



## Public Children Services Association of Ohio

Crystal Ward Allen, Executive Director  
400 East Town Street, Suite G-10 \* Columbus, Ohio 43215  
614-224-5802 \* Fax 614-228-5150 \* Email address: pcsaocwa@iwaynet.net  
Website: www.pcsao.org

# PCSAO White Paper: HIPAA and Core Child Welfare Services

## What is HIPAA?

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) has two key purposes. The first (Title I) protects health insurance coverage for workers and their families when they change or lose their jobs. The second (Title II) requires the U.S. Department of Health and Human Services (HHS) to establish national standards for electronic health care transactions and national identifiers for providers, health plans, and employers. It also addresses, through new protections, the *security and privacy of patient health data*.<sup>1</sup>

## PCSAO Philosophy

After much research and analysis, the PCSAO Board of Trustees unanimously adopted the following statement regarding the general statewide impact of HIPAA on Public Children Services Agencies in Ohio:

*“We, the Board of Trustees of the Public Children Services Association of Ohio, having studied and researched the Health Insurance Portability and Accountability Act, realize this federal law was not intended for public child welfare. While physical and behavioral healthcare information is often critical to child safety and permanency, we do recognize the absolute need to protect the privacy of health information, and we will ensure confidential handling of such, just as we do all child protection information. Given the volumes of regulations, interpretations, and anticipated litigation of HIPAA, PCSAO urges Congress to specifically exclude public child welfare from HIPAA implications.”*

## **Public Child Welfare in the Age of HIPAA**

The following is a summary of pertinent information regarding HIPAA and Child Welfare, inclusive of US Department of Health and Human Services HIPAA comments, tools, regulations and cites, related state law, regulations and materials, standard practice and PCSAO conclusions. Resources used in this paper are provided at the end.

---

<sup>1</sup>“The Impact of HIPAA on Child Abuse and Neglect Cases”, Howard Davidson, J.D., Director, American Bar Association Center on Children and the Law, copyright 2003.

## **I. Covered Entity Assessment and Status**

- A. Public Children Services Agencies (PCSAs) are NOT Covered Entities** in their performance of Core Child Welfare Services. The following citations are from the Federal Register.

*“Government funded programs that do not have as their principal purpose the provision of, or payment for the cost of health care, but which do incidentally provide such services, are not health plans...” (Federal Register, Volume 65 160 and/or No. 250)*

- B. CDJFSs are NOT Covered Entities re: Medicaid eligibility or enrollment services.**

*“(W)e do not consider an agency that is not otherwise a Covered Entity (such as a local welfare agency) to be a Covered Entity because it determines eligibility or enrollment or collects information as authorized by law. We also do not consider the agency to be a business associate when conducting these functions.” (Federal Register, Volume 65, No. 160 and/or No. 250)*

- C. HHS Covered Entity Decision Making Tools**

Using the US Department of Health and Human Services Covered Entity Decision Making Tool for Public Governmental Entities, found at the web address below, indicates governmental agencies performing core child welfare services are NOT Covered Entities.

<http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp>

## **II. PCSAs are NOT required Business Associates under HIPAA**

Public Children Services Agencies do not perform business associate functions or services for Covered Entities. Disclosure of Protected Health Information by a Covered Entity will fall under Treatment, Payment or Health Care Operations (TPO), pursuant to a signed consent form, or under one of the specific items listed under Release of PHI without a signed Authorization.

*A “business associate is a person or organization...that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. Business associate functions...include claim processing, data analysis, utilization review, and billing. Business associate services...are limited to legal, actuarial, accounting, consulting data aggregation, management, administrative, accreditation, or financial services.” (HHS Office for Civil Rights Privacy Rule Summary, also Section 160.103)*

- III. Release of Protected Health Information WITHOUT a Signed Authorization** - Covered Entities (such as physical and behavioral healthcare providers) are permitted to share Protected Health Information (PHI) with PCSAs and CDJFSs, without authorization, within the following parameters:

All HIPAA citations listed below, excepting ORC mentions, can be found in the Code of Federal Regulations, 45 CFR, Parts 160 and 164.

