

HIPAA and Disclosures to Law Enforcement



Disclosures About Persons in Custody

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Basic Rule: (45 CFR 164.512(k)(5))

A hospital or other covered entity may disclose to a correctional institution or a law enforcement official that has lawful custody of an inmate or other individual protected health information about the inmate or individual without authorization, subpoena or other legal process, in certain circumstances.

Requirements: The correctional institution or law enforcement official must represent that the protected health information is necessary for:

- The provision of health care to the individual;
- The health and safety of the individual or other inmates;
- The health and safety of the officers or employees of or others at the correctional institution;
- The health and safety of individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility or setting to another;
- Law enforcement on the premises of the correctional institution; and
- The administration and maintenance of the safety, security and good order of the correctional institution.

Application

Does this provision apply to situation in which the patient is merely under arrest and not yet an inmate in a correctional facility? Likely yes. The regulation references “inmate or other individual,” implying that the person need not be an inmate. Also, a person can be under arrest and legally in custody without actually being incarcerated. As a practical matter, however, law enforcement must represent that disclosure of protected health information is necessary for one of the purposes listed above. These purposes generally anticipate that the person is lodged in a correctional facility.

Does the provision apply to a former inmate, such as a parolee? No. HIPAA expressly provides that an individual is no longer an inmate when released on parole, probation, supervised release or otherwise is no longer in lawful custody.