45 CFR 164.502

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Code of Federal Regulations > TITLE 45 -- PUBLIC WELFARE > SUBTITLE A -- DEPARTMENT OF HEALTH AND HUMAN SERVICES > SUBCHAPTER C -- ADMINISTRATIVE DATA STANDARDS AND RELATED REQUIREMENTS > PART 164 -- SECURITY AND PRIVACY > SUBPART E -- PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION

§ 164.502 Uses and disclosures of protected health information: general rules.

(a) Standard. A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.

(1) Covered entities: Permitted uses and disclosures. A covered entity is permitted to use or disclose protected health information as follows:

(i) To the individual;

(ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;

(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of §§ 164.502(b), 164.514(d), and 164.530(c) with respect to such otherwise permitted or required use or disclosure;

(iv) Except for uses and disclosures prohibited under § 164.502(a)(5)(i), pursuant to and in compliance with a valid authorization under § 164.508;

(v) Pursuant to an agreement under, or as otherwise permitted by, § 164.510; and

(vi) As permitted by and in compliance with this section, § 164.512, § 164.514(e), (f), or (g).

(2) Covered entities: Required disclosures. A covered entity is required to disclose protected health information:

(i) To an individual, when requested under, and required by § 164.524 or § 164.528; and

(ii) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the covered entity's compliance with this subchapter.

(3) Business associates: Permitted uses and disclosures. A business associate may use or disclose protected health information only as permitted or required by its

business associate contract or other arrangement pursuant to § 164.504(e) or as required by law. The business associate may not use or disclose protected health information in a manner that would violate the requirements of this subpart, if done by the covered entity, except for the purposes specified under § 164.504(e)(2)(i)(A) or (B) if such uses or disclosures are permitted by its contract or other arrangement.

(4) Business associates: Required uses and disclosures. A business associate is required to disclose protected health information:

(i) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the business associate's compliance with this subchapter.

(ii) To the covered entity, individual, or individual's designee, as necessary to satisfy a covered entity's obligations under § 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of protected health information.

(5) Prohibited uses and disclosures.

(i) Use and disclosure of genetic information for underwriting purposes: Notwithstanding any other provision of this subpart, a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of health plan, shall not use or disclose protected health information that is genetic information for underwriting purposes. For purposes of paragraph (a)(5)(i) of this section, underwriting purposes means, with respect to a health plan:

(A) Except as provided in paragraph (a)(5)(i)(B) of this section:

(1) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy (including changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(2) The computation of premium or contribution amounts under the plan, coverage, or policy (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(3) The application of any pre-existing condition exclusion under the plan, coverage, or policy; and

(4) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(B) Underwriting purposes does not include determinations of medical appropriateness where an individual seeks a benefit under the plan, coverage, or policy.

(ii) Sale of protected health information:

(A) Except pursuant to and in compliance with § 164.508(a)(4), a covered entity or business associate may not sell protected health information.

(B) For purposes of this paragraph, sale of protected health information means:

(1) Except as provided in paragraph (a)(5)(ii)(B)(2) of this section, a disclosure of protected health information by a covered entity or business associate, if applicable, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information.

(2) Sale of protected health information does not include a disclosure of protected health information:

(i) For public health purposes pursuant to § 164.512(b) or § 164.514(e);

(ii) For research purposes pursuant to § 164.512(i) or § 164.514(e), where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes;

(iii) For treatment and payment purposes pursuant to § 164.506(a);

(iv) For the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence as described in paragraph (6)(iv) of the definition of health care operations and pursuant to § 164.506(a);

(v) To or by a business associate for activities that the business associate undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, pursuant to §§ 164.502(e) and 164.504(e), and the only remuneration provided is by the covered entity to the business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities;

(vi) To an individual, when requested under § 164.524 or § 164.528;

(vii) Required by law as permitted under § 164.512(a); and

(viii) For any other purpose permitted by and in accordance with the applicable requirements of this subpart, where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the protected health information for such purpose or a fee otherwise expressly permitted by other law.

(b) Standard: Minimum necessary. (1) Minimum necessary applies. When using or disclosing protected health information or when requesting protected health information from another covered entity or business associate, a covered entity or business associate must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

(2) Minimum necessary does not apply. This requirement does not apply to:

(i) Disclosures to or requests by a health care provider for treatment;

(ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;

(iii) Uses or disclosures made pursuant to an authorization under § 164.508;

(iv) Disclosures made to the Secretary in accordance with subpart C of part 160 of this subchapter;

(v) Uses or disclosures that are required by law, as described by § 164.512(a); and

(vi) Uses or disclosures that are required for compliance with applicable requirements of this subchapter.

(c) Standard: Uses and disclosures of protected health information subject to an agreed upon restriction. A covered entity that has agreed to a restriction pursuant to § 164.522(a)(1) may not use or disclose the protected health information covered by the restriction in violation of such restriction, except as otherwise provided in § 164.522(a).

(d) Standard: Uses and disclosures of de-identified protected health information.

(1) Uses and disclosures to create de-identified information. A covered entity may use protected health information to create information that is not individually identifiable health information or disclose protected health information only to a business associate for such purpose, whether or not the de-identified information is to be used by the covered entity.

(2) Uses and disclosures of de-identified information. Health information that meets the standard and implementation specifications for de-identification under § 164.514(a) and (b) is considered not to be individually identifiable health information, i.e., de-identified. The requirements of this subpart do not apply to information that has been de-identified in accordance with the applicable requirements of § 164.514, provided that:

(i) Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of protected health information; and

(ii) If de-identified information is re-identified, a covered entity may use or disclose such re-identified information only as permitted or required by this subpart.

(e)

(1) Standard: Disclosures to business associates. (i) A covered entity may disclose protected health information to a business associate and may allow a business associate to create, receive, maintain, or transmit protected health information on its behalf, if the covered entity obtains satisfactory assurance that the business associate will appropriately safeguard the information. A covered entity is not required to obtain such satisfactory assurances from a business associate that is a subcontractor.

(ii)A business associate may disclose protected health information to a business associate that is a subcontractor and may allow the subcontractor to create,

receive, maintain, or transmit protected health information on its behalf, if the business associate obtains satisfactory assurances, in accordance with § 164.504(e)(1)(i), that the subcontractor will appropriately safeguard the information.

(2) Implementation specification: Documentation. The satisfactory assurances required by paragraph (e)(1) of this section must be documented through a written contract or other written agreement or arrangement with the business associate that meets the applicable requirements of § 164.504(e).

(f) Standard: Deceased individuals. A covered entity must comply with the requirements of this subpart with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual.

(g)

(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

(2) Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(3)

(i) Implementation specification: unemancipated minors. If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:

(A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;

(B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or

(C)A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis;

(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis; and

(C) Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access under § 164.524 to a parent, guardian, or other person acting in loco parentis, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

(4) Implementation specification: Deceased individuals. If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(5) Implementation specification: Abuse, neglect, endangerment situations. Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if:

(i) The covered entity has a reasonable belief that:

(A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

(B) Treating such person as the personal representative could endanger the individual; and

(ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(h) Standard: Confidential communications. A covered health care provider or health plan must comply with the applicable requirements of § 164.522(b) in communicating protected health information.