- A. Child Abuse or Neglect Reporting and Investigation** – HIPAA mandates disclosure of information when required by law, and permits disclosure of PHI to the governmental authority authorized to receive reports of abuse and neglect. State law mandates certain professionals, including healthcare providers, to report suspected child abuse or neglect to PCSAs (ORC 2151.421). Section 164.512(a), (b), (d).
- B. Children in the Custody of a PCSA** - PCSAs are the Personal Representative of all children in agency custody, serving *in loco parentis*. All rights and responsibilities with regards to health care are assigned to the agency. Section 164.02(g).
- C. Judicial Proceeding** – In response to a Court order, but only the Protected Health Information expressly authorized by such an order. Section 164.512(e).
- D. Child Fatality Review Process** – Covered Entities are permitted to release PHI for the purpose of health oversight activities, and according to state law. Child Fatality Review participants are required to provide certain information, (ORC 4731.22). Section 164.512(d), (g).
- E. Child is at Imminent Risk of Harm** – Covered entities may disclose PHI “to avert a serious threat to health or safety.” This provision presumes good faith disclosures. Section 164.512(j)
- F. Domestic Violence, Adult Abuse** – To prevent serious physical harm, and to the extent required by state law. Section 164.512(c).
- G. Child Protection Intervention** – HIPAA rules do not apply where the “provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.” Section 160.203(c).

“What we know. While HIPAA provides broad protections from unauthorized disclosure of patient health information:

- HIPAA does not inhibit reporting of child abuse and neglect;
- HIPAA supports disclosures of health information for public health prevention, surveillance, investigation, and intervention activities;
- HIPAA provides protections for child victim health information, but disclosures can still be made with victim consent or where necessary to prevent serious harm to them or other potential child victims;
- HIPAA gives courts, law enforcement agencies, and those determining the cause of child deaths the ability to access relevant health information; and
- HIPAA protects child victim health information from being disclosed to parents or other adult representatives when disclosure would be contrary to the child’s best interests.”<sup>1</sup>

---

<sup>1</sup> “The Impact of HIPAA on Child Abuse and Neglect Cases”, Howard Davidson, J.D., Director, American Bar Association Center on Children and the Law, copyright 2003.

- IV. **Release of PHI for the purposes of Treatment, Payment or Health Care Operations (TPO) with authorization.** - Standard Public Children Service Agency practice is to secure a signed, valid Release of Information Form with the families we serve, when seeking or sharing information, to ensure proper handling of all child protection case information. *Covered Entities are authorized to disclose PHI pursuant to a signed authorization for purposes of Treatment, Payment or Health Care Operations.* CFR Section 164.502(a)(1).

Memorandums of Understanding should be signed by all parties for collaborative casework, such as State Cluster, local Family and Children First Councils, Family Case Conferencing, and Team Decision Making; specific consent forms should be signed by the family and participating entities.

- A. **Valid Authorization for Disclosure Forms** should include the following core elements. CFR Section 164.508(c). ODJFS issued Clearance #5071, HIPAA Privacy and Notice Requirement on April 18, 2003; it can currently be accessed on the internet at <http://www.state.oh.us/odjfs/ols/clearance>

1. Description of the information to be used or disclosed.
2. Name or class of persons authorized to use or disclose the PHI.
3. Name or class of persons to whom the Covered Entity is authorized to make disclosure.
4. Expiration date related to the authorization for disclosure.
5. Statement of the individual's right to revoke consent, in writing.
6. Statement that the information disclosed may be subject to redisclosure.
7. Signature of the individual and the date signed.
8. If signed by a "personal representative", must include a description of the representative's authority.
9. Must be written in plain language.

