

# THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

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## Introduction to Information Sharing and Resources

State-Based COSSAP Grantees Working Group

July 18, 2023

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Legislative Analysis and Public Policy Association (LAPPA)

# **ABOUT LAPPA**



501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

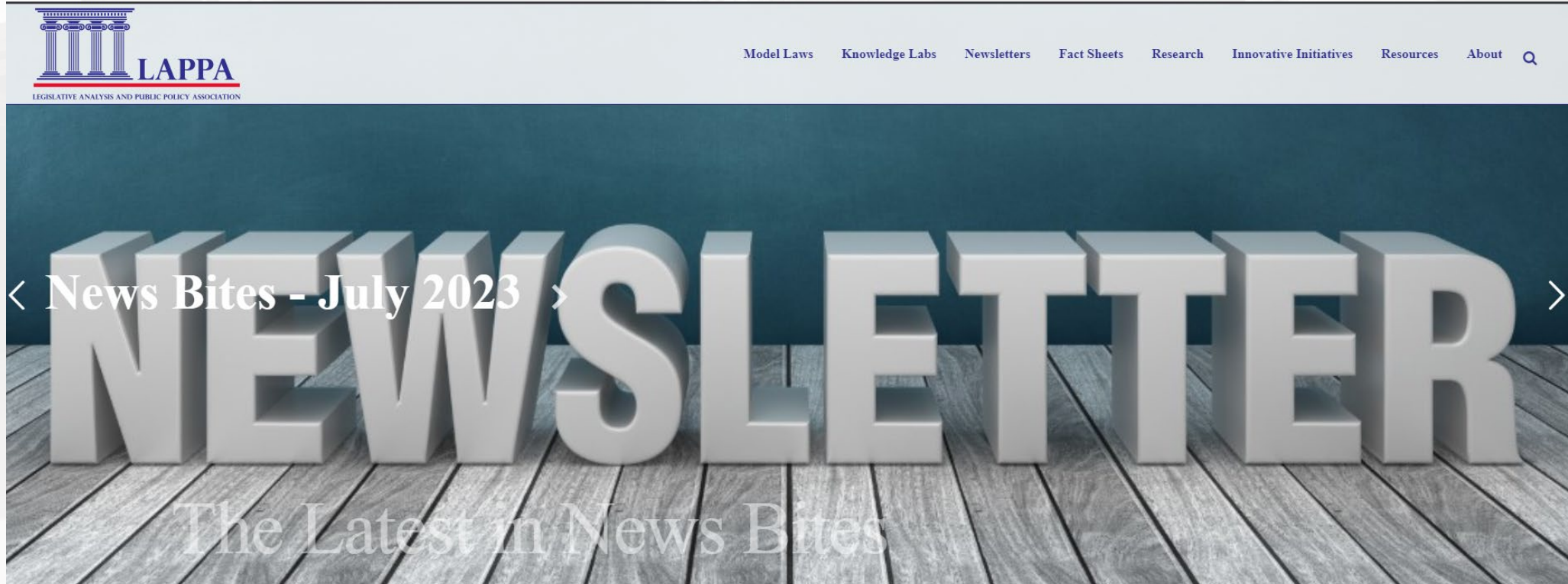
ONDCP's Model Acts Program Grant recipient for 2019-21, 2021-23, and 2023-25.

<https://legislativeanalysis.org/>

# What does LAPPA do?

- Model Acts grant
  - ❖ [Model laws](#) (16 published)
  - ❖ [50-state Summary of Laws](#) (17 published)
  - ❖ [Fact sheets](#) (36 published)
  - ❖ [Case Law Monitor](#) (six per year)
  - ❖ [News Bites](#) (six per year)
  - ❖ [Knowledge Labs](#) (six in 2023-2H)
  - ❖ Technical assistance (TA)
- COSSAP grant subaward
  - ❖ [Information sharing scenarios](#) (COSSAP website)
  - ❖ TA

# What does LAPPA do?



The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

# Types of information sharing laws

**Federal laws and regulations**

**State (specific) laws and regulations**

# Types of information sharing laws

Federal laws and regulations



The image shows a screenshot of a Reddit post. At the top, it says "r/ABoringDystopia" and "Posted by u/Maurens • 11h • i.redd.it". Below that, it says "3 Awards". The main text of the post is "Remember to disable the hospital spy before discussing sensitive information". Below the text is a photograph of a white sign taped to a wall in a hospital hallway. The sign reads: "Please remember not to discuss patient information (PHI) unless the Amazon Echo is muted. Thank you." To the left of the sign is a metal rack holding boxes of "MIRAL POWDER-FREE BEAR GLOVES". At the bottom of the screenshot, there are icons for upvotes (35.9k), downvotes, comments (981), share, and award.