(i) Standard: Uses and disclosures consistent with notice. A covered entity that is required by § 164.520 to have a notice may not use or disclose protected health information in a manner

inconsistent with such notice. A covered entity that is required by § 164.520(b)(1)(iii) to include a specific statement in its notice if it intends to engage in an activity listed in § 164.520(b)(1)(iii)(A)-(C), may not use or disclose protected health information for such activities, unless the required statement is included in the notice.

(j) Standard: Disclosures by whistleblowers and workforce member crime victims.

(1) Disclosures by whistleblowers. A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce or a business associate discloses protected health information, provided that:

(i) The workforce member or business associate believes in good faith that the covered entity has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more patients, workers, or the public; and

(ii) The disclosure is to:

(A)A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the covered entity or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered entity; or

(B) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct described in paragraph (j)(1)(i) of this section.

(2) Disclosures by workforce members who are victims of a crime. A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that:

(i) The protected health information disclosed is about the suspected perpetrator of the criminal act; and

(ii) The protected health information disclosed is limited to the information listed in § 164.512(f)(2)(i).

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE SUBPART:

42 U.S.C. 1320d-2, 1320d-4, and 1320d-9; sec. 264 of Pub. L. 104-191, *110 Stat. 2033-2034 (42 U.S.C. 1320d-2* (note)); and secs. 13400-13424, Pub. L. 111-5, *123 Stat. 258-279.*

History

[65 FR 82462, 82805, Dec. 28, 2000; *66 FR 12434,* Feb. 26, 2001; *67 FR 53182, 53267,* Aug. 14, 2002; *78 FR 5566, 5696,* Jan. 25, 2013]

Annotations

Notes

[EFFECTIVE DATE NOTE:

78 FR 5566, 5696, Jan. 25, 2013, amended this section, effective Mar. 26, 2013.]

Case Notes

LexisNexis® Notes

Case Notes Applicable to Entire Part
Banking Law : Consumer Protection : Fair Debt Collection : Communications
Civil Rights Law : Prisoner Rights : Medical Treatment
Healthcare Law : Actions Against Facilities : Facility Liability : General Overview
Healthcare Law : Actions Against Healthcare Workers : General Overview
Healthcare Law : Business Administration & Organization : Patient Confidentiality : General Overview
Healthcare Law : Business Administration & Organization : Patient Confidentiality : Breach
Healthcare Law : Business Administration & Organization : Patient Confidentiality :
Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) :
Torts : Malpractice & Professional Liability : Healthcare Providers

Case Notes Applicable to Entire Part

Part Note

Banking Law : Consumer Protection : Fair Debt Collection : Communications

Webster v. Acb Receivables Mgmt., 2014 U.S. Dist. LEXIS 55575 (D Md Apr. 22, 2014).

Overview: *Debt collection agency could not invoke bona fide defence under 15 U.S.C.S. § 1692k(c) because, although acts of communicating with plaintiff after receiving her mailed cease and desist request were unintentional, and errors were bona fide, agency failed to demonstrate nexus between procedural safeguards and types of errors that occurred.*

- While it is true that the Health Insurance Portability and Accountability Act of 1996, *42 U.S.C.S. § 1320d* et seq., prohibits "covered entities" from disclosing protected health

information, *45 C.F.R. § 164.502(a)*, the U.S. Court of Appeals for the Fourth Circuit has explained that verification of a debt under *15 U.S.C.S. § 1692g*(b), involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed. *Go To Headnote*

Civil Rights Law : Prisoner Rights : Medical Treatment

Warren v. Corcoran, 2011 U.S. Dist. LEXIS 135012 (ND NY Oct. 20, 2011).

Overview: *Presence of the correctional officers at the inmate's Telemed appointments served a legitimate penological interest: protecting prison personnel from potential threats, and thus, the correctional officers appropriately remained in the room with the inmate and the nurse during the inmate's Telemed appointment with the infectious disease doctor.*

- Correctional officers who are present during an inmate's Telemed appointments are considered part of the facility's Health Insurance Portability and Accountability Act (HIPAA), *42 U.S.C.S. §§ 1320d*-1320d-8 Health Care Component. Those transport and health unit correctional officers, as part of their duties, receive protected health information, and are held to stringent HIPAA guidelines protecting that information. Those guidelines are the same for the nurses and doctors. A Health Care Component may use protected health information for health care operations that are part of its treatment activities. *45 C.F.R. §§ 164.502(a)(1)(ii)*, *164.506(c)(2)*. *Go To Headnote*

Healthcare Law : Actions Against Facilities : Facility Liability : General Overview

Stevens Ex Rel. Stevens v. Hickman Cmty. Health Care Servs., 418 S.W.3d 547, 2013 Tenn. LEXIS 990 (Tenn Nov. 25, 2013).

Overview: *A patient's widow failed to substantially comply with the Tennessee Health Care Liability Act, Tenn. Code Ann. § 29-26-121(a)(2)(E), and her failure was not excused by extraordinary cause, because a plaintiff had to substantially comply, rather than strictly comply, with § 29-26-121(a)(2)(E).*

- The intended meaning of the phrase "complete medical records," as used in the Tennessee Health Care Liability Act, Tenn. Code Ann. § 29-26-121(a)(2)(E) (2012), was not to grant defendants access to a plaintiff's entire medical history. Instead, the purpose of this requirement is to afford defendants access to all medical records that are relevant to the particular claim at issue. In determining whether medical records are relevant for purposes of litigation, defendants should continue to adhere to the "minimum necessary" standard that traditionally applies to a provider's use and disclosure of a patient's private health records under *45 C.F.R. § 164.502(b)(1)*. *Go To Headnote*

Healthcare Law : Actions Against Healthcare Workers : General Overview

Stevens Ex Rel. Stevens v. Hickman Cmty. Health Care Servs., 418 S.W.3d 547, 2013 Tenn. LEXIS 990 (Tenn Nov. 25, 2013).