**B. Minimum Necessary Standard**

1. For routine and recurring disclosures, Covered Entities must implement policies and procedures. CFR Section 164.514(d)(4)
2. For all other requests, the Covered Entity shall determine what PHI is reasonably necessary to accomplish the purpose for which the request is made. CFR Section 164.512(d)(4).
3. Does not apply to disclosures of PHI as "required by law". CFR Section 164.512(a) and ORC 2151.421 (child abuse or neglect reporting).
4. Pursuant to a Court order, the PHI to be disclosed will be expressly authorized by such an order. CFR Section 164.512(e).

V. **Public Children Services Agencies Uphold High Standards of Confidentiality**

PCSAs are required to operate under a high standard of confidentiality, as a result of federal and state law and regulations. These high standards serve to provide confidence among Covered Entities, as they disclose PHI to PCSAs, for the purpose of child safety and permanence.

**A. Related Federal Laws and Regulations:**

1. 42 USC Sec. 671(a)(8) – Requires all states to safeguard and restrict the use or disclosure of programs under Title IV-B (protective, in-home services)
2. 42 USC Sec. 5106a(b)(2)(A)(v) – Federal confidentiality requirements including reports of child abuse and neglect, and other protective services.
3. 42 USC Sec. 5106a(b)(2)(A)(vi), 5106a(c)(4)(B)(i), 5106a(c)(5)(A), 5106a(c)(6) – Provisions for review, disclosure and limitations for public disclosure of findings when abuse or neglect has resulted in a child fatality.
4. 45 CFR Sec. 1340.14(i) – Requires state statute regarding the confidentiality of child abuse and neglect reports
5. 45 CFR Sec. 1355.21 – Requires state confidentiality safeguards of all Title IV-E (foster and adoptive services) and Title IV-B (in-home services).
6. 45 CFR Sec. 205.50 – Specifies confidential elements of cases; *specifically addresses medical data.*

**B. Related Ohio Revised Code (ORC) Sections** are listed below, and can be found at <http://onlinedocs.andersonpublishing.com>

1. ORC 121.37 – Establishes confidentiality of Family and Children First Council records.
2. ORC 149.43, 1347.08(F)(2) – Putative father registry information is not a public record; allows limited access to information with written consent of subject.
3. ORC 307.67, 307.628 – Allows Child Fatality Review Boards access to summary child abuse or neglect and other records; ensures confidentiality of records; provides immunity to those providing information to CFR Boards; materials are not public records.
4. ORC 2151.141 – Allows for sharing of certain child abuse information to other mandated reporters providing services to the child.
5. ORC 2151.421 – Mandated reporter statute; establishes confidentiality of records.
6. ORC 2151.3107.17, 3107.42, 3705.12, 3705.23 – Dealing with the confidentiality of adoption records; original birth records once adoption is finalized.
7. ORC 3705.051(H) – Regarding access to child records of a non-custodial parent.
8. ORC 5153.17 – PCSAs must keep all child abuse and neglect records, and all case records regarding services confidential.
9. ORC 5153.171 – Regarding release of abuse or neglect information that may have caused a child fatality; the local county prosecutor must advise the PCSA Director of what information can be released when, pending prosecution.
10. ORC 5153.172, 5153.173 – Detailed parameters regarding the release of child abuse neglect information that shall be released upon a child's death; a common pleas court can prohibit release if not in the best interest of the deceased child's sibling.

C. **Related Ohio Administrative Code Rules** are listed below, and can be found at <http://dynaweb.odjfs.state.oh.us:6336/dynaweb/>

1. 5101:9-9-20 - Treatment of health insurance portability and accountability (HIPAA) inquiries to a county agency.
2. 5101: - HIPAA Privacy Notice
3. 5101:2-7-04 - Foster Caregiver Confidentiality Provisions
4. *5101:2-34-38 - Confidentiality of Child Abuse and Neglect Information \**
5. 5101:2-34-381 - Confidentiality of Central Registry Information
6. 5101:2-39-51 - Guidelines for the Sharing of Information Between the PCSA and the OWF/PRC Program
7. 5101:2-42-90 - Guidelines for Release of Foster Child Information to a Substitute Caregiver
8. 5101:2-48-19, 20, 21, 22, 23 - OAC Rules Related to the Confidentiality and Authorized Release of Adoptive Home Studies, Child Study Inventories, Birth and Sibling Parent Records, Adoptive Child Records

