

## **DHMH HIPAA Information Notice # 1: DHMH Public Health and Health Oversight Activities**

### **The Maryland Department of Health and Mental Hygiene (DHMH) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

#### **June 2003**

The following is to provide some information and resources about how the Health Insurance Portability and Accountability Act of 1996 and Maryland State law may affect outside entities that disclose health information to the Maryland Department of Health and Mental Hygiene.

#### **Hybrid Entity**

The DHMH has determined that it is a hybrid entity under HIPAA. This determination was made upon advice of the Maryland Office of the Attorney General after an analysis of the law and regulations in relationship to various services and programs at DHMH. As a hybrid entity, DHMH conducts business activities that are both covered and non-covered functions. In compliance with 45 CFR §164.105 (a)(2)(iii)(C), DHMH designated payer programs and all Local Health Departments and State hospitals as covered health care components within the hybrid entity. <http://209.116.251.43/policies/pdf/APPEND-8c.pdf>

DHMH included in its covered health care components those programs that would meet the definition of a covered entity if each were a separate legal entity.<sup>1</sup> This list could change in the future if certain business practices change. This means that only the listed programs are required to comply with the HIPAA Rules for Privacy, Security, Transactions, Code Sets, and Identifiers at this time. Nonetheless, DHMH is implementing privacy and security policies and practices department-wide that incorporate many of the HIPAA standards as well as requirements consistent with other State laws, regulations, and policies.

#### **Public Health and Healthcare Oversight Activities**

In general, regardless of the hybrid designation, there should be no change in the ability or the responsibility of providers and health plans to disclose health information to a DHMH business unit under applicable Federal or State law. The hybrid entity designation does not diminish the public health and health oversight responsibilities of DHMH. It is important to note that HIPAA<sup>2</sup> provides that it was not intended to interfere with the implementation of State healthcare laws and programs.

State laws consistent with HIPAA regarding the authority of DHMH to require disclosure of health information for treatment, payment, healthcare operations as well as for public health activities and healthcare oversight are generally found in the Maryland Code Health-General Article and the Maryland Code Health Occupations Article. HIPAA permits and State law authorizes, permits, or requires uses and disclosures of health information without an individual's permission for a number of reasons related to ensuring the proper conduct of the healthcare system as well as for the protection of the public's health.

Outlined below are some HIPAA provisions that permit disclosures of health information and that should not interfere with the continued disclosure of health information to DHMH. HIPAA allows a covered entity to disclose health information to:

- ◆ A covered entity if such disclosure is required by law (§164.512(a))
- ◆ A public health authority, or an agent of a public health authority, when the public health authority is authorized by law to collect or receive such information, for the purpose of preventing or controlling disease, injury, or disability. This includes, but is not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of surveillance, public health investigations, and interventions. (§164.512(b))<sup>3</sup>
- ◆ A Health Oversight Agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight. (§164.512(d))
- ◆ A covered entity for the covered entity's own treatment, payment, or health care operations. (§164.506(c))

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- ◆ A research study with either an authorization from the data subject or a waiver of authorization from an Institutional Review Board or privacy board. (§164.512(i))
- ◆ A covered entity with a valid authorization. (§164.508)

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<sup>1</sup> 45 CFR § 160.103 (definition of covered entity)

<sup>2</sup> P.L. 104-191, § 1178(b)

<sup>3</sup> Required by law is interpreted to mean a mandate contained in law that compels a covered entity to make a use or disclosure of health information and that is enforceable in a court of law. (See, 65 CFR 82497) The permitted disclosure of health information authorized under state laws is interpreted broadly and is not to limit the authority, power or procedures established under any state or federal law. The preamble to the privacy rule provides that "procedures" authorized by law is interpreted to include State administrative regulations and guidelines. (See, P.L. 104-191, § 1178(b) and 64 FR 59998.