



FEDERAL PRIVACY LAWS Fact Sheet

Police Department as FAN Comeback QRT Partner and Federal Privacy Law

Background

The purpose of this fact sheet is to discuss two well-known federal health privacy laws, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, and 42 CFR Part 2 that governs substance use disorder programs, and explain why they do not apply to police departments that provide information about an individual suspected of overdosing on narcotics (individual) to a quick response team that provides outreach and support to assist the individual in obtaining treatment and supportive services.

Facts

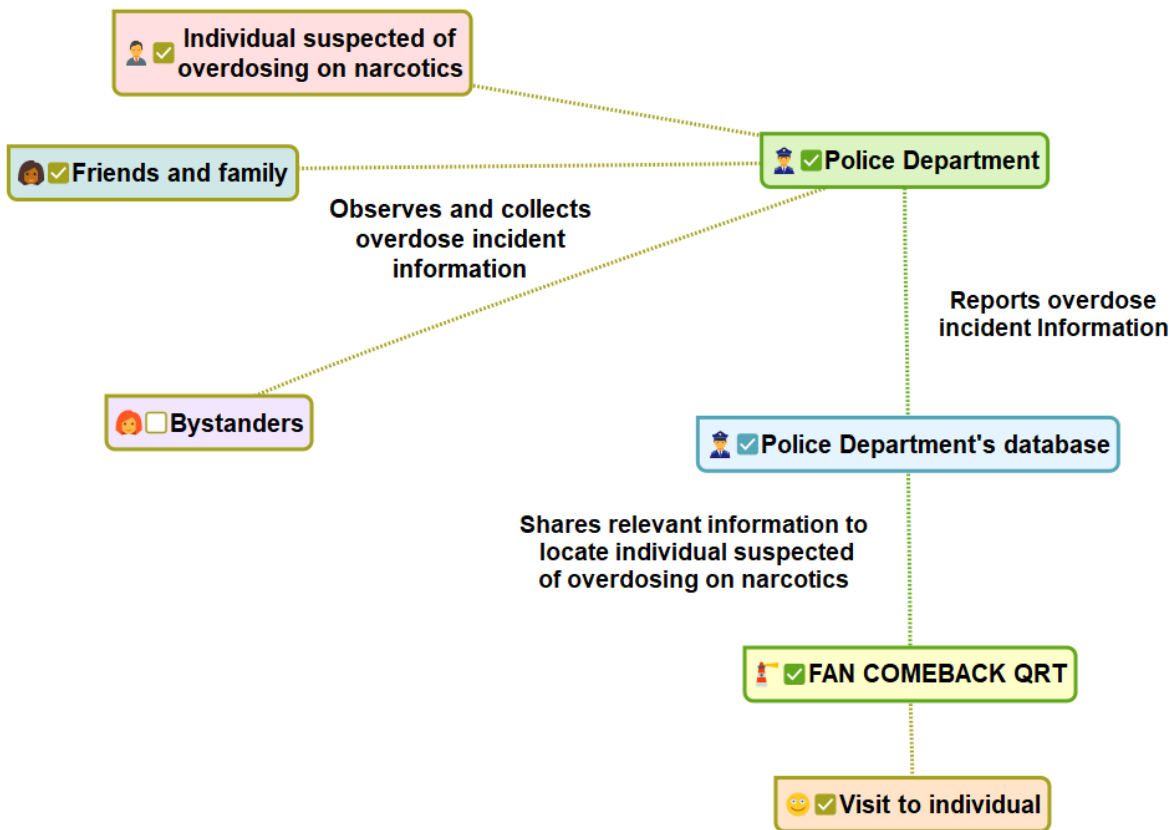
Some police departments in Michigan participate in the Families Against Narcotics Comeback Quick Response Team (FAN COMEBACK QRT). The purpose of this initiative is to collaborate across the community to prevent and respond to opioid overdoses. Partners include police departments, substance use treatment providers, recovery services, peer support services and community support services.

When an overdose occurs, the police department leaves an informational card with the individual indicating that the FAN COMEBACK QRT will follow-up with support and resources. On a daily basis, the police department reports overdose information collected at the overdose location to the Overdose Tracking and Monitoring System. Prior to response, the police department sends relevant information (incident case number, name of individual, date of birth, address of incident location, address of residence, phone number and safety concerns) to all FAN COMEBACK QRT members and coordinates the visits. Teams comprised of the police department and peer recovery as well as others, as needed, respond to the overdose incident within 72 hours.

