

## **HIPAA and Child Welfare – Any Relation?**

By Crystal Ward Allen, Executive Director, PCSAO

*After a great deal of research and consultation, it appears HIPAA (an often feared, dreaded and barely understood new federal law) has limited implications for public child welfare in Ohio.*

The Health Insurance Portability and Accountability Act was written and passed for the following three purposes:

- Continuity of health insurance when workers and their families lose or change jobs
- Simplification and standardization of electronic transfer of health care information
- Ensuring the privacy and security of health care information

It is important to note, health care is defined as physical and behavioral healthcare (including mental health and substance abuse assessments and treatment).

Since Public Children Services Agencies routinely facilitate and handle a variety of healthcare activities for the children and families we serve, PCSAO has worked hard to understand the implications of the new HIPAA law, to our work. We attended and hosted HIPAA and Child Welfare trainings held by the Child Welfare League of America; we have sought legal consultation from the Office of Legal Services, ODJFS, local county prosecutors, and independent legal counsel; we have research American Bar Association analysis re: HIPAA and child welfare; we have had ongoing consultation with the ODJFS HIPAA experts; we have consulted with our local governmental partners, including the County Commissioners Association of Ohio and other statewide associations; and we have researched both the federal HIPAA law and regulations, available State of Ohio work regarding HIPAA as it applies to child welfare; as well as reviewed how other states are interpreting HIPAA implications for child welfare.

In the end, PCSAO has concluded that HIPAA was never intended to significantly impact child welfare:

- HIPAA clearly identifies the following Covered Entities affected: healthcare plans (such as private insurances and the Medicaid program), “clearinghouses” of healthcare information or billing (such as local ADAMHS/ADAS Boards), and healthcare providers (such as hospitals, clinics, physicians, mental health providers)
- HIPAA is intended to assure a high level of privacy and security for one’s healthcare information.

Within the core services associated with public child welfare, we do not easily fit into the Covered Entities, as outlined in HIPAA. As a part of our ongoing work, we already have a very high standard of confidentiality for all of our work and

records, which inspires confidence and limits exposure related to the privacy and security issue.

Because PCSAO has always promoted high standards of excellence, and active collaboration with our partners, we are not, however, advising our agency to “Just Say No!”, and ignore HIPAA. Thus, PCSAO has developed the following work plan, to assist county agencies, with a responsible HIPAA plan:

- Provide a series of HIPAA Advisories to our 88 Public Children Services Agencies explaining HIPAA (three have been provided thus far).
- Offer statewide training from a nationally renown HIPAA expert (occurred February 12, 2003)
- Strongly encourage local HIPAA assessment as to whether the local agency is a Covered Entity, (based on available information) and documentation of the rationale and conclusion.
- Develop Model policies and procedures (in the format of Standards for Effective Practice) particularly responsive to the HIPAA Privacy requirements. Agencies can then adapt these locally (a statewide workgroup is in progress, Standards are to be issues by early April).
- Partner with the Office for Children and Families, ODJFS to offer a statewide HIPAA training video-conference that can be viewed and taped by all 88 PCSAs, so all child welfare staff can be trained on HIPAA related issues (planned for early April).
- PCSAO is also joining with other national entities to seek an explicit HIPAA exemption for public child welfare agencies, within the federal law.

While we do not see typical Ohio Public Children Services Agencies as an intended Covered Entity under HIPAA, we do take our responsibilities with Ohio’s children and families, and all our governmental and service partners, seriously. PCSAO believes this strategy to show a feasible, responsible, good faith effort to limit exposure or liability as HIPAA plays out across the nation; we also believe this response will instill confidence in our handling of healthcare information, for our families, as well as our many HIPAA impacted partners.

For more information, contact Crystal Ward Allen at [pcsaocwa@iwaynet.net](mailto:pcsaocwa@iwaynet.net) or 614/224-5802.