Overview: *A patient's widow failed to substantially comply with the Tennessee Health Care Liability Act, Tenn. Code Ann. § 29-26-121(a)(2)(E), and her failure was not excused by extraordinary cause, because a plaintiff had to substantially comply, rather than strictly comply, with § 29-26-121(a)(2)(E).*

- The intended meaning of the phrase "complete medical records," as used in the Tennessee Health Care Liability Act, Tenn. Code Ann. § 29-26-121(a)(2)(E) (2012), was not to grant defendants access to a plaintiff's entire medical history. Instead, the purpose of this requirement is to afford defendants access to all medical records that are relevant to the particular claim at issue. In determining whether medical records are relevant for purposes of litigation, defendants should continue to adhere to the "minimum necessary" standard that traditionally applies to a provider's use and disclosure of a patient's private health records under *45 C.F.R. § 164.502(b)(1)*. *Go To Headnote*

Healthcare Law : Business Administration & Organization : Patient Confidentiality : General Overview

W. Va. Dep't of Health & Human Res. v. E.H., 2015 W. Va. LEXIS 995 (W Va Oct. 15, 2015).

Overview: *Although a trial court erred in relying on HIPAA to order the state health agency to restore a patient advocate's access to patients and patient records, the order was proper under state law where the written agreement between the agency and the advocate was a contract under W. Va. Code R. § 64-59-11.5.1.d.*

- Pursuant to the Federal Health Insurance Portability and Accountability Act's privacy rule, a covered entity or business associate may not use or disclose protected health information barring either a regulatory exemption or written authorization from the subject of the information or his/her representative. *45 C.F.R. § 164.502(a) (2014)*. *Go To Headnote*

- Under the Federal Health Insurance Portability and Accountability Act, a business associate relates to and is defined in reference to a covered entity. The privacy rule's, *45 C.F.R. § 164.502(a) (2014)*, construct of a covered entity extends to: (1) a health plan, (2) a health care clearinghouse, or (3) a health care provider who transmits any health information in electronic form in connection with a covered transaction. *45 C.F.R. § 160.103 (2014)*. *Go To Headnote*

Monarch Fire Prot. Dist. v. Freedom Consulting & Auditing Servs., 678 F. Supp. 2d 927, 2009 U.S. Dist. LEXIS 118937 (ED Mo Dec. 21, 2009), affirmed by *644 F.3d 633, 2011 U.S. App. LEXIS 13775 (8th Cir. Mo. 2011).*

Overview: *Auditors who disclosed HIPAA-protected health information to a lawyer who then shared same with law enforcement breached contract with plan sponsor and were liable for legal fees incurred to defend sponsor's directors in ensuing criminal inquiry though sponsor was not entitled to other legal fees, to judgment for conversion, or to punitive damages.*

- *45 C.F.R. § 164.502(j)(1)*speaks only to disclosures that are made by a whistleblower to an attorney retained by or on behalf of that whistleblower. Put another way, a business associate's disclosure of information defined by the Health Insurance Portability and

Accountability Act of 1996 (HIPAA) as "protected health information" (PHI) to its own attorney for the purpose of determining its legal options is not a violation of HIPAA's privacy rule, nor is a workforce member's disclosure of PHI to his or her own attorney for that same purpose, but a business associate may not disclose PHI to an attorney retained by a workforce member. Logic dictates this result, as it would make little sense, given HIPAA's emphasis on protecting PHI, for its whistleblower provision to authorize such disclosures to third-party attorneys. A close examination of the language of § 164.502(j)(1) confirms that this is the correct interpretation. Go To Headnote

- *45 C.F.R. § 164.502(j)(1)*authorizes disclosures of information defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as "protected health information" for the purpose of determining the legal options of that party, indicating that the whistleblower exception contemplates an attorney-client relationship. This is further supported by the use of definite instead of indefinite articles in (ii)(B); the provision refers to disclosures to an attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate, which suggests that the attorney must be retained by or on behalf of the same party for whom the attorney is to ascertain the legal options. Go To Headnote

- *45 C.F.R. § 164.502(j)(1)*only refers to disclosures to attorneys retained by workforce members of a covered entity -- that is, workforce members of an entity subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). *45 C.F.R. § 160.103* (defining "covered entity"). Go To Headnote

Alvista Healthcare Ctr. v. Miller, 286 Ga. 122, 686 S.E.2d 96, 2009 Ga. LEXIS 679 (Ga Nov. 2, 2009).

Overview: *It was proper to affirm a judgment entered for a spouse in her action seeking an injunction requiring the release of a decedent's medical records because she was entitled to access the decedent's protected health information in accordance with 45 CFR § 164.502(g)(4), and O.C.G.A. § 31-33-2(a)(2) authorized her to act on behalf of the decedent.*

- O.C.G.A. § 31-33-2(b)(1) provides, in part, that any request for a deceased patient's medical records by a person authorized under § 31-33-2(a)(2) shall be accompanied by an authorization in compliance with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations. Section 31-33-2(a)(2) requires a healthcare provider to furnish a copy of a deceased patient's record upon written request by (A) The executor, administrator, or temporary administrator for the decedent's estate if such person has been appointed. (B) If an executor, administrator, or temporary administrator for the decedent's estate has not been appointed, by the surviving spouse. (C) If there is no surviving spouse, by any surviving child; and (D) If there is no surviving child, by any parent. Thus, § 31-33-2(a)(2) establishes a definite order of priority with respect to who is authorized to obtain a deceased patient's medical records. The first priority, set forth in § 31-33-2(a)(2)(A), is consistent with the specification in *45 C.F.R. § 164.502(g)(4)* of an executor, administrator, or other person having authority to act on behalf of the decedent or his estate. Go To Headnote

- O.C.G.A. § 31-33-2(a)(2)(B) applies only if an executor or administrator has not been appointed. The evident purpose of § 31-33-2(a)(2), when read in conjunction with § 31-33-2(b)(1), is to identify several persons, the executor or administrator being the first choice and the surviving spouse being the second, who have authority to submit an authorization in compliance with the Health Insurance Portability and Accountability Act of 1996 and to obtain medical records on behalf of the decedent or his estate. Accordingly, § 31-33-2(a)(2) constitutes the applicable state law to which *45 C.F.R. § 164.502(g)(4)* refers and § 31-33-2(a)(2)(B) necessarily implies that, when there is no executor or administrator, the surviving spouse is granted authority to act on behalf of the decedent or his estate with respect to requests for medical records. *Go To Headnote*

- O.C.G.A. § 31-33-2(a)(2) treats the surviving spouse as a personal representative in lieu of the executor or administrator with respect to requests for medical records. O.C.G.A. § 31-33-2(a)(2)(B) establishes a limited personal representation in the surviving spouse for the express purpose of obtaining the decedent's medical records in compliance with the Health Insurance Portability and Accountability Act of 1996. The Georgia statute does not provide for personal representation by the surviving spouse for other purposes. However, the statute permits her to obtain all types of medical records, other than mental health records as excepted by O.C.G.A. § 31-33-4, and subject to the preservation in O.C.G.A. § 31-33-6 of the privileged or confidential nature of communications recognized in other laws. Therefore, § 31-33-2(a)(2) is carefully tailored to provide the authority contemplated by *45 C.F.R. § 164.502(g)(4)*. Except for mental health records and any records which remain privileged or confidential, all of the decedent's protected health information is relevant to the limited personal representation granted to a surviving spouse by § 31-33-2(a)(2)(B). *Go To Headnote*

- *45 C.F.R. § 164.502(g)(4)*does not require that the person having authority to act on behalf of the decedent or his estate and requesting medical records must intend to make future use of those records in her fiduciary capacity as a personal representative. When the person having authority to act on behalf of the decedent or his estate makes a request for medical records which is within the scope of that authority, the very request constitutes an action in that person's capacity as a limited personal representative. Such request is the only action which can come within the limited personal representation established by O.C.G.A. § 31-33-2(a)(2) for the purpose of obtaining medical records. Once the medical records are obtained by a person authorized by state law to act on behalf of the decedent or his estate by requesting them, *45 C.F.R. § 164.502(g)(4)* does not restrict the future use of those records. After obtaining the medical records, therefore, the surviving spouse may pursue a wrongful death claim, she may seek appointment as administrator in order to bring a survival action on behalf of the estate pursuant to O.C.G.A. § 51-4-5(b), she may do both, or she may do neither. *Go To Headnote*

State v. Mubita, 145 Idaho 925, 188 P.3d 867, 2008 Ida. LEXIS 113 (Idaho June 11, 2008).