At the visit, the police department lets the individual know that they are not in trouble and offers assistance. If the individual responds positively, the police department introduces the Peer Recovery Coach and turns the rest of the visit over to them. The Peer Recovery Coach obtains a signed consent form and initiates a transfer of care in front of the patient to the chosen facility. If the individual refuses treatment, then the police

department leaves information and resources with the individual and offers Narcan training to the individual and family.

Possible Overdose Location




Federal Privacy Law

Health Insurance Portability and Accountability Act of 1996 (HIPAA). Congress enacted HIPAA to reduce costs by standardizing claims submission and payment processes in the health care system. Recognizing that electronic health information must be secured during this process, Congress mandated the development of national security standards to safeguard this information. Additionally, in order to prevent the erosion of privacy over time by this explosion of electronic health data, Congress directed that privacy standards be established.

By law, HIPAA only regulates specified organizations involved in the claims submission and payment process - health care providers (that transmit information electronically, such as a claim), health plans, health care clearinghouses and their business associates.

Examples of health care providers include doctors, dentists, hospitals and clinics. Health plans may be private insurance companies like Blue Cross Blue Shield or government health plans, like Medicare and Medicaid.



Health care clearinghouses reformat electronic transactions, making them readable to the recipient organization.

Business associates provide services to health care providers, health plans or clearinghouses that involve their access to the covered entity's individually identifiable health information, also known as protected health information (PHI). Examples of services include legal, accounting, management, quality assurance activities, patient safety activities, billing, personal health records and subcontractors. Like covered entities, business associates are HIPAA covered and subject to HIPAA's rules regarding data sharing.

42 CFR Part 2. For over 30 years, federal regulations, 42 CFR Part 2 (Part 2), have required substance use disorder treatment programs that receive federal assistance to comply with stringent confidentiality requirements. A program that is regulated by Part 2 holds itself out as offering alcohol or drug abuse diagnosis, treatment or referral for treatment and provides those services. A Part 2 program also receives federal assistance, such as Medicaid payments or non-profit status. Substance use treatment providers may be subject to both Part 2 and HIPAA.

FAQs

Q1: The police department is partnering with health care providers and social services to connect individuals with community services. Is the police department covered by HIPAA?

A1: No. The police department does not furnish, bill or get paid for health care services in the normal course of business. Consequently, the police department is not a health care provider under HIPAA. The police department collects information about an individual as part of its public safety responsibilities. The police department retains overdose information in its database and shares relevant identification, contact and possibly safety information with the FAN COMEBACK QRT. Together, the police department and another member of the FAN COMEBACK QRT use the information to visit the individual and offer resources and assistance.

The police department is not acting as a health care provider, health plan, health care clearinghouse or business associate. The police department is carrying out its public safety mission and is not covered by HIPAA.

Q2: Is the overdose information collected by the police department subject to HIPAA?

A2: No. HIPAA does not regulate health information directly. HIPAA only regulates PHI held by covered entities (health care providers, health plans, and health care clearinghouses) and business associates. Unless there is a covered entity or business associate, HIPAA does not protect the health information. Therefore, HIPAA does not regulate the overdose information collected by the police department.

Q3: There are parts of local government that are covered by HIPAA. Does that mean that the police department is covered by HIPAA too?

A3: No. Local government might find itself HIPAA covered, for example, if it provides health care services and electronically submits a claim to a health plan, such as Blue Cross Blue Shield. In this example, local government is a HIPAA covered health care provider. Consequently, HIPAA regulates the local government's

uses and sharing of PHI which is individually identifiable health information. HIPAA limits health information that it regulates to information created or received by a health care provider, health plan, employer or health care clearinghouse. When the police department observes a possible overdose, they document the incident and store the information in their database. By definition, the police department does not collect HIPAA regulated health information and is therefore not subject to HIPAA.

Q4: The police department is partnering with substance use treatment services, recovery services, peer support services and community support services to conduct outreach visits with individuals. Several of the substance use treatment providers are covered by Part 2 which stringently protects substance use disorder information. Does this make the police department subject to these regulations as well?

A4: No. The police department does not provide alcohol or drug abuse diagnosis, treatment or referral for treatment. The police department is not a federally assisted substance use disorder treatment program within the meaning of Part 2. Therefore, Part 2 does not apply to overdose and identity related information collected by the police department from the individual, the individual's friends and family or bystanders at the overdose location.

SUPPORTERS



Robert Wood Johnson Foundation

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