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## Release of Information During COVID-19

With the current state of events surrounding the COVID-19 pandemic, there is a lot of information being published in the form of announcements, bulletins, notifications, and guidance, to name a few. The healthcare industry and its workforce are in unprecedented times, navigating the uncharted waters together. This document provides questions and answers to some of today's common scenarios related to the disclosure of protected health information (PHI) during a disaster.

## Frequently Asked Questions and Answers

This FAQ tool is broken up into 5 categories: (1) Compliance, (2) Subpoenas, (3) Workflows, (4) Reporting, and (5) Remote Workforce.

## COVID-19 Major Events Timeline in the US (not inclusive)

| | | | |
|---|---|---|---|
| 12/31/2019: | WHO recognizes mystery pneumonia-like illness in China | 2/29/2020: | US travel restrictions – Iran, Italy, South Korea |
| 1/11/2020: | China reports first coronavirus death | 3/3/2020: | CDC lifts restrictions for virus testing |
| 1/21/2020: | 1st confirmed US coronavirus case | 3/11/2020: | US travel restrictions - Europe |
| 1/30/2020: | WHO declares global health emergency | 3/13/2020: | Trump declares national emergency |
| 1/31/2020: | US travel restrictions - China | 3/15/2020: | CDC warns against large gatherings |
| 2/11/2020: | Coronavirus renamed COVID-19 | 3/17/2020: | COVID-19 present in all 50 states |
| 2/26/2020: | 1st case of local transmission in US suspected | 3/20/2020: | US travel restrictions - Mexico |
| | | 3/26/2020: | US leads the world in COVID-19 |
| 2/28/2020: | 1st COVID-19 death reported in the US | 3/27/2020: | Trump signs $2 trillion stimulus bill |
| | | 4/2/2020: | Global cases hit 1 million |

## Category I: Compliance

1. **Questions: I heard that HIPAA was waived during the pandemic. Is this true?**

   **Answer:** No. This is not true. HIPAA is still applicable. There are certain aspects of HIPAA that have been relaxed, but HIPAA still applies!

2. **Question: How should behavioral health and substance use disorder records be handled?**

   **Answer:**
   - Minimum necessary applies
   - March 27, 2020 – Congress passed $2 trillion bill to assist health professionals fighting COVID-19
     - Included in the bill – Jessica Grubbs "Legacy Act"
     - Updates SAMHSA (Title 42 CFR Part 2)
     - Eases the sharing of addiction records for TPO – patient still in control
     - Section 3221 (C) – Confidentiality and Disclosure of Records Relating to Substance Use Disorder.
     - *"It shall be permissible for a patient's prior written consent to be given once for all such future uses or disclosures for purposes of treatment, payment, and health care operations, until such time as the patient revokes such consent in writing."* https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-H41319DAF6C9B4CFD8C60C2CFE7EA1202

*Disclaimer: This document does not represent legal advice or opinion. It is for guidance purposes only. Please refer to the laws and appropriate legal counsel for full analysis and clarifications.*

3. **Question: Should verbal requests and authorizations be accepted during the pandemic?**

   **Answer:**  Yes, if there is an established relationship.
   - If you have a vendor, portal set up and use is recommended. A signed waiver may be required by the business associate to accept verbal requests on a covered entity's behalf.
   - OCR has provided guidance during the pandemic and will not impose penalties for noncompliance with HIPAA under good faith efforts.
     https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf

4. **Question: Can information be sent to another provider without consent?**

   **Answer:** Yes, this falls under the category of treatment, payment, and healthcare operations (TPO).  Under HIPAA §164.508 – Authorization not required, TPO is listed as not requiring an authorization for disclosure.

5. **Question: How should signed authorizations be obtained if a physician has done a tele-document meeting with a patient?**

   **Answer:**
   - Verify the patient's identity and location.
   - Obtain patient's informed consent for treatment through a remote examination.  This may be a verbal, with witness.
   - If available electronic signature should be obtained.
   - Check with applicable state laws.

6. **Question: Is it okay to disclose PHI to next of kin and/or an individual named in the legal paperwork if there is not a Medical Power of Attorney or Advanced Directive available?**

   **Answer:** Yes, PHI can be shared as "need to know" and at provider's discretion under HIPAA §164.510(b) - Disclosures to Family, Friends, and Others Involved in an Individual's Care and for Notification.