*\* OAC 5101:2-34-38 is particularly helpful for establishing a high level of confidence in PCSAs, as they receive Protected Health Information from Covered Entities, as this rule severely limits the disclosure of information, and includes criminal penalties for violation of the rule.*

## VI. **PCSAO RECOMMENDATIONS for PCSAs REGARDING HIPAA**

- A. **Document agency status as to Covered Entity** – go to the HHS Covered Entity Decisionmaking website, to assess your local agency status. Document your finding in a letter to your county commissioners, children services board, and local prosecutor.
- B. **Review local Policies and Procedures** - Ensure your agency policies and procedures have adequate standards of Confidentiality and Security (handling and storage of records) within the existing federal and state child protective services parameters.
- C. **Staff Awareness** - Review PCSA Confidentiality and Security Policies and Procedures with Staff.
- D. **Familiarize your staff with HIPAA** – Child welfare professionals will be working with Covered Entities on a regular basis, and should be familiar with basic HIPAA concepts. Brenda G. Meyer, Assistant Lucas County Prosecutor, and Sharon Simonson, Lucas County Risk Management, HIPAA Privacy Officer authored the ***attached HIPAA Power Point presentation***, used to train Lucas County Family and Children First Council members – consider sharing this with your staff in staff meetings.
- E. **Communicate with your community partners** – share your status, activities and ongoing standards of practice regarding confidentiality with public and private partners, especially those that are / may be Covered Entities.

**Related Council on Accreditation Standards**     <http://www.coanet.org>

G1.5            Confidentiality and Privacy Protections  
G2.10          Information Management  
G11.4          Security of Information  
G11.6.02      Service Agreements  
                  COA Business Associate Addendum

**PCSAO Statewide HIPAA Workgroup Contributing to this Summary**

Susan Alberter, Greene County Children Services  
Crystal Ward Allen, Executive Director, Public Children Services Association of Ohio  
Cathy E. Appel, Assistant Director, Clark County Department of Job and Family Services  
Wayne Edwards, Jefferson County Children Services  
Cynthia King, Executive Director, Jefferson County Children Services  
Kelly Lynch, Executive Director, Guernsey County Children Services  
Marilyn Parker, Legal Counsel, Lucas County Children Services  
Shawn Sabella, Director of Operations, Public Children Services Association of Ohio  
Sue Williams, Office for Children and Families, Ohio Department of Job and Family Services

Special thanks to Brenda Meyer, Lucas County Prosecutor's Office, for review and input.

**Resources / Bibliography**

HHS Centers for Medicare and Medicaid Services website, <http://www.cms.gov/hipaa/>

HHS Office of Civil Rights HIPAA website, <http://www.hhs.gov/ocr/hipaa/>

HIPAAOhio Guide to the Privacy Rule, <http://www.state.oh.us/hipaa/privacyrule/index.htm>

"The Impact of HIPAA on Child Abuse and Neglect Cases" by Howard Davidson, JD, Director, American Bar Association Center on Children and the Law, 2003

"Tactical Implementation for HIPAA Compliance – State Governments" by the State Government – Government Information Value Exchange for States (GIVES), Version 3, 7/23/02.

"Understanding the Health Insurance Portability and Accountability Act (HIPAA), Facts, Strategies, and Solutions" by The Child Welfare League of America, September 2002.

"HIPAA Overview" by Brenda Meyer, Lucas County, Prosecuting Attorney Office, and Sharon Simonson, Lucas County Risk Management, HIPAA Privacy Officer, March, 2003.

"Protected Healthcare Information (PHI) ODJFS Policies and Procedures", 2003 Training to Health Component Staff, by Ohio Department of Job and Family Services.

"Public Records and Confidentiality Laws", Ohio Department of Job and Family Services, Office of Legal Services, January 2003. <http://dynaweb.odjfs.state.oh.us:6336/dynaweb/legal/pubrec>