Overview: *Defendant's motion to suppress documents disclosed by a health department to the prosecutor's office regarding defendant's HIV status was properly denied; Idaho Const. art. I, § 17, afforded no protection because, in submitting the documents in order to obtain HIV-related services, defendant assumed the risk that they would be further disclosed.*

- Under *45 C.F.R. § 164.502*, the general rule is that a covered entity may not use or disclose protected health information, except as specifically permitted. *45 C.F.R. § 164.512* sets forth specific instances where a covered entity may disclose protected health information without the written consent, authorization or notice to the individual. *45 C.F.R. § 164.512(f)* sets forth the standard for disclosures to law enforcement officials for law enforcement purposes. *45 C.F.R. § 164.512(f)(1)(ii)(C)* permits such disclosures in compliance with an authorized investigative demand or similar process authorized by law provided that: (1) the information sought is relevant and material to a legitimate law enforcement inquiry; (2) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) de-identified information could not reasonably be used. *Go To Headnote*

Zaborac v. Mut. Hosp. Serv., 2004 U.S. Dist. LEXIS 22816 (SD Ind Oct. 7, 2004).

Overview: *Debt collector's conduct in communicating directly with debtor violated FDCPA. However, because collector's misinterpretation of law could be a bona fide error, collector was entitled to opportunity to prove that violation of FDCPA was unintentional.*

- Under *45 C.F.R. § 164.502(b)*, a debt collector should disclose only the minimum information necessary. *Go To Headnote*

Healthcare Law : Business Administration & Organization : Patient Confidentiality : Breach

Sneed v. Pan Am Hosp., 2010 U.S. App. LEXIS 5751 (11th Cir Mar. 18, 2010), writ of certiorari denied by *131 S. Ct. 1482, 179 L. Ed. 2d 318, 2011 U.S. LEXIS 1357, 79 U.S.L.W. 3476 (U.S. 2011).*

Overview: *District court did not err in dismissing state prisoner's § 1983 federal claims as time-barred, under Fla. Stat. § 95.11(3)(p), because prisoner's action accrued no later than September 22, 2000, when, in prisoner's presence, the state introduced his medical records into evidence at his trial, and prisoner filed his suit more than four years later.*

- The Health Insurance Portability and Accountability Act (HIPAA) generally provides for confidentiality of medical records and governs the use and disclosure of protected health information by covered entities that have access to that information and that conduct certain electronic health care transactions. *45 C.F.R. § 164.502*. It provides both civil and criminal penalties for improper disclosures of medical information and limits enforcement of the statute to the Secretary of Health and Human Services. *42 U.S.C.S. §§ 1320d-5*(a)(1), 1320d-6. Private rights of action to enforce federal law must be created by Congress. HIPAA contains no express provision creating a private cause of action. The United States Court of Appeals for the Eleventh Circuit declines to hold that HIPAA creates a private cause of action, or rights that are enforceable through *42 U.S.C.S. § 1983.* *Go To Headnote*

United States v. Elliott, 676 F. Supp. 2d 431, 2009 U.S. Dist. LEXIS 122041 (D Md Dec. 29, 2009).

Overview: *Although HIPPA may have been violated when court clerk issued subpoena for defendant's medical records in connection with DUI charges, suppression of records was not warranted as U.S. had strong interest in prosecuting drunk drivers and defendant's blood was drawn only in connection with her medical treatment, not at behest of law enforcement.*

- The Health Insurance Portability and Accountability Act (HIPPA), *42 U.S.C.S. § 1320d,* prohibits a "covered entity" from receiving and using protected health information. *45 C.F.R. § 164.502(a)*. Law enforcement agencies, including the office of the prosecuting attorney, are not covered entities under HIPPA. HIPPA provides for criminal and civil penalties against entities that fail to comply with its provisions. *42 U.S.C.S. §§ 1320d-5,* 1320d-6. *Go To Headnote*

Monarch Fire Prot. Dist. v. Freedom Consulting & Auditing Servs., 678 F. Supp. 2d 927, 2009 U.S. Dist. LEXIS 118937 (ED Mo Dec. 21, 2009), affirmed by *644 F.3d 633, 2011 U.S. App. LEXIS 13775 (8th Cir. Mo. 2011).*

Overview: *Auditors who disclosed HIPAA-protected health information to a lawyer who then shared same with law enforcement breached contract with plan sponsor and were liable for legal fees incurred to defend sponsor's directors in ensuing criminal inquiry though sponsor was not entitled to other legal fees, to judgment for conversion, or to punitive damages.*

- *45 C.F.R. § 164.502(j)(1)*speaks only to disclosures that are made by a whistleblower to an attorney retained by or on behalf of that whistleblower. Put another way, a business associate's disclosure of information defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as "protected health information" (PHI) to its own attorney for the purpose of determining its legal options is not a violation of HIPAA's privacy rule, nor is a workforce member's disclosure of PHI to his or her own attorney for that same purpose, but a business associate may not disclose PHI to an attorney retained by a workforce member. Logic dictates this result, as it would make little sense, given HIPAA's emphasis on protecting PHI, for its whistleblower provision to authorize such disclosures to third-party attorneys. A close examination of the language of § 164.502(j)(1) confirms that this is the correct interpretation. *Go To Headnote*
- *45 C.F.R. § 164.502(j)(1)*authorizes disclosures of information defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as "protected health information" for the purpose of determining the legal options of that party, indicating that the whistleblower exception contemplates an attorney-client relationship. This is further supported by the use of definite instead of indefinite articles in (ii)(B); the provision refers to disclosures to an attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate, which suggests that the attorney must be retained by or on behalf of the same party for whom the attorney is to ascertain the legal options. *Go To Headnote*
- *45 C.F.R. § 164.502(j)(1)*only refers to disclosures to attorneys retained by workforce members of a covered entity -- that is, workforce members of an entity subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). *45 C.F.R. § 160.103* (defining "covered entity"). *Go To Headnote*

Alvista Healthcare Ctr. v. Miller, 286 Ga. 122, 686 S.E.2d 96, 2009 Ga. LEXIS 679 (Ga Nov. 2, 2009).

