in their state to determine their rights and remedies under federal and state law.**

HELPFUL LINK: [Click here](#) to learn more about filing a HIPAA complaint.

For More Information

Resources

This resource is one of many that are available within the Center of Excellence for Protected Health Information's resource library, which can be found at coephi.org.

Request Technical Assistance

You can request brief, individualized technical assistance and join our mailing list for updates, including news about the publication of new resources and training opportunities, [here](#).

Disclaimer

Resources, training, technical assistance, and any other information provided through the Center of Excellence for Protected Health Information do not constitute legal advice. For legal advice, including legal advice on other applicable state and federal laws, please seek out local counsel.

This resource was supported by SAMHSA of the U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$5,000,000 with 100 percent funded by SAMHSA/HHS. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by SAMHSA/HHS, or the U.S. Government.

References

1. 45 CFR § 160.103 (definition of "individually identifiable health information").
2. Id. (definitions of "business associate" and "covered entity").
3. 45 CFR §§ 164.510(b)(1)(i) and 164.510(b)(3).
4. 45 CFR § 164.510(b)(2).
5. 45 CFR § 164.512(j).
6. See HHS, "When Your Child, Teenager, or Adult Son or Daughter has a Mental Illness or Substance Use Disorder, Including Opioid Addiction: What Parents Need to Know about HIPAA," <https://www.hhs.gov/sites/default/files/when-your-child.pdf>.
7. 45 CFR § 164.510(b).
8. 45 CFR § 160.103 (definition of "disclosure").
9. 45 CFR § 164.508.
10. 45 CFR § 164.508(c).
11. 45 CFR § 164.508(b).
12. 45 CFR § 164.502(g).
13. 45 CFR § 164.502(g)(5).
14. 45 CFR § 160.203(b).
15. 42 USC § 290dd-2; 42 CFR Part 2. For more information about the substance use disorder privacy law and regulations, visit www.coephi.org.