



NAVIGATING CONFIDENTIALITY IN FIRST RESPONDER DEFLECTION

WHAT YOU NEED TO KNOW

In performing their jobs, first responders often gain access to sensitive information about people's substance use disorders (SUD) and treatment. Protecting the privacy of this information is required by law and plays a key role in promoting recovery. This resource explains the limited circumstances under which two federal privacy laws apply to SUD information obtained by first responders. It also describes how these laws permit first responders to share protected information.

A CLOSER LOOK:

Two federal laws protect the privacy of SUD information:

- The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") – which applies to Protected Health Information ("PHI"), and
- A specific federal confidentiality law for SUD records, 42 CFR Part 2 ("Part 2").

When do these laws apply to first responders?

HIPAA: First responders must only comply with HIPAA's requirements if they are a "covered entity" or a "business associate" to a covered entity. To be a covered entity, first responders must provide health care and transmit PHI electronically for certain transactions (e.g., billing insurance). A "business associate" is a person or entity that creates, receives, maintains, or transmits PHI in performing certain functions or activities for or on behalf of a covered entity.

[Click here for HIPAA transactions rule.](#)

Example

The Greenville Fire Station has one ambulance and three emergency medical technicians (EMTs). They provide emergency medical services to individuals and share information with staff at three regional hospitals that are classified as covered entities under HIPAA. The ambulance service is fully funded by the government and never bills individuals for services.

Question 1: Is Greenville Fire Station a covered entity under HIPAA?

Answer: No. It is *not* a covered entity because even though it provides health services, it does not bill individuals or transmit information electronically in connection with other qualifying transactions.

Question 2: By sharing information with the staff at three regional hospitals, is Greenville Fire Station a business associate performing functions or activities for or on behalf of a covered entity?

Answer: No. Greenville Fire Station is *not* a business associate to any of the three regional hospitals because it is not creating, receiving, maintaining, or transmitting PHI to perform functions or activities for or on behalf of those covered entity hospitals. Rather, Greenville Fire Station is providing a service to individual patients.

Part 2: Part 2 only applies to “Part 2 programs” and “lawful holders.” A Part 2 program means a person that provides SUD treatment, diagnosis, or referral for treatment, and meets the definitions of “program” and “federally assisted.” For more information about when Part 2 applies, see the [Center of Excellence for Protected Health Information’s resources](#). First responders will rarely be a Part 2 program, but they may become “lawful holders” if they receive records from a Part 2 program. As a lawful holder, they must follow Part 2’s privacy and security restrictions for that information.

Example

A Greenville Fire Station first responder connects Jane to a Part 2 program following an overdose. One month later, the Part 2 program obtains Jane’s written consent to tell the first responder that Jane is doing well in her treatment.

Question: Is the first responder a lawful holder?

Answer: Yes. The first responder is a lawful holder of the information they received from the Part 2 program and must protect its confidentiality. Note that Part 2 does not apply to information that the patient self-discloses to a first responder.

Example

The first responder from the last example runs into Jane on the street. Jane thanks them for helping her and says she is finally in recovery from a ten-year struggle with cocaine and opioid use disorders.

Question: Is the information Jane disclosed about herself protected by Part 2?

Answer: No. Part 2 does not protect information that Jane self-disclosed.

How can first responders legally share protected information?

When HIPAA or Part 2 applies to first responders (and as noted above, they will not always apply!), they can share protected information through the laws' "exceptions." The most applicable exceptions are:

- **Patient consent/authorization**

Written patient consent is an excellent way to facilitate information sharing because it centers the individual in the decision-making process. HIPAA and Part 2 have slightly different requirements for written consent.

[Click here for a sample consent form that meets the requirements of both.](#)

- **For treatment purposes**

- **HIPAA:** First responders who are subject to HIPAA may share Protected Health Information without the individual's written consent when necessary for treatment. This includes providing health care to the individual, care coordination, and referrals to other healthcare providers.

- **Part 2:** A lawful holder of Part 2-protected information may only use and re-disclose the information as permitted by Part 2. (42 CFR § 2.33)

Example

A first responder that is subject to HIPAA responds to a 911 call about an overdose. The first responder administers naloxone, followed by oxygen, and the individual declines further care on the spot. The first responder wants to inform an outreach unit at a different agency about what happened so they can offer the individual follow-up care.

Question: Can the first responder share that information without patient consent?

Answer: Yes, because HIPAA permits sharing health information without consent for treatment purposes.

- **De-identified information:**

Information that does not reasonably identify an individual can be shared under both HIPAA and Part 2. [Click here for OCR's guidance](#) about de-identifying information under HIPAA.

Example

Green Leaf SUD program tracks the number of referrals received from first responders, number of individuals currently engaged in treatment, and how many individuals remained engaged for 60 or more days.

Green Leaf can share this aggregate information if it does not identify any individuals.



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](#).



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