Overview: *It was proper to affirm a judgment entered for a spouse in her action seeking an injunction requiring the release of a decedent's medical records because she was entitled to access the decedent's protected health information in accordance with 45 CFR § 164.502(g)(4), and O.C.G.A. § 31-33-2(a)(2) authorized her to act on behalf of the decedent.*

- When O.C.G.A. § 31-33-2(a)(2)(B) is applicable, a surviving spouse has authority thereunder to act on behalf of the decedent or his estate by requesting his medical records and, thus, is entitled to access the decedent's protected health information pursuant to *45 C.F.R. § 164.502(g)(4)*. *Go To Headnote*

Healthcare Law : Business Administration & Organization : Patient Confidentiality :

United States v. Jafari, 2016 U.S. App. LEXIS 7885 (3rd Cir May 2, 2016).

Overview: *Evidence indicating that doctors besides defendant received kickback payments was properly admitted under Fed. R. Evid. 401 and 403 as relevant to background on the kickback conspiracy and to establish witnesses' credibility; a Brady claim failed, as there was no indication that the government withheld favorable material evidence.*

- The Health Insurance Portability and Accountability Act provides that a covered entity may not use or disclose protected health information, except as permitted or required by the regulations. *45 C.F.R. § 164.502(a)*. For example, covered entities may disclose protected health information without patient consent in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order. *45 C.F.R. § 164.512(e)(1)(i)*. A "covered entity" is defined as a health plan, a health care clearinghouse, or a health care provider that transmits health information electronically in certain covered transactions. *45 C.F.R. §§ 160.102*, *164.104*. *Go To Headnote*

Webster v. Acb Receivables Mgmt., 2014 U.S. Dist. LEXIS 55575 (D Md Apr. 22, 2014).

Overview: *Debt collection agency could not invoke bona fide defence under 15 U.S.C.S. § 1692k(c) because, although acts of communicating with plaintiff after receiving her mailed cease and desist request were unintentional, and errors were bona fide, agency failed to demonstrate nexus between procedural safeguards and types of errors that occurred.*

- While it is true that the Health Insurance Portability and Accountability Act of 1996, *42 U.S.C.S. § 1320d* et seq., prohibits "covered entities" from disclosing protected health information, *45 C.F.R. § 164.502(a)*, the U.S. Court of Appeals for the Fourth Circuit has explained that verification of a debt under *15 U.S.C.S. § 1692g*(b), involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed. *Go To Headnote*

United States v. Yazzie, 2014 U.S. Dist. LEXIS 23837 (D NM Feb. 6, 2014).

Overview: *After reconsidering its denial of defendant's motions to withdraw his guilty plea under Fed. R. Crim. P. 11(d)(2)(B) to violating 18 U.S.C.S. § 2241(a), court continued to deny motions because although fact that defendant was asserting his innocence weighed in his favor, other factors did not justify allowing withdrawal of plea.*

- The Health Insurance and Portability Accountability Act of 1996 (HIPAA) prohibits a covered entity from using or disclosing protected health information. *45 C.F.R. § 164.502(a)*. Covered entities include a health plan, a health care clearinghouse, and a health care provider who transmits any health information in electronic form in connection with a transaction that HIPAA covers. *45 C.F.R. § 164.104(a)*. The FBI is not a covered entity under HIPAA. *Go To Headnote*

Stevens Ex Rel. Stevens v. Hickman Cmty. Health Care Servs., 418 S.W.3d 547, 2013 Tenn. LEXIS 990 (Tenn Nov. 25, 2013).

Overview: *A patient's widow failed to substantially comply with the Tennessee Health Care Liability Act, Tenn. Code Ann. § 29-26-121(a)(2)(E), and her failure was not excused by extraordinary cause, because a plaintiff had to substantially comply, rather than strictly comply, with § 29-26-121(a)(2)(E).*

- The intended meaning of the phrase "complete medical records," as used in the Tennessee Health Care Liability Act, Tenn. Code Ann. § 29-26-121(a)(2)(E) (2012), was not to grant defendants access to a plaintiff's entire medical history. Instead, the purpose of this requirement is to afford defendants access to all medical records that are relevant to the particular claim at issue. In determining whether medical records are relevant for purposes of litigation, defendants should continue to adhere to the "minimum necessary" standard that traditionally applies to a provider's use and disclosure of a patient's private health records under *45 C.F.R. § 164.502(b)(1)*. *Go To Headnote*

Carbajal v. Warner, 2013 U.S. Dist. LEXIS 36864 (D Colo Mar. 18, 2013).

Overview: *Plaintiff's motion for a protective order pursuant to Fed. R. Civ. P. 26 was denied in part; plaintiff's mental health records were relevant because he alleged that he suffered emotional distress, suffering of reputation, humiliation, mental anguish, and loss of enjoyment of life.*

- The Health Insurance Portability and Accountability Act (HIPPA) was enacted to provide standards for protection of the privacy of medical information. Pursuant to the terms of HIPAA, a covered entity, may not use or disclose protected health information, except as permitted or required by other statutory provisions. *45 C.F.R. § 164.502(a)*. The covered entity may disclose medical information to the patient who is the subject of the records. *45 C.F.R. § 164.502(a)(1)(iv)*. Disclosure of a patient's medical information is permitted when it is requested by the patient. *45 C.F.R. § 164.502(a)(1)(iv)*. *Go To Headnote*

Warren v. Corcoran, 2011 U.S. Dist. LEXIS 135012 (ND NY Oct. 20, 2011).

Overview: *Presence of the correctional officers at the inmate's Telemed appointments served a legitimate penological interest: protecting prison personnel from potential threats, and thus, the*

correctional officers appropriately remained in the room with the inmate and the nurse during the inmate's Telemed appointment with the infectious disease doctor.

- Correctional officers who are present during an inmate's Telemed appointments are considered part of the facility's Health Insurance Portability and Accountability Act (HIPAA), *42 U.S.C.S. §§ 1320d*-1320d-8 Health Care Component. Those transport and health unit correctional officers, as part of their duties, receive protected health information, and are held to stringent HIPAA guidelines protecting that information. Those guidelines are the same for the nurses and doctors. A Health Care Component may use protected health information for health care operations that are part of its treatment activities. *45 C.F.R. §§ 164.502(a)(1)(ii)*, *164.506(c)(2)*. *Go To Headnote*

- The New York State Department of Correctional Services (DOCS) is a "Hybrid Entity" under the Health Insurance Portability and Accountability Act (HIPAA), *42 U.S.C.S. §§ 1320d*-1320d-8, or a legal entity that performs business activities that are governed by HIPAA as well as business activities that are not governed by HIPAA. *45 C.F.R. § 164.103*. Under HIPAA, Hybrid Entities designate components of themselves that, if those components were separate legal entities, they would meet the definition of covered en*tities. 45 C.F.R. § 164.105(a)(2)(iii)(C)*. DOCS has designated correctional officers and their relief and supervisors assigned to: Transportation, Health Units, and Mental Health Units as part of the Health Care Component of DOCS. Health Care Components must comply with the disclosure requirements of HIPAA. *45 C.F.R. § 164.105(a)(2)(ii)*. Under HIPAA, a covered entity may not use or disclose protected health information, as defined by *45 C.F.R. § 164.105(a)(2)(i)(C)*, except as permitted by *45 C.F.R. § 164.502(a)* or *45 C.F.R. §§ 164.302*-.318. *45 C.F.R. § 164.502(a)*. *Go To Headnote*