(Specific) laws and regulations

# Federal information sharing laws/regulations

**HIPAA Privacy Rule**

**42 C.F.R. Part 2**

**28 C.F.R. Part 23**

**FERPA**

**CAPTA**

**Resources online**

# Federal information sharing laws/regulations

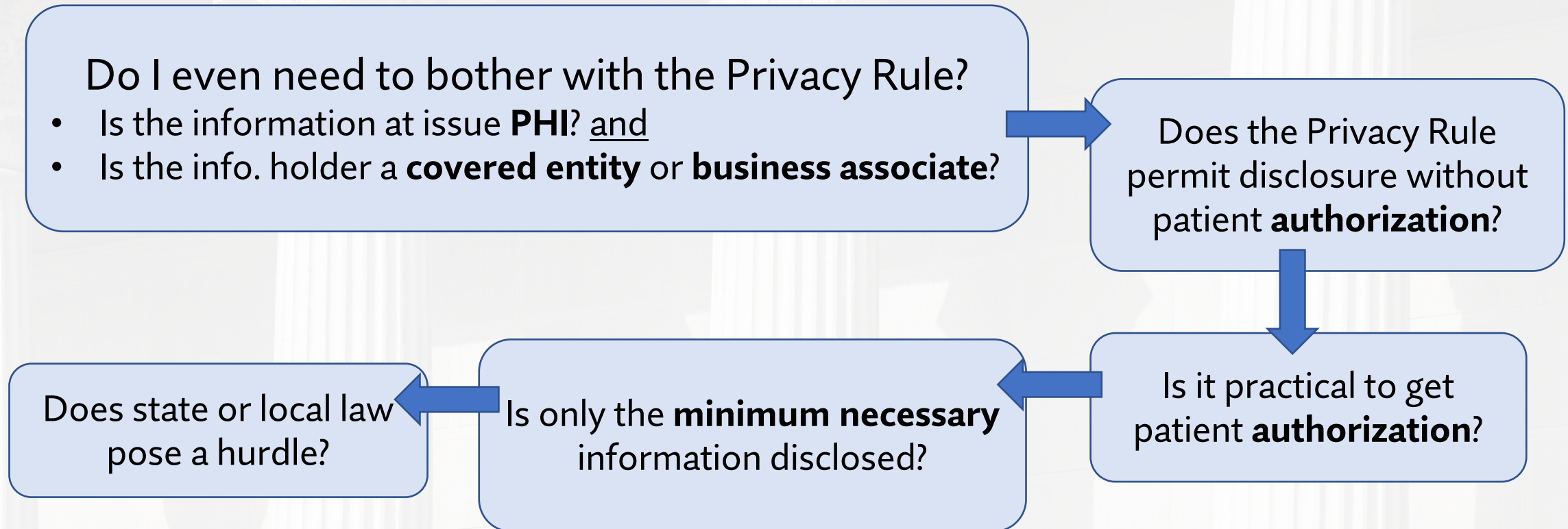
## HIPAA Privacy Rule

- Title II to the Health Insurance Portability and Accountability Act (Section 264)
- Privacy Rule regulations → 45 C.F.R. Parts 160 and 164 (A and E)
- **Covered entity** or **business associate** may not use or disclose **protected health information (PHI)**, except as permitted or required
- Patient **authorization** is necessary for uses and disclosures of PHI not otherwise allowed
- More avenues for sharing under Privacy Rule than 42 C.F.R. Part 2



# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Scenario analysis



# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Protected health information (PHI)

- PHI = individually identifiable health information (IIHI) that is
  - ❖ Transmitted by or maintained in any form or medium and
  - ❖ Not one of the following:
    - In records covered by FERPA
    - Certain physician, psychiatrist, psychologist records pertaining to student over 18
    - In employment records held by **covered entity** employer
    - Regarding person who died 50+ years ago

# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Protected health information (PHI)

- De-identified health information is not **PHI**
- How can information be de-identified?
  - ❖ Remove 18 identifiers listed in [45 C.F.R. § 164.514\(b\)\(2\)\(i\)\(A\)-\(R\)](#) or
  - ❖ Have a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods conclude info is de-identified

# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Covered entity

- Covered entity = one of the following
  - ❖ Health plan
  - ❖ Health care clearinghouse or
  - ❖ Health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA
- Hybrid **covered entity**

# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Business associate

- Business associate = Person or entity that performs certain activities or services involving the use or disclosure of **PHI** either on behalf of, or to, a **covered entity** (but not the covered entity's employees).
- **Covered entity** can be business associate of another **covered entity**

### SERVICES

Legal; actuarial; accounting; consulting; data aggregation; management; administrative; accreditation; financial

### ACTIVITIES

Claims processing; data analysis, processing, or administration; utilization review; quality assurance; billing; benefit management; practice management

# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Business associate

- **Covered entity** must include certain protections for the information in a **business associate** agreement (BAA)
- BAA must impose specified written safeguards on **PHI** used or disclosed by its **business associates**
- **Covered entity** cannot use BAA to authorize a **business associate** to make disclosures not allowed under Privacy Rule


# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Disclosures w/o authorization

- Six (6) permitted (but not required) disclosures
  - ❖ To the individual who is subject of the **PHI**
  - ❖ For treatment, payment, or healthcare operations
  - ❖ Where individual given opportunity to agree or object
  - ❖ Incident to an otherwise permitted use and disclosure
  - ❖ Limited data set for research, public health, or health care purposes
  - ❖ “Public interest and benefit activities” (12)

# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Disclosures w/o authorization

- Public interest and benefit activities (“Uses and disclosures for which an authorization or opportunity to agree or object is not required”)
  - **Required by law** 
  - **Public health activities**
  - About victims of abuse, neglect, or domestic violence
  - Health oversight activities
  - Judicial and administrative proceedings
  - **Certain law enforcement purposes**
- Decedent information
- Cadaveric organ, eye or tissue donation purposes
- Research purposes
- **Avert a serious threat to health or safety**
- Specialized government functions
- Workers compensation compliance



# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Patient authorization

- Valid authorization requires:
  - ❖ Six core elements
  - ❖ Three statements
  - ❖ Plain language
  - ❖ Copy to individual

### ELEMENTS

Description of information; who is authorized to disclose/receive; purpose; expiration date; signature

### STATEMENTS

Patient may revoke; potential for re-disclosure; ability/inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization

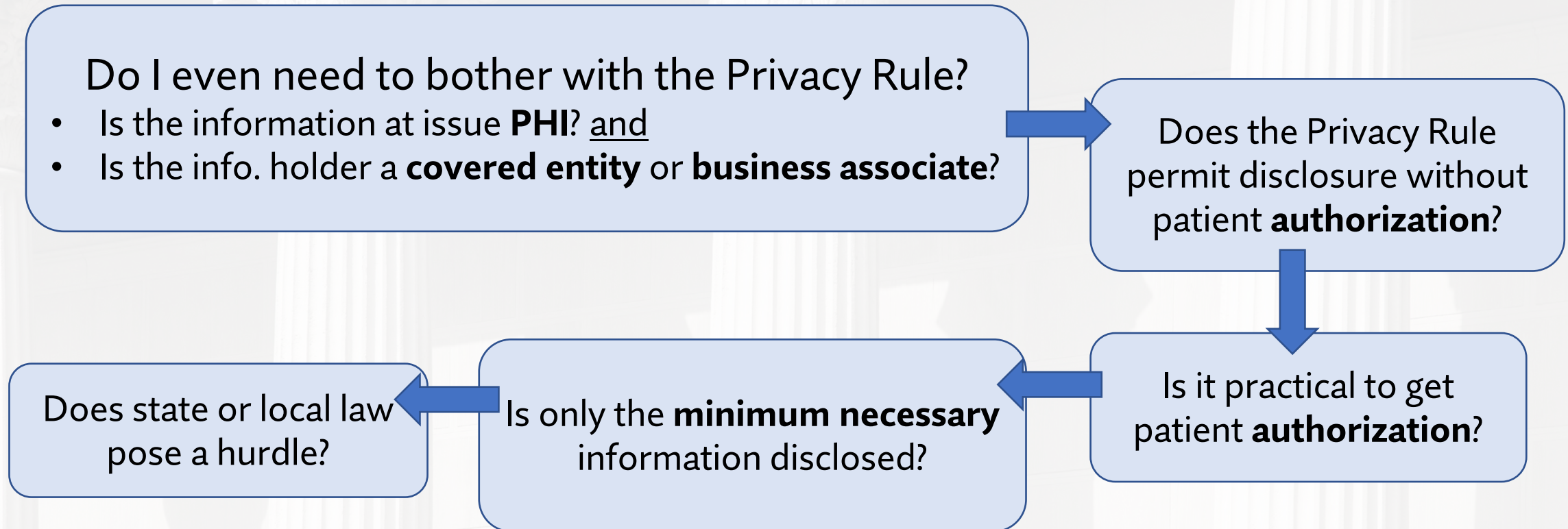
# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Decedents' records