# Category II: Subpoenas

7. **Question: Subpoenas typically must by served in-person, but servers are no longer permitted onsite at facilities. How can we navigate this to remain compliant?**

   **Answer:**
   - Below are some alternative options for delivery.  Any changes should be confirmed with your state and local courts before implementation.
     - Accept at Security Checkpoints and then forward to HIM
     - Meet servers in an open space within the hospital
     - Accept/collaborate on electronic submission
     - Call ahead or schedule drop-off (if permitted)
     - Use CDC hygiene guidelines: https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html
     - Recommended Resource: https://www.serve-now.com/resources/covid-19

# Category III: Workflows

8. **Question: Is there any guidance regarding the handling of paper records?**

   **Answer:**
   - COVID-19 can live a few minutes up to 5 days on paper
     - https://www.webmd.com/lung/how-long-covid-19-lives-on-surfaces
   - Follow CDC guidelines
     - Wash hands
     - Wear mask and gloves
     - Social distancing
     - Clean and disinfect (regularly)
     - Essential staffing only – minimize paper handlers
   - Follow guidance for infection control and Emergency Medical Treatment and Labor Act (EMTALA)
     - https://www.cms.gov/files/document/qso-20-15-emtala-requirements-and-coronavirus-0311-updated-003pdf.pdf-1

9. **Question: How should offices handle patient registration of new patients if online registration is not available?**

    **Answer:**
    - Follow CDC guidelines: https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html
        - Wash hands
        - Wear mask and gloves
        - Social distancing
            ◦ Remove seating areas
            ◦ Place footprints on floor 6 feet apart to instruct people where to stand if they are waiting
            ◦ Schedule appointments (if possible)
        - Clean and disinfect (regularly)
        - Essential staffing only – minimize paper handlers

10. **Question:  Now is the time to lead efforts to optimize workflows to achieve interoperability in healthcare as patients/consumers need access to their medical information (despite the epidemic).  What initiatives do you recommend for ROI management to present to senior management?**

    **Answer:**
    - Increase portal use
    - Reintroduce Information Governance
    - Prepare for Information Blocking Rule
        - Map USCDI data elements and assure consistent definitions for implementation
        - Start to define strategies
    - Map coding data for automatic claims submission
    - Educate and train providers and the workforce to maximize EMR usage (i.e. no more internal requests for continuity of care)

# Category IV:  Reporting

11. **Question: When reporting to the CDC, how does minimum necessary apply?**

    **Answer:**
    - Minimum necessary applies.  Information should only be provided as requested/required to fulfill the purpose of the data requested.
    - CDC Health Departments Case Report Form: https://www.cdc.gov/coronavirus/2019-ncov/php/reporting-pui.html
    - US Core Data for Interoperability (USCDI): https://www.healthit.gov/isa/united-states-core-data-interoperability-uscdi
        - Demographics
        - Vitals (BP, Weight, etc)
        - Allergies
        - Clinical notes (DS, H&P, OP, Consult notes, etc)
        - Labs
        - Immunizations
        - Medications
        - Med Allergies
        - Smoking status
        - Implanted Devices

12. **Does the CDC get information from all State Health Departments for all community monitored disease outbreaks/ active monitoring?  Does a patient need to give consent for their information to be released to the State Health Department and the CDC?**

    **Answer:** Yes, the information should be coming from local and state health departments.  A patient does not need to authorize the release of their PHI to public health and/or government agencies.  Public health is listed as a disclosure where an authorization is not required:
    - HIPAA 45 CFR §164.508 – Authorization not required
    - HIPAA 45 CFR §164.512(b)(1) – Disclosure to public health authority

# Category V:  Remote Workforce

13. **Question: Is it okay to direct work phone calls to a personal phone?**

    **Answer:**
    - Follow organizational policy and procedure for remote staff and personal device use (if permitted)
    - Have a signed waiver personal device use
    - Obtain signed Remote Access and Confidentiality Agreement from all remote staff
    - Provide education and training and then document into employee file

14. **Question: Providers are wanting to see progress of patient wounds for outpatients (who are not coming to clinic), providers are wanting photos via e-mail.  I am trying to get them to use the portal to communicate.  Any advice in promoting portal vs email?**

    **Answer:**
    - Education and Training
        - Explain the risks of email (if not encrypted) to the workforce. If email is secure and encrypted, email can be sent.
        - Promote the benefits of portal use. A lot of times, it's the lack of knowing how to use a system that deters its actual use.
        - Provide training 1:1 or in a small group approach. Providers typically don't like to be trained in large groups. Once they learn it, they appreciate it.

15. **Question: How should smart devices be managed in a work-from-home setting?**

    **Answer:**  Smart devices (i.e. Alexa, Google Home, Ring, Nest) should be turned off or the employee should be set up to work remotely in a different room from any smart devices. They are voice activated and/or have cameras.

    ***Note:*** *Security/Video cameras in the house is another consideration that must be taken to ensure positioning of a monitor isn't visible to the camera.*

## Learn More

To learn more about how MRO is committed to providing tips, suggestions, and best practices for your organization during the COVID-19 pandemic, visit our resources web page at: **https://info.mrocorp.com/best-practices/c19**

When evaluating ROI solutions, please contact MRO at **sales@mrocorp.com** or **610.994.7500** to learn more about the industry's #1 ROI solutions provider. For more information, you can also visit **www.mrocorp.com.**