

Privacy in HIPAA, VAWA, FVPSA & VOCA: Different Laws, Different Purposes

Privacy Question:	HIPAA Privacy & Security Rules:	VAWA/FVPSA/VOCA:
Who must follow this law?	<p>“Covered entities”, which are</p> <ul style="list-style-type: none"> • Health Plans, • Health Care Clearinghouses, & • Health Care Providers transmitting health care information electronically, <p>PLUS</p> <ul style="list-style-type: none"> • “Business Associates” of any of the above must contract to follow the rules 	<ul style="list-style-type: none"> • All grantees and subgrantees of Violence Against Women Act (VAWA) or Family Violence Prevention Services Act (FVPSA) funding • All recipients and subrecipients of VOCA victim assistance funds
What information is protected by this law?	<p>“Protected Health Information” which means individually identifiable health information transmitted or maintained by a covered entity or business associate (exclusions for certain educational and employment records)</p>	<ul style="list-style-type: none"> • “Personally Identifying Information” and • Individual Information (VAWA/VOCA) • which is collected in connection with services requested, utilized or denied
What is the basic rule?	<p>A covered entity or business associate may not use or disclose protected health information except for:</p> <ul style="list-style-type: none"> • treatment, • payment, • health care operations, • sharing with business associates, • organized healthcare arrangements, 	<p>Grantees and subgrantees shall not disclose personally identifying information ... without the written consent of the person whose information is sought</p> <p>Grantees may share:</p> <ul style="list-style-type: none"> • nonpersonally identifying aggregate data,

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	<ul style="list-style-type: none"> • affiliated entities, • some researchers, and • public policy exceptions in 12 national priority areas 	<ul style="list-style-type: none"> • court, law enforcement and prosecution generated information necessary for those purposes, and • information compelled to be disclosed by statutory or lawful court mandate
Does the rule allow for <u>routine</u> disclosure of personally identifying information without the individual's consent to meet organizational needs?	Yes, specifically for treatment, payment, and health care operations purposes	No
How does someone consent to disclosure of personal information?	Written consent; sometimes by oral consent or by "failure to object"	Written, informed, reasonably time-limited, consent
Can consent to release personal information be a condition of services?	Yes, in some circumstances	No
Can information be shared with an individual's family and friends absent written consent?	Yes, if the individual does not object or if the professional believes it is in his/her best interest	No, VAWA/FVPSA/VOCA require written, informed, reasonably time-limited consent for disclosure of personally identifying information
Can a written release have an uncertain expiration or no expiration date at all?	Yes, it can have an "expiration event" or for a research database, no expiration date	No, VAWA/FVPSA/VOCA requires the release be "time-limited"
Can identifying information be shared to comply with government reporting	In some circumstances, yes	No

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or evaluation requirements?		
Can the organization disclose personal information about victims of abuse, neglect or domestic violence to law enforcement without consent?	Yes, if the law enforcement request meets certain requirements described in the rules at 45 CFR 164.512	Only if there is a specific statutory or court mandate requiring disclosure
Does the organization have to give notice to the person if his/her information is disclosed to law enforcement?	Not always – medical provider has some discretion to evaluate harm and best interests	Yes. Grantee shall make reasonable attempts to provide notice to victims affected by the disclosure of information
Can non-identifying information be disclosed without consent?	Yes, “de-identified” health information which does not identify an individual is not protected and can be disclosed	Yes, nonpersonally identifying data in the aggregate regarding services to clients and nonpersonally identifying demographic information can be shared
Where are the laws & rules found?	45 CFR Parts 160 and 164	34 USC §12291 (a)(20) & (b)(2) 42 USC §10402(7); 42 USC §10406(c)(5); 28 CFR §94.115

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