

INFORMATION-SHARING BETWEEN HOSPITALS AND LAW ENFORCEMENT

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Hospitals have a legal and ethical responsibility to protect patient information. Law enforcement agencies have a duty to protect and serve the public, which sometimes entails a need to know patient information. At times, these obligations may be in tension with one another. To improve cooperation and understanding between GNYHA member hospitals and the New York State law enforcement community, GNYHA has compiled guidance on the most salient laws and regulations governing how hospitals can share patient information with law enforcement. A non-exhaustive summary of the laws and regulations is listed below. Also, an attached chart outlines where the disclosure of patient information is required or permitted, depending on the type of information requested.

Substance Use Disorder (SUD) Regulations

Federal SUD regulations (under 42 CFR Part 2, commonly known as “Part 2”) govern information-sharing at federally assisted alcohol and drug treatment programs. In New York State, Part 2 regulations generally apply to units and facilities licensed by the New York State Office of Alcoholism and Substance Abuse Services (OASAS). Part 2 restrictions apply to information that can identify a patient as having or having had a SUD. Part 2 strictly prohibits treatment programs from releasing this kind of information to law enforcement without a court order that contains certain language, which is detailed in the attached chart.

NYS Mental Hygiene Law (MHL)

The New York State MHL applies to units or facilities licensed by the New York State Office of Mental Health (OMH) or the Office for Persons with Developmental Disabilities (OPWDD). MHL protections cover all information generated within an OMH-licensed facility, not only information about mental health care. The MHL typically requires a specially-worded court order to disclose this information to law enforcement.

NYS PHL Article 27-F (HIV-Confidentiality Law)

The New York State PHL protects HIV-related information, which broadly includes any information that indicates a person: had an HIV-related test; has an HIV-infection, HIV-related illness, or AIDS; has been exposed to HIV; or has one of these conditions. Information on an individual’s contacts also is protected. Disclosure of any HIV-information to law enforcement generally requires a specially-worded court order.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

HIPAA requires providers to safeguard patient’s “protected health information” (PHI). PHI not only includes medical information, but also demographic data (e.g., name, address, birth date, social security number) and information about when a patient was seen or discharged. In limited circumstances, however, a hospital may disclose patient information to law enforcement at the hospital’s discretion.



GNYHA is a dynamic, constantly evolving center for health care advocacy and expertise, but our core mission—helping hospitals deliver the finest patient care in the most cost-effective way—never changes.

NYS Public Health Law (PHL) §18; Education Law (Ed Law) §6530(23); CPLR §4504

The New York State PHL and Ed Law include general confidentiality provisions for patient information, which the New York State Department of Health (DOH) has broadly interpreted to prohibit disclosures without at least oral patient authorization. The Civil Practice Law and Rules, while pertaining to evidentiary standards, contains broadly worded provisions on the provider-patient privilege barring physicians and certain other providers from disclosing information acquired in attending a patient in a professional capacity. DOH has not interpreted the provisions as prohibiting hospitals from giving patient information to law enforcement when the disclosure is appropriate and consistent with other applicable law, such as when a crime occurs on the premises or upon receipt of a court-ordered subpoena.



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TYPE OF INFORMATION	WHEN IS A HOSPITAL REQUIRED TO DISCLOSE TO LAW ENFORCEMENT? ¹	WHEN IS A HOSPITAL PERMITTED TO DISCLOSE TO LAW ENFORCEMENT? ²
<p>Part 2 SUD Information 42 CFR Part 2</p>	<ul style="list-style-type: none"> Pursuant to a court order³ that indicates: 1) the crime involved is extremely serious; 2) there is a reasonably likelihood that the records will disclose information of substantial value in the investigation or prosecution; 3) other ways of obtaining the information are not available or would not be effective; 4) the potential injury to the patient, to the physician-patient relationship, and to the ability of the program to provide services to other patients is outweighed by the public interest and the need for the disclosure; and 5) the person holding the records has been afforded the opportunity to be represented by independent counsel. [§2.65] Pursuant to a court order for purposes of investigating or prosecuting the Part 2 program and/or persons holding patient records or authorizing the use of undercover agents and informants to investigate employees or agents of a Part 2 program. [§2.66-7] 	<ul style="list-style-type: none"> When the information is directly related to crimes and threats to commit crimes on the premises or against Part 2 program personnel. The disclosed information is restricted to the patient’s status, name, address, and last known whereabouts. [§2.12(c)(5)] When participation in the Part 2 program is a condition of the disposition of any criminal proceedings against the patient, or of the patient’s parole or other release from custody. [§2.35]
<p>MHL Information NY MHY §33.13</p>	<ul style="list-style-type: none"> Pursuant to a court order requiring disclosure that indicates the court has found the interests of justice significantly outweigh the need for confidentiality. [§33.13(c)(1)] To the Justice Center for the Protection of People with Special Needs (“The Justice Center”). [§33.13(c)(4)] To the State division of criminal justice (NYDSC) or the FBI’s criminal justice information services division when a mental health professional determines in his or her reasonable professional judgement that his or her current patient is likely to engage in conduct that would result in serious harm to self or others. This information is used by NYSDSC for background checks for firearms sales. [§33.13(c)(13-14); §9.46 (SAFE Act)]. 	<ul style="list-style-type: none"> If a treating psychologist or psychiatrist determines that a patient presents a serious and imminent danger to another individual or himself. This provision shall not be construed to impose an obligation upon a treating psychiatrist or psychologist to release information. [§33.13(c)(6)]. To locate missing persons, or to governmental agencies regarding criminal investigations, provided the information is limited to data concerning hospitalization. [§33.13(c)(9)(ii)] When necessary to prevent imminent, serious harm to the patient or client or another person. [§33.13(c)(9)(v)] To a district attorney when such request for information is in connection with and necessary to the furtherance of a criminal investigation of patient or client abuse. [§33.13(c)(9)(vi)] To a correctional facility when a patient or inmate is pending release to community supervision. [§33.13(c)(10)]

