

Contact Tracing by Public Health Agencies and HIPAA Disclosures

Dentists may be asked to provide a patient's name and other information to public health authorities to assist in COVID-19 contact tracing. Practices should know what's allowed depending on whether or not they're considered a covered practice under HIPAA.

For COVID-19 contact tracing purposes, does HIPAA permit a covered dental practice to disclose a patient's name and other information to a public health authority without the patient's written authorization? If so, how much information does HIPAA permit the dental practice to disclose?

HIPAA permits a covered dental practice to disclose protected health information (PHI) to a public health authority without obtaining the written authorization of the patient (or the patient's personal representative, such as a parent or guardian).

According to the HHS Office for Civil Rights (OCR), all states have laws that require health care providers to report cases of specific diseases to public health officials, and HIPAA permits disclosures that are required by law as well as voluntary disclosures to public health authorities that are authorized by law to collect information for public health purposes. For example, a public health authority may need to obtain information about individuals affected by a disease and to contact those affected in order to allow for actions to prevent further illness.

According to OCR, a "public health authority" is "an agency or authority of the federal government, a state, a territory, a political subdivision of a state or territory, or Indian tribe that is responsible for public health matters as part of its official mandate, as well as a person or entity acting under a grant of authority from, or under a contract with, a public health agency." Examples include state and local health departments, the FDA, the CDC, and OSHA.

When disclosing PHI to a public health authority, HIPAA requires a dental practice to limit the disclosure to the minimum necessary information for the purpose of the disclosure. However, the dental practice may reasonably rely on the public health authority to determine the minimum necessary information. A covered dental practice may develop policies and procedures for routine and recurring public health disclosures that include the types and amounts of PHI that may be disclosed.

If the patient or the patient's personal representative has agreed to the disclosure by signing a HIPAA valid authorization, the minimum necessary standard would not apply to the disclosure, but the disclosure would need to comply with any limits in the authorization.

If the patient or the patient's personal representative has not signed a HIPAA valid authorization, but requests an accounting of disclosures, the public health disclosure would need to be included in the accounting.

HIPAA does not affect state laws that provide additional privacy protection for patients. For example:

- If a state law requires a certain disclosure, such as reporting a disease outbreak to the public health authorities, and is not contrary to HIPAA, HIPAA does not preempt the state law
- If a state law is contrary to HIPAA and more stringent than HIPAA (i.e., the state law provides more privacy protection to patients), then HIPAA would defer to the state law

HIPAA defers to state law on several issues, such as who is considered a patient's personal representative and when public health reporting is required by law.

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A dental practice that is not a HIPAA covered entity must comply with state laws on privacy, security and breach notification. Keep in mind that a dental practice that is not covered by HIPAA may have agreed to comply with all or part of HIPAA in an agreement, such as a participating provider agreement with a dental plan.

For more information on which health care providers are covered by HIPAA, see the Centers for Medicare & Medicaid Services (CMS), [Are You a Covered Entity?](#)

For more information:

- OCR [Public Health](#)
- OCR FAQs: [Public Health Uses and Disclosures](#)
- OCR FAQs: [Minimum Necessary](#)
- OCR FAQs: [Right to an Accounting of Disclosures](#)
- CMS [Are You a Covered Entity?](#)

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