

**“homelessness in and of itself constitutes sufficient serious and imminent threat”**

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The **U.S. Department of Health and Human Services** modified regulations related to consent **effective in mid-October, 2002, eliminated the requirement of a consent form** but still require that the provider would additionally be required to make a good faith effort to obtain the patient’s written acknowledgment of the notice of privacy rights and practices.

**Why was the Consent requirement eliminated from the HIPAA Privacy Rule, and how will it affect individuals' privacy protections?**

- Because they believed that the consent form requirements created serious unintended consequences that interfere with patient access to health care.
- The consent requirement created the unintended effect of preventing health care providers from providing timely, quality health care to individuals in a variety of circumstances.
- To eliminate such barriers to health care, mandatory consent was replaced with the voluntary consent provision:
  - Enables them to obtain consent in a manner that does not disrupt needed treatment.  
Although consent is no longer mandatory,
    - The health care provider should get verbal permission from individuals, when possible
  - Allows activities that are essential to quality health care to occur unimpeded.
  - Rule protects patient privacy as intended without harming consumers’ access to care or the quality of that care
- A covered entity is permitted, but not required, to use and disclose PHI, without an individual’s authorization, in the applicable homeless service coordination activities:
  - TREATMENT: as necessary to provide treatment which includes:
    - sharing information with other providers (including hospitals and clinics),
    - referring patients for treatment (including linking patients with available providers in areas where the patients have relocated)
    - coordinating patient care with others that can help in finding patients appropriate health services
  - Emergency Situations when
    - Individual is incapacitated or not available.

- A delay involved in obtaining the patient's consent to use or disclose information would compromise the patient's care
- **In the individual's best interest**
- If the homeless person does not express an objection; or based on the exercise of professional judgment, can reasonably infer from the circumstances that the individual does not object to the disclosure
- **Disclose only the protected health information that is directly relevant to the person's involvement with the individual's care**
- **This authority can only be relied upon when a person is known to be homeless and personnel are working with community partners to lessen the threats associated with his or her homelessness**
- Information being shared was limited to the “minimum amount necessary”
- Covered Entity has adopted reasonable safeguards as required by the Privacy Rule

○ Public Health Activities

- **Information for preventing or controlling disease, injury, or disability**
- Victims of Abuse, Neglect or Domestic Violence – In situations where disclosure may be necessary.
- Health Oversight Activities – audits and investigations necessary for oversight of the health care system and government benefit programs.
- Serious Threat to Health or Safety –to prevent or lessen a serious and imminent threat to a person or the public, When such disclosure is made to a person reasonably able to prevent or lessen a serious and imminent threat to the health or safety of a person or the public
- Limited Data Set (creation)– in which specific identifiers have been removed, and disclosed for research, health care operations, and public health purposes

HIPAA Privacy Rule does not apply to disclosures if they are not made by entities covered by the Privacy Rule.

The United States Department of Veterans Affairs Office of General Counsel has determined that **homelessness in and of itself constitutes sufficient serious and imminent threat** to an individual to rely upon this disclosure authority.

Privacy Laws and Regulations:

- Privacy Act : two authorities applicable for disclosures to community partners.
  - Rule recognizes that the covered entity is in the best position to know and determine who in its workforce needs access to personal health information to perform their jobs.
  - Routine Use #40
    - legal authority to disclose relevant health care information to health and welfare agencies, housing resources, and utility companies in situations where the provider needs to act quickly in order to act quickly to provide basic and/or emergency needs for a homeless individual and their family. Basic need services include safety, shelter, housing and medical needs.
  - Routine Use #5
    - legal authority to disclose relevant health care information to the extent necessary and on a need-to-know basis, consistent with good medical-ethical practices, to family members and/or the person(s) with whom the patient has a meaningful relationship.
      - meaningful relationship: is a connection, association, or involvement between the community partner and the homeless individual, where the community partner is trying to provide housing and related services.
    - This Routine use provides authority under the Privacy Act for disclosures made by Coordinated Entry System to community partners who are aware of and trying to provide services to the homeless individual.

### Homeless Management Information System:

In addition to using these authorities to disclose information necessary for the coordination of housing and homeless services, these authorities may also be used to develop and manage “By Name Lists” (BNL). CES community partners collaborate to develop BNLs, which are master lists of homeless individuals in the community. These lists are populated through information obtained from outreach, Homeless Management Information System (HMIS; community data collection system), shelters, VA Homeless Operations Management & Evaluation System (HOMES; VA data collection system), and any other providers in the community who may work with persons experiencing homelessness. CES community partners work collaboratively to establish and maintain the BNL, which includes sharing information on individuals already on the BNL, on persons needing to be placed on the BNL and others needing to be removed from the BNL.

HMIS share some common objectives, including the following:

- Increase access to and coordination of homeless services;
- Identify gaps in the homeless service system;
- Improve service quality and adequacy for homeless clients;

- Promote the most appropriate and cost-effective use of services;
- Enable more accurate calculations of the prevalence of homelessness in local communities and nationwide; and
- Provide an empirical basis for service planning and evaluation, funding decisions, and public policy

### Allowable uses and disclosures

- Permissible uses and disclosures (not required, CHO can decide not to include some of these in privacy notice)
  - **Provide or coordinate services**
    - Administrative functions
    - Create de-identified PPI
  - **Avert serious threat to health or safety**
    - Report abuse, neglect, or domestic violence

HUD funded programs can infer consent from a client to participate in HMIS with appropriate baseline privacy protections in place (i.e. posted sign, privacy notice, etc.).

HMIS Implied and Oral Consents: “Consent of the individual for data collection may be inferred from the circumstances of the collection.”

- “need to know”
- For uses, access is based on minimum information needed to perform job functions
  - Minimum Necessary Disclosure (MND) does not apply to disclosures: Made with an authorization

Disclosures relating to health and safety threats can occur "consistent with applicable law and standards of ethical conduct . . . if the HMIS user or developer, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat."

### Civil Rights / Constitutional Law / Preamble to the Constitution

The Declaration of Independence reminds us that all people have inalienable rights—among them, the right to life, liberty, and the pursuit of happiness. To secure these rights, the U.S. Constitution creates a government of the people to “establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.”

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

**General Welfare.** The concern of the government for the health, peace, morality, and safety of its citizens. **Providing** for the **welfare** of the **general** public is a basic goal of government. The preamble to the U.S. Constitution cites promotion of the **general welfare** as a primary reason for the creation of the Constitution ...

The first clause of Article I, Section 8, reads, "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States."

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Hawaii Constitution: ...addresses the public health of state inhabitants, which states that "the State shall provide for the protection and promotion of the public health."

## Bill of Rights<sup>[edit]</sup>

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The preamble is followed by a twenty-point [bill of rights](#):

2. All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing property. These rights cannot endure unless the people recognize their corresponding obligations and responsibilities.

6. No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land.

17. There shall be no imprisonment for debt.

20. The enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.