

# **HIPAA and Law Enforcement: Presentation to NCVHS**

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# **HIPAA Complaint Categories**

- **Transitional Problems (Not problems)**
- **Poor Drafting/Guidance**
- **Bad Policies (Legislative/Regulatory)**
- **The World has Changed**

# Who is a Law Enforcement Official?

***Law enforcement official* means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:**

**(1) Investigate or conduct an official inquiry into a potential violation of law; or**

**(2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law**

# Law Enforcement I

- **Gunshot etc. reporting laws**
- **Judicial subpoenas, warrants**
- **Grand jury subpoenas**
- **ADMINISTRATIVE REQUESTS**
  - **Relevant and material to legitimate law enforcement inquiry**
  - **Specific and limited in scope to the purpose for which the information is sought**
  - **Requester can't use de-identified data**

# Law Enforcement II

- **For locating a suspect, fugitive, material witness, or missing person.**

## **Disclosures limited to**

- **Name and address**
- **Date/place of birth**
- **SSN**
- **Blood type**
- **Type of injury**
- **Date/time of treatment or death**
- **Distinguishing physical characteristics**

# Law Enforcement III

- **Victims of a crime**
  - **With consent**
  - **Without consent (incapacity/emergency) and**
    - **Law Enforcement represents that information not intended to be used against victim**
    - **Law enforcement represents that delay would materially and adversely affect activity**
    - **Disclosure in best interest of patient as determined by professional judgment**

# Law Enforcement IV

- **Decedents**
  - **If covered entity suspects that death may have resulted from criminal conduct**

# Law Enforcement V

- **Crime on Premises**
  - **if the covered entity believes in good faith that the information disclosed constitutes evidence of criminal conduct that occurred on the premises of the covered entity**

# Law Enforcement VI

- **Reporting Crime in Emergencies**
  - **In response to medical emergency (other than on premises of covered entity) if disclosure appears necessary to alert law enforcement to**
    - **Commission/nature of a crime**
    - **Location of crime/victim**
    - **Identity, description, location of perpetrator**
  - **But follow standard rule for victims of abuse, neglect, or domestic violence**

# **Other Disclosure Authority Relevant to Law Enforcement**

- **Disclosures required by law**
- **Public health disclosures**
- **Abuse, neglect, domestic violence**
- **Health oversight**
- **Judicial and administrative proceedings**
- **Decedents (to coroners)**
- **To avert a serious threat to health/safety**
- **Jails and Prisons**

# **E.O. 13181 - Part I**

## **To Protect Privacy of PHI in Oversight Investigations**

- Health oversight investigators may uncover evidence of wrongdoing unrelated to the health care system**
- Deputy Attorney General must authorize use against the data subject**
- Standard: If the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.**

# **E.O. 13181 - Part II**

- **Good Points**
  - **Reasonable standard**
  - **Formal Procedure (but only law enforcement involvement)**
  - **Annual Report**
- **Bad Points**
  - **Federal only**
  - **Not enforceable by data subject**
  - **Not as good procedurally as 18 USC §3486**