Holman v. Rasak, 486 Mich. 429, 785 N.W.2d 98, 2010 Mich. LEXIS 1446 (Mich July 13, 2010), writ of certiorari denied by *131 S. Ct. 913, 178 L. Ed. 2d 750, 2011 U.S. LEXIS 173, 79 U.S.L.W. 3399 (U.S. 2011).*

Overview: *In medical malpractice action, ex parte interview of decedent's treating physician was permissible since ex parte interviews, which were permitted under MCL 600.2157 and 600.2912f, were consistent with HIPAA, provided that reasonable efforts had been made to secure a qualified protective order that met requirements of 45 C.F.R. § 164.512(e)(1)(v).*

- *45 C.F.R. § 164.502(a)*provides that a covered entity may not use or disclose protected health information, except as permitted or required by this subpart. *Go To Headnote*

Sneed v. Pan Am Hosp., 2010 U.S. App. LEXIS 5751 (11th Cir Mar. 18, 2010), writ of certiorari denied by *131 S. Ct. 1482, 179 L. Ed. 2d 318, 2011 U.S. LEXIS 1357, 79 U.S.L.W. 3476 (U.S. 2011).*

Overview: *District court did not err in dismissing state prisoner's § 1983 federal claims as time-barred, under Fla. Stat. § 95.11(3)(p), because prisoner's action accrued no later than September 22, 2000, when, in prisoner's presence, the state introduced his medical records into evidence at his trial, and prisoner filed his suit more than four years later.*

- The Health Insurance Portability and Accountability Act (HIPAA) generally provides for confidentiality of medical records and governs the use and disclosure of protected health information by covered entities that have access to that information and that conduct certain electronic health care transactions. *45 C.F.R. § 164.502*. It provides both civil and criminal penalties for improper disclosures of medical information and limits enforcement of the statute to the Secretary of Health and Human Services. *42 U.S.C.S. §§ 1320d-5*(a)(1), 1320d-6. Private rights of action to enforce federal law must be created by Congress. HIPAA contains no express provision creating a private cause of action. The United States Court of Appeals for the Eleventh Circuit declines to hold that HIPAA creates a private cause of action, or rights that are enforceable through *42 U.S.C.S. § 1983*. *Go To Headnote*

United States v. Elliott, 676 F. Supp. 2d 431, 2009 U.S. Dist. LEXIS 122041 (D Md Dec. 29, 2009).

Overview: *Although HIPPA may have been violated when court clerk issued subpoena for defendant's medical records in connection with DUI charges, suppression of records was not warranted as U.S. had strong interest in prosecuting drunk drivers and defendant's blood was drawn only in connection with her medical treatment, not at behest of law enforcement.*

- The Health Insurance Portability and Accountability Act (HIPPA), *42 U.S.C.S. § 1320d,* prohibits a "covered entity" from receiving and using protected health information. *45 C.F.R. § 164.502(a)*. Law enforcement agencies, including the office of the prosecuting attorney, are not covered entities under HIPPA. HIPPA provides for criminal and civil penalties against entities that fail to comply with its provisions. *42 U.S.C.S. §§ 1320d-5,* 1320d-6. *Go To Headnote*

Monarch Fire Prot. Dist. v. Freedom Consulting & Auditing Servs., 678 F. Supp. 2d 927, 2009 U.S. Dist. LEXIS 118937 (ED Mo Dec. 21, 2009), affirmed by *644 F.3d 633, 2011 U.S. App. LEXIS 13775 (8th Cir. Mo. 2011).*

Overview: *Auditors who disclosed HIPAA-protected health information to a lawyer who then shared same with law enforcement breached contract with plan sponsor and were liable for legal fees incurred to defend sponsor's directors in ensuing criminal inquiry though sponsor was not entitled to other legal fees, to judgment for conversion, or to punitive damages.*

- In order to share information defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as "protected health information" (PHI), health care plans and providers are required to enter into business associate agreements, contracts obligating the third parties to abide by HIPAA's restrictions on PHI disclosures. *45 C.F.R. § 164.502(e) Go To Headnote*
- *45 C.F.R. § 164.502(j)(1)*speaks only to disclosures that are made by a whistleblower to an attorney retained by or on behalf of that whistleblower. Put another way, a business associate's disclosure of information defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as "protected health information" (PHI) to its own attorney for the purpose of determining its legal options is not a violation of HIPAA's privacy rule, nor is a workforce member's disclosure of PHI to his or her own attorney for

that same purpose, but a business associate may not disclose PHI to an attorney retained by a workforce member. Logic dictates this result, as it would make little sense, given HIPAA's emphasis on protecting PHI, for its whistleblower provision to authorize such disclosures to third-party attorneys. A close examination of the language of § 164.502(j)(1) confirms that this is the correct interpretation. Go To Headnote

- *45 C.F.R. § 164.502(j)(1)*authorizes disclosures of information defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as "protected health information" for the purpose of determining the legal options of that party, indicating that the whistleblower exception contemplates an attorney-client relationship. This is further supported by the use of definite instead of indefinite articles in (ii)(B); the provision refers to disclosures to an attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate, which suggests that the attorney must be retained by or on behalf of the same party for whom the attorney is to ascertain the legal options. Go To Headnote

- *45 C.F.R. § 164.502(j)(1)*only refers to disclosures to attorneys retained by workforce members of a covered entity -- that is, workforce members of an entity subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). *45 C.F.R. § 160.103* (defining "covered entity"). Go To Headnote

Alvista Healthcare Ctr. v. Miller, 286 Ga. 122, 686 S.E.2d 96, 2009 Ga. LEXIS 679 (Ga Nov. 2, 2009).

Overview: *It was proper to affirm a judgment entered for a spouse in her action seeking an injunction requiring the release of a decedent's medical records because she was entitled to access the decedent's protected health information in accordance with 45 CFR § 164.502(g)(4), and O.C.G.A. § 31-33-2(a)(2) authorized her to act on behalf of the decedent.*

- The Health Insurance Portability and Accountability Act of 1996 authorizes the Secretary of the Department of Health and Human Services to promulgate rules and regulations which would ensure the privacy of patients' medical information. *42 U.S.C.S. § 1320d-2*(d)(2)(A). Those privacy regulations apply to the protected health information of a deceased individual. *45 C.F.R. § 164.502(f)*. In cases of a deceased individual, the covered entity must treat a personal representative as the individual. *45 C.F.R. § 164.502(g)(1)*. Go To Headnote

- If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative under *45 C.F.R. § 164.502(g)*, with respect to protected health information relevant to such personal representation. *45 C.F.R. § 164.502(g)(4)*. This definition is a functional one and, therefore, the "applicable law" to which the regulation refers clearly is state law. "Applicable law" generally means state law, since that's what governs who may act on behalf of another. Go To Headnote

- O.C.G.A. § 31-33-2(b)(1) provides, in part, that any request for a deceased patient's medical records by a person authorized under § 31-33-2(a)(2) shall be accompanied by an authorization in compliance with the Health Insurance Portability and Accountability