- **Covered entity** must treat **personal representative** the same as the individual with respect to uses and disclosures of **PHI**
- Personal representative = person with legal authority (based on state law) to act on behalf of the decedent or the decedent's estate

# Federal information sharing laws/regulations

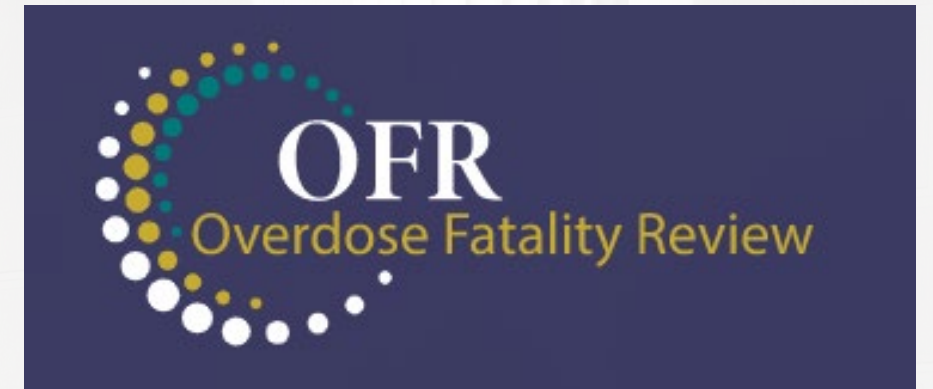
## HIPAA Privacy Rule – Scenario analysis



# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Overdose fatality review (OFR)

- How can an OFR team obtain medical records?
- Sharing information learned from family
- Non-member observers



<https://www.cossapresources.org/Tools/OFR/Resources>

# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Deflection initiatives

- Challenges vary depending type of initiative
- Post-overdose outreach program; mental health co-responder and a CRS
  - ❖ Is OD victim info covered by HIPAA or can it be shared with/between response team members?
  - ❖ Does it make a difference if referral is LE or EMS?
  - ❖ What if outreach team wants to share information with family members?
  - ❖ Do they need to obtain permission from the OD victim beforehand?



<https://ptaccollaborative.org/ptacc-suite/>

WHEREAS, integral members of the QRT, in addition to first responders, such as CCEMS and HPD, are local mental health providers, such as Prestera, Recovery Point and HCTC, and researchers working at Marshall University through its Departments of Public Health and Health Informatics (“Marshall University”) and University Physicians & Surgeons, Inc., d/b/a Marshall Health (“Marshall Health”); and

WHEREAS, CCEMS, Prestera, Recovery Point, and HCTC are each Covered Entities, as the term “Covered Entity” is defined by HIPAA at 45 CFR §160.103, and subject to the Privacy and Security Rules, as well as HITECH; and,

WHEREAS, the City of Huntington, HPD and Marshall University, do not meet the definition of Covered Entity under HIPAA; and,

WHEREAS, for the purposes of the QRT Project, those Parties that are Covered Entities, of necessity, must share protected health information with other QRT Project Members that are not Covered Entities—namely, the City of Huntington and HPD —prior to any individual giving their consent or authorization for such disclosure of personal health information, and also with Marshall University and Marshall Health for follow-up data collection and analysis

WHEREAS the Privacy Rule, the Security Rule and HITECH require that the Covered Entities receive adequate assurances that protected health information shared for the purposes of further referral and treatment, as well as research, will remain protected by the other non-Covered Entity Parties and/or that further disclosure of the protected health information will be with the individual’s consent or consistent with HIPAA and other applicable laws; and,