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<p>HIV-Related Information NY PHL §2782; 10 NY-CRR Part 63</p>	<p>Pursuant to an order granted upon a showing: 1) of a compelling need for disclosure for purposes of adjudication of a criminal proceeding; or 2) that there is a clear and imminent danger to an individual. The court, in the order, shall provide written findings of fact, including scientific or medical findings, citing specific evidence in the record that supports each finding. The court order shall also indicate that the court weighed the need for disclosure against the privacy interest of the protected individual and the public interest, which may be disserved by disclosure that deters future testing or treatment or which may lead to discrimination. The court order should also include a statement about prohibiting re-disclosure. [§2782(1)(k); §2785; 63.6(a)(12)]</p>	<ul style="list-style-type: none"> • To an employee or agent of certain correctional agencies or probation departments, or a medical director of a local correctional facility to the extent that person is authorized to access records containing such information to carry out functions, powers, and duties with respect to the protected individual. [§2782(1)(l-o); 63.6(a)(13-14)] • To an employee or agent of the NYC Board of Corrections so the board may continue to access records of inmates who die in the custody of the NYC Department of Corrections, when necessary for the board to carry out its duties, functions, and powers with respect to the protected individual. [§63.6(a)(15)] • To a person (which may include a law enforcement officer) who may have been exposed to HIV under certain circumstances subject to specific contact requirements in §63.8(m). [§2782(4); 63.6(g)]
<p>All Other Information 45 CFR §164.512</p>	<p>HIPAA defers to State law to the extent it requires disclosure in certain circumstances, e.g., a court order, and mandatory reporting requirements. NY PHL §18 and NY Ed. Law §6530(23) impose general obligations of confidentiality for all health information not just that which is specially protected by a State law.</p>	<ul style="list-style-type: none"> • Pursuant to a written administrative request by a law enforcement agent (such as an administrative subpoena), if a) the information sought is relevant and material; b) the request is specific and limited in scope; and c) de-identified information cannot be used. [§164.512(f)(1)(ii)(c)] • Pursuant to an informal request (often verbal) by a law enforcement agent, provided certain criteria are met which are dependent on the purpose of the request. Common types of purposes include: identifying or locating a suspect, fugitive, material witness, or missing person; avoiding a serious and imminent threat; gathering information on crime victims; responding to reports of crimes in emergencies; or investigating when a patient death may have resulted from criminal conduct. Disclosures must be limited to basic demographic and health information. [§164.512(f)(2)].

1. Hospitals are required to make certain reports to law enforcement and other social service agencies, e.g., child abuse, gunshot wounds, certain stab wounds, and serious burns (see, NY Social Serv. Law §413(1); NY PL §265.25; NY §265.26). Generally, none of the laws or regulations discussed herein prohibits this mandatory reporting, although Part 2, for example, restricts mandatory reporting to child abuse and neglect.

2. Hospitals may release patient information via a valid authorization form. A commonly used form can be found here: <https://www.health.ny.gov/forms/doh-5032.pdf>.

3. Under 42 CFR §2.61, a court order by itself does not compel disclosure. The court order would have to be accompanied by a judicial subpoena. It should be noted that, while a court order cannot be ignored, it can be challenged in court.