Act of 1996 and its implementing regulations. Section 31-33-2(a)(2) requires a healthcare provider to furnish a copy of a deceased patient's record upon written request by (A) The executor, administrator, or temporary administrator for the decedent's estate if such person has been appointed. (B) If an executor, administrator, or temporary administrator for the decedent's estate has not been appointed, by the surviving spouse. (C) If there is no surviving spouse, by any surviving child; and (D) If there is no surviving child, by any parent. Thus, § 31-33-2(a)(2) establishes a definite order of priority with respect to who is authorized to obtain a deceased patient's medical records. The first priority, set forth in § 31-33-2(a)(2)(A), is consistent with the specification in *45 C.F.R. § 164.502(g)(4)* of an executor, administrator, or other person having authority to act on behalf of the decedent or his estate. *Go To Headnote*

- O.C.G.A. § 31-33-2(a)(2)(B) applies only if an executor or administrator has not been appointed. The evident purpose of § 31-33-2(a)(2), when read in conjunction with § 31-33-2(b)(1), is to identify several persons, the executor or administrator being the first choice and the surviving spouse being the second, who have authority to submit an authorization in compliance with the Health Insurance Portability and Accountability Act of 1996 and to obtain medical records on behalf of the decedent or his estate. Accordingly, § 31-33-2(a)(2) constitutes the applicable state law to which *45 C.F.R. § 164.502(g)(4)* refers and § 31-33-2(a)(2)(B) necessarily implies that, when there is no executor or administrator, the surviving spouse is granted authority to act on behalf of the decedent or his estate with respect to requests for medical records. *Go To Headnote*

- O.C.G.A. § 31-33-2(a)(2) treats the surviving spouse as a personal representative in lieu of the executor or administrator with respect to requests for medical records. O.C.G.A. § 31-33-2(a)(2)(B) establishes a limited personal representation in the surviving spouse for the express purpose of obtaining the decedent's medical records in compliance with the Health Insurance Portability and Accountability Act of 1996. The Georgia statute does not provide for personal representation by the surviving spouse for other purposes. However, the statute permits her to obtain all types of medical records, other than mental health records as excepted by O.C.G.A. § 31-33-4, and subject to the preservation in O.C.G.A. § 31-33-6 of the privileged or confidential nature of communications recognized in other laws. Therefore, § 31-33-2(a)(2) is carefully tailored to provide the authority contemplated by *45 C.F.R. § 164.502(g)(4)*. Except for mental health records and any records which remain privileged or confidential, all of the decedent's protected health information is relevant to the limited personal representation granted to a surviving spouse by § 31-33-2(a)(2)(B). *Go To Headnote*

- *45 C.F.R. § 164.502(g)(4)*does not require that the person having authority to act on behalf of the decedent or his estate and requesting medical records must intend to make future use of those records in her fiduciary capacity as a personal representative. When the person having authority to act on behalf of the decedent or his estate makes a request for medical records which is within the scope of that authority, the very request constitutes an action in that person's capacity as a limited personal representative. Such request is the only action which can come within the limited personal representation established by O.C.G.A. § 31-33-2(a)(2) for the purpose of obtaining medical records. Once the medical records are obtained by a person authorized by state law to act on

behalf of the decedent or his estate by requesting them, *45 C.F.R. § 164.502(g)(4)* does not restrict the future use of those records. After obtaining the medical records, therefore, the surviving spouse may pursue a wrongful death claim, she may seek appointment as administrator in order to bring a survival action on behalf of the estate pursuant to O.C.G.A. § 51-4-5(b), she may do both, or she may do neither. *Go To Headnote*

- The Health Insurance Portability and Accountability Act of 1996 and the related regulations do not preempt any state law which provides more stringent requirements for the disclosure of protected health information. *45 C.F.R. § 164.502(g)(4)* permits an executor, administrator, or some other person authorized to act on behalf of the decedent or his estate to obtain protected health information. However, the person whom O.C.G.A. § 31-33-2(a)(2) allows to act on behalf of the deceased individual or his estate is only the executor or administrator if the estate is represented, and only the surviving spouse if one exists and the estate is unrepresented. Therefore, O.C.G.A. § 31-33-2(a)(2) is more stringent than, and thus is not preempted by *45 C.F.R. § 164.502(g)(4)*. *Go To Headnote*

- When O.C.G.A. § 31-33-2(a)(2)(B) is applicable, a surviving spouse has authority thereunder to act on behalf of the decedent or his estate by requesting his medical records and, thus, is entitled to access the decedent's protected health information pursuant to *45 C.F.R. § 164.502(g)(4)*. *Go To Headnote*

State Ex Rel. Protective Health Servs. State Dep't of Health v. Vaughn, 222 P.3d 1058, 222 P.3d 1058, 2009 Okla. LEXIS 67 (Okla Sept. 15, 2009).

Overview: *Where a certified nurse aide photocopied pages of a nursing home resident's medication record and provided it to the EEOC in support of her claim against the nursing home, her conduct did not violate the prohibition against misappropriating a resident's property under 42 U.S.C.S. §§ 1396r (e)(2), (g)(1)(c), or Okla. Admin. Code § 310:677-1-2.*

- Federal HIPAA regulations prohibit the use and disclosure of medical information by a covered entity except under certain circumstances. *45 C.F.R. § 164.502 (2003)*. The definition of a covered entity is a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter. *45 C.F.R. § 160.103(3)*. Disclosure is defined as the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information. This definition is clear that, although transfer is one component of disclosure, disclosure also includes other methods of divulging information. *Go To Headnote*

State Ex Rel. Adams County Historical Soc'y v. Kinyoun, 277 Neb. 749, 765 N.W.2d 212, 2009 Neb. LEXIS 80 (Neb May 15, 2009).

Overview: *Although HIPAA prevented the release of individually identifiable medical information, it also provided for release of information when required by state law. Death records sought by historical society were not prohibited from release, Neb. Rev. Stat. §§ 27-504(3), 71-961, or 83-109, as they were records of death and were therefore public records.*

- Under 45 C.F.R. § 164.502(f) (2008), a covered entity must comply with the requirements of this subpart with respect to the protected health information of a deceased individual. Therefore, the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C.S. § 1320d et seq., and its attendant regulations do apply to deceased individuals. Go To Headnote

Ex Parte John Alden Life INS. Co., 999 So. 2d 476, 2008 Ala. LEXIS 119 (Ala June 20, 2008).

Overview: *Petition for writ of mandamus to keep trial court from mandating production of material regarding Alabama insureds about claim that premiums were not assessed on group basis was denied; privacy rule of Health Insurance Portability and Accountability Act of 1996, 42 U.S.C.S. § 1320d(4), was not violated by disclosing material expressly authorized.*

- The Health Insurance Portability and Accountability Act of 1996, 42 U.S.C.S. § 1320d(4) (HIPAA), privacy rule generally forbids a covered entity, including a group-health-plan or health-insurance issuer, from using an individual's "protected health information" except as provided by the rule. 45 C.F.R. § 164.502(a) (2007). Disclosure is mandated when an individual seeks his or her own health information from a covered entity and when the Secretary of the Department of Health and Human Services asks for such information from a covered entity in order to enforce HIPAA. 45 C.F.R. § 164.502(a)(2). The rule permits disclosure in other circumstances. 45 C.F.R. § 164.502(a)(1). Go To Headnote

Arons v. Jutkowitz, 9 N.Y.3d 393, 850 N.Y.S.2d 345, 880 N.E.2d 831, 2007 N.Y. LEXIS 3355 (NY Nov. 27, 2007).

