

### Because..



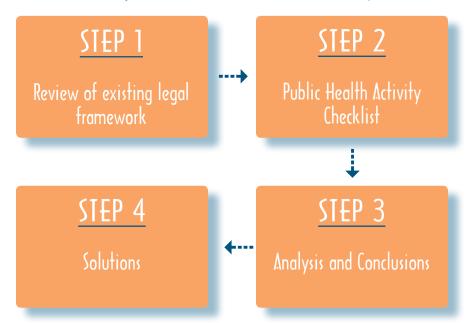
- The responsibility of protecting of health information from wrongful and harmful disclosure doesn't cease during emergencies.
- Legal preparedness includes an awareness of laws that govern the flow of information during public health emergency planning and response.
- Responding to an influenza pandemic may propel state health agencies into roles and activities that raise concerns about the privacy of health information.

# ASTHO presents the Privacy & Pandemic Flu Guide.

The purpose of the guide is to aid public health professionals when privacy concerns are raised about pandemic flu planning and response activities. It walks the professional through a 4-step system to:

- Determine how activities implicate federal and state privacy laws
- Fashion solutions for activities that do not conform to those laws
- Identify laws that might need amending

Privacy & Pandemic Flu Guide: the 4 steps



The guide is available at: http://www.astho.org/?template=hipaa.html

## Background:

- The President has declared a state of emergency for the country.
- The Secretary of the US Department of Health and Human Services (HHS) has declared a public health emergency
- The Governor has declared a state of emergency and a public health emergency.
- State and local emergency operations centers have been activated.

## At the ACS operated by the state health agency:

- Patients with flu-like symptoms are triaged depending on the severity of their symptoms
- Patients needing further care are routed to appropriate facilities.
- First aid and medical supplies, such as antiviral medication, are provided.
- Patients are provided transport to their homes or other health care facilities, as needed.

### Situation:

A public health preparedness staff person calls the privacy officer and says:

"Leaders of a local faith-based organization have offered to deliver care to homes and transport patients to the ACS. They have provided us with a list of congregation members and would like the ACS to cross-reference existing records to identify congregation members who have sought triage care. The faith-based organization also wants ACS staff to ask about religious affiliation when processing new patients and, on a daily basis provide it with the names of individuals who identify with its faith.

We want to work with this organization, but are we allowed to collect and disclose this information?"

## Information Pathways & Points:

### Information pathways include:

- 1. Intake
- 2. Patient Referral
- 3. Disclosure of Patient Identity & Medical Information

### INFORMATION PATHWAY

The path that a piece of information follows through collection, protection, use, and disclosure. Activities might create more than one pathway.

### Information points include:

#### 1. Intake

Intake of symptoms and medical history at ACS

# Information Point A specific spot along an information pathway

A specific spot along an information pathway where a health agency collects, protects, uses, or discloses information.

- · Intake of religious affiliation at ACS
- Intake of transportation needs at ACS
- Symptoms and medical history used to provide first aid
- Information on transportation needs used to inform services offered

### 2. Patient Referral

- Patients referred to outside health care providers
- Patient medical history disclosed to outside health care providers
- 3. Disclosure of Patient Identity and Medical Information
  - Patients' symptoms and medical histories disclosed to faith-based organization for delivery of health care services in ACS and patient homes

# Step 1: Review of Existing Legal Framework

### The evaluator considers

#### 1 Intake

 Relevant sections of HIPAA; state confidentiality law; state statute giving ownership of records of persons with special needs to the local emergency management director

## 2. Patient Referral

- Relevant sections of HIPAA; state health practitioner law, Department of Health law and hospital law
- 3. Disclosure of Patient Identity and Medical Information
- Relevant sections of HIPAA; potential and precedent for President, HHS Secretary, and/or Governor to suspend requirements to facilitate volunteerism

For a more
detailed analysis, the complete
Public Health Activity Checklist, and
an addition scenario, please see the full
Privacy & Pandemic Flu Guide on the
ASTHO Web site.

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# Step 4: Solution

The evaluator advises the ACS staff person to establish the local faith-based organization leaders as volunteer employees of the State Department of Health. The evaluator also recommends the creation of a plan for data protection, specifically storage, transmission, and disposal. Finally, the evaluator says that the religious affiliation of patients can be collected in a directory, as long as patients do not object.

# Step 2: Public Health Activity Checklist

Data Collection	
Who?	SHA staff at ACS
What role?	Public health authority
What data?	Medical history, religious affiliation
In what form?	Written forms, database
From whom?	Patients presenting at ACS
What purpose?	Treatment, referral
Data Protection	
Who stores?	ACS
In what form stored?	Access database
How protected?	Hard copy locked in file cabinet, shredded, database encryption, rolebase access, privacy training of ACS staff and volunteers
How long retained?	Until ACS is dismantled
In what form transmitted?	Oral and written form
How protected while transmitted?	Privacy training of ACS staff and volunteers
How destroyed?	Paper forms shredded, database deleted
When destroyed?	At least 1 week after ACS is dismantled
Who destroys?	ACS staff



# Step 3: Analysis and Conclusions

The evaluator uses the results from Step I and II to reach conclusions. The ACS is a public health authority performing an intervention and not a HIPAA covered entity. Therefore, it is outside HIPAA jurisdiction. State confidentiality laws; however, do apply. The data collected at information points in Intake and Patient Referral are health information. Given that the ACS is the public health authority performing an intervention, the health information does not become individually identifiable. The public health authority is not listed as a collector of information in the definition of individually identifiable health information of protected health information. The release of patient identity and religious affiliation in the facility directory is an authorized protected health information disclosure. If the local faith-based organization leaders are established as State Department of Health volunteer employees, then they can provide services, otherwise this activity is disallowed.

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