



## MISSOURI PUBLIC HEALTH AUTHORITY Legal Technical Assistance

# Follow-up Questions from HIPAA Fact and Fiction Training on February 6, 2024


*The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their jurisdiction.*

- 1. Question:** If an employer sends a patient to a local public health agency (LPHA) for testing (such as a TB skin test) for purposes of determining eligibility for employment or maintaining employment and pays for the test, is a HIPAA-compliant written authorization from the patient needed to share the results with the employer?

**Answer:** HHS's [summary of the privacy rule](#) provides examples of disclosures that require an individual's authorization, including "disclosures to an employer of the results of a pre-employment physical or lab test". As such, an LPHA should obtain a valid written authorization from the patient to release the test results to the employer. All authorizations must be in [plain language](#) and contain a [number of elements](#), including a description of the protected health information to be used and disclosed, the person authorized to make the use or disclosure, the person to whom the covered entity may make the disclosure, an expiration date, and, in some cases, the purpose for which the information may be used or disclosed.

- 2. Question:** If a patient calls and asks for test results over the phone or requests that their test results be emailed to them, is verbal consent by the patient sufficient to permit this disclosure?

**Answer:** HIPAA permits providers to share information [by email](#) or [by phone](#), provided they apply reasonable safeguards. Furthermore, HIPAA requires that providers "must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the covered health care provider by alternative means or at alternative locations." 45 CFR 164.522(b). In other words, if an individual is requesting email or phone as a means of communication and the request is reasonable, the provider must accommodate this request. Additionally, providers [may share information in writing, by phone, or in person with individuals](#) involved in a patient's treatment or care, including if the individual is not present and it is in the provider's professional judgment that it is in the patient's best interest.



A provider should take reasonable precautions to confirm that the identity of the patient is correct prior to sharing the information, such as by asking for full name and date of birth and address, or sending a test email confirming that the [patient consents to the provider sharing](#) the health information over email. Specifically with respect to email, HHS states the [following](#): “Patients may initiate communications with a provider using e-mail. If this situation occurs, the health care provider can assume (unless the patient has explicitly stated otherwise) that e-mail communications are acceptable to the individual. If the provider feels the patient may not be aware of the possible risks of using unencrypted e-mail, or has concerns about potential liability, the provider can alert the patient of those risks, and let the patient decide whether to continue e-mail communications.”

- 3. Question:** Is it a breach or improper disclosure by an LPHA if it shares information with a patient at the email address or phone number the patient has provided, but the patient has provided the incorrect email or phone number.

**Answer:** Please see the response above. Providers “must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the covered health care provider by alternative means or at alternative locations.” 45 CFR 164.522(b). If the provider has reason to believe the phone number or email address is erroneous, then the provider may send a test email, ask for reasonable details to verify the individual’s identity over the phone, or decline to leave any protected health information on voicemail. The provider may also re-confirm consent to share the health information with the patient by phone or email prior to doing so. If a provider suspects or knows they sent PHI to the wrong email address or phone number, then they must perform a [risk assessment](#) in accordance with the breach notification rule, to determine whether a breach occurred.

- 4. Question:** What kind of disclosures of a patient’s PHI must an LPHA document and share when a patient requests an accounting of disclosures?

**Answer:** A full description of the disclosures a covered entity is required to report and those that are exempt from disclosure can be found at [45 CFR 164.528](#). In summary, an individual has the right to an accounting of all disclosures in the prior six years (or less time at the patient’s request), except for disclosures:

- i. To carry out treatment, payment and health care operations;
- ii. To individuals of protected health information pertaining to them;
- iii. [Incident to a use or disclosure permitted](#) or required by the HIPAA Privacy Rule;
- iv. Pursuant to an authorization;
- v. For the facility's directory or to persons involved in the individual's care or other notification purposes;
- vi. For national security or intelligence purposes;
- vii. To correctional institutions or law enforcement officials;
- viii. As part of a limited data set;
- ix. That occurred prior to the compliance date for the covered entity; or
- x. To a health oversight or law enforcement official if it would impede the agency’s investigation for the time the agency specifies.

Examples of the types of disclosures that a covered entity must document include those to [public health authorities](#) and for [purposes of litigation](#) to which the covered entity is not a party. Generally, the written accounting must include disclosures of PHI prior to the date of the request for an accounting, including disclosures to or by business associates of the covered entity, including date, name, and address (if known) of the entity or person receiving the PHI, a brief description of the PHI disclosed, and a brief summary of the basis of the disclosure.



This document was developed by Meghan Mead, JD, Acting Deputy Director, Network for Public Health Law – Mid-States Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

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