Overview: *Defendants, physicians and hospitals, in medical malpractice actions could conduct ex parte interviews with treating physicians for plaintiff patient and decedents of plaintiff administrators because no conflict existed between New York law and HIPAA on the subject as HIPAA did not address the subject of ex parte interviews of treating physicians.*

- The Privacy Rule, 45 C.F.R. pts. 160, 164, forbids an organization subject to its requirements (a "covered entity") from using or disclosing an individual's health information ("protected health information") except as mandated or permitted by its provisions. 45 C.F.R. § 164.502(a). "Covered entities" generally include health plans, health care clearinghouses, and health care providers, such as physicians, hospitals, and HMOs. 45 C.F.R. §§ 160.103, 164.104(a). "Protected health information" encompasses any individually identifiable health information held or transmitted by a covered entity in any form or medium, whether electronic, paper or oral. 45 C.F.R. § 160.103. Go To Headnote

- The Privacy Rule, 45 C.F.R. pts. 160, 164, mandates disclosure in only two situations: when an individual asks a covered entity for his or her own health information or when the Secretary of Health and Human Services asks a covered entity for access to such information in order to enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, *110 Stat. 1936 (1996),* codified as amended in scattered sections of 18, 26, 29, and 42 U.S.C.S. 45 C.F.R. § 164.502(a)(2). The Rule, however, permits uses and disclosures in numerous circumstances as regulated by its provisions. 45 C.F.R. § 164.502(a)(1). Uses and disclosures qualifying as permissive

under the Privacy Rule are just that -- for purposes of compliance with HIPAA, the covered entity is permitted, but not required, to use the information or make the disclosure. Nothing in the rule requires covered entities to act on authorizations that they receive, even if those authorizations are valid. A covered entity presented with an authorization is permitted to make the disclosure authorized but is not required to do so. Stated another way, a covered entity, such as a physician, who releases a patient's protected health information in a way permitted by the Privacy Rule does not violate HIPAA; however, neither the statute nor the Rule requires the physician to release this information. *Go To Headnote*

In re Berg, 152 N.H. 658, 886 A.2d 980, 2005 N.H. LEXIS 152 (NH Oct. 18, 2005).

Overview: *Father's right to raise children did not trump his children's privacy rights when protection of those rights served their best interests in custody proceeding; children, like adults, could seek protection of N.H. Rev. Stat. Ann. § 330-A:32 therapist-client privilege, and court could invoke privilege on their behalf if needed.*

- Section 164.502(a)(2) (*45 C.F.R. § 164.502(a)(2)*) of the Health Insurance Portability and Accountability Act Privacy Rules, *45 C.F.R. §§ 164.500*-.534, requires a health care provider to disclose protected health information to the health care recipient at the health care recipient's request. In certain circumstances, the health care provider is also required to disclose such information to the personal representative of the health care recipient at the personal representative's request. *45 C.F.R. § 164.502(g)(1)*. For an unemancipated minor, a parent, among others, must be treated as the minor's personal representative, so long as the parent, under applicable law, has the authority to act on behalf of the minor in making decisions related to health care. *45 C.F.R. § 164.502(g)(3)(i)*. However, the health care provider may not disclose or provide access to protected health information about an unemancipated minor to a parent if doing so is prohibited by an applicable provision of state or other law, including applicable case law. *45 C.F.R. § 164.502(g)(3)(ii)(B)*. *Go To Headnote*

Beard v. City of Chicago, 2005 U.S. Dist. LEXIS 374 (ND Ill Jan. 10, 2005).

Overview: *In employee's discrimination suit, city could not claim patient confidentiality privilege for leave of absence records where city was not a covered entity or program of Health Insurance Portability and Accountability Act or Public Health Service Act.*

- The regulations under the Health Insurance Portability and Accountability Act, of 1996, *42 U.S.C.S. § 1320d* et seq., provide that a "covered entity" includes only those healthcare providers who transmit any health information in electronic form in connection with a transaction covered by this subchapter, *45 C.F.R. § 160.103*, and that the restrictions on use or disclosure of health information apply only to a covered en*tity. 45 C.F.R. § 164.502(a)*. *Go To Headnote*

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) :

Beard v. City of Chicago, 2005 U.S. Dist. LEXIS 374 (ND Ill Jan. 10, 2005).

Overview: *In employee's discrimination suit, city could not claim patient confidentiality privilege for leave of absence records where city was not a covered entity or program of Health Insurance Portability and Accountability Act or Public Health Service Act.*

- The regulations under the Health Insurance Portability and Accountability Act, of 1996, *42 U.S.C.S. § 1320d* et seq., provide that a "covered entity" includes only those healthcare providers who transmit any health information in electronic form in connection with a transaction covered by this subchapter, *45 C.F.R. § 160.103*, and that the restrictions on use or disclosure of health information apply only to a covered en*tity. 45 C.F.R. § 164.502(a)*. *Go To Headnote*

Torts : Malpractice & Professional Liability : Healthcare Providers

Stevens Ex Rel. Stevens v. Hickman Cmty. Health Care Servs., 418 S.W.3d 547, 2013 Tenn. LEXIS 990 (Tenn Nov. 25, 2013).

Overview: *A patient's widow failed to substantially comply with the Tennessee Health Care Liability Act, Tenn. Code Ann. § 29-26-121(a)(2)(E), and her failure was not excused by extraordinary cause, because a plaintiff had to substantially comply, rather than strictly comply, with § 29-26-121(a)(2)(E).*

- The intended meaning of the phrase "complete medical records," as used in the Tennessee Health Care Liability Act, Tenn. Code Ann. § 29-26-121(a)(2)(E) (2012), was not to grant defendants access to a plaintiff's entire medical history. Instead, the purpose of this requirement is to afford defendants access to all medical records that are relevant to the particular claim at issue. In determining whether medical records are relevant for purposes of litigation, defendants should continue to adhere to the "minimum necessary" standard that traditionally applies to a provider's use and disclosure of a patient's private health records under *45 C.F.R. § 164.502(b)(1)*. *Go To Headnote*

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE SUBTITLE:

[PUBLISHER'S NOTE: Nomenclature changes to Subtitle A appear at *66 FR 39450, 39452,* July 31, 2001.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Race to the Top--Early Learning Challenge (RTT-ELC) program, see: *78 FR 53964,* Aug. 30, 2013.]

NOTES APPLICABLE TO ENTIRE PART :

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 164 Guidance and Request for Information, see: *74 FR 19006,* Apr. 27, 2009.]

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