WHEREAS, there is no clear exception under law for the sharing of protected health information by and among the Members of the QRT Project, as they attempt to address the opioid overdose crisis in Huntington, in light of the fact that (a) the QRT Project is not a separate legal entity and does not meet the definition of a Covered Entity, and (b) the non-Covered Entity Parties do not clearly constitute Business Associates of the Covered Entities, as the term “Business Associate” is defined by HIPAA under 45 CFR 160.103; and,

WHEREAS, to effectuate the purpose of the QRT Project and honor the spirit and intent of the Privacy and Security Rules under HIPAA and HITECH, the City of Huntington, HPD, Marshall University, and Marshall Health each agree that they will assume the mantle of Business Associates to the Covered Entity Parties, and comply with certain obligations with respect to the protected health information received from the Covered Entity Parties as part of the QRT Project;

Source: HIPAA Privacy and Security Agreement for Huntington (W.V.) Quick Response Team Project Members

# Federal information sharing laws/regulations

## HIPAA Privacy Rule – Use of public health data

- Using data sources designed and intended for routine public health surveillance to aid in law enforcement drug distribution investigations
- <https://www.hhs.gov/hipaa/for-professionals/faq/505/what-does-the-privacy-rule-allow-covered-entities-to-disclose-to-law-enforcement-officials/index.html>

# Federal information sharing laws/regulations

## HIPAA Privacy Rule - Resources

- [Administrative Simplification Regulations](#) (HHS; as of 2013)
- [45 CFR Part 164 - SECURITY AND PRIVACY](#) (LII/Cornell Law School)
- [Summary of HIPAA Privacy Rule](#) (HHS; last reviewed Oct. 2022)

The screenshot displays the HHS.gov website's "Health Information Privacy" section. The page title is "Summary of the HIPAA Privacy Rule". The main content area includes a search bar at the top, a navigation menu with buttons for "HIPAA for Individuals", "Filing a Complaint", "HIPAA for Professionals", and "Newsroom", and a breadcrumb trail: "HHS > HIPAA Home > For Professionals > Privacy > Summary of the HIPAA Privacy Rule". The page features a sidebar with expandable sections for "HIPAA for Professionals", "Regulatory Initiatives", "Privacy", and "Security". The "Privacy" section is expanded, showing a list of links: "Summary of the Privacy Rule", "Guidance", "Combined Text of All Rules", and "HIPAA Related Links". The main content area contains the heading "Summary of the HIPAA Privacy Rule" followed by a paragraph: "This is a summary of key elements of the Privacy Rule including who is covered, what information is protected, and how protected health information can be used and disclosed. Because it is an overview of the Privacy Rule, it does not address every detail of each provision." Below this is a link for "Summary of the Privacy Rule - PDF" and an "Introduction" section with a bullet point: "The Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services ("HHS") issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The Privacy Rule standards address the use and disclosure of individuals' health information—called "protected health information" by organizations subject to the Privacy Rule.



# Federal information sharing laws/regulations

## HIPAA Privacy Rule - Resources

- [Administrative Simplification Regulations](#) (HHS; as of 2013)
- [45 CFR Part 164 - SECURITY AND PRIVACY](#) (LII/Cornell Law School)
- [Summary of HIPAA Privacy Rule](#) (HHS)
- [HIPAA FAQs for Professionals](#) (HHS)

HHS > [HIPAA Home](#) > [For Professionals](#) > HIPAA FAQs for Professionals

Text Resize **AAA** | Print | Share

### HIPAA FAQs for Professionals

Search frequently asked questions about HIPAA by category, number, or keyword.

Please note that some older FAQs have been sent to archive. This content is searchable using the search term 'HIPAA FAQs' at <https://archive-it.org/collections/4657>.

**FAQs by Category**

Select a Category | **View**

- Authorizations (30)
- Business Associates (41)
- Compliance Dates (2)
- Covered Entities (14)
- Decedents (9)
- Disclosures for Law Enforcement Purposes (5)
- Disclosures for Rule Enforcement (1)
- Disclosures in Emergency Situations (2)
- Disclosures Required by Law (6)
- Disclosures to Family and Friends (28)

# Federal information sharing laws/regulations

## HIPAA Privacy Rule - Resources

- [Administrative Simplification Regulations](#) (HHS; as of 2013)
- [45 CFR Part 164 - SECURITY AND PRIVACY](#) (LII/Cornell Law School)
- [Summary of HIPAA Privacy Rule](#) (HHS)
- [HIPAA FAQs for Professionals](#) (HHS)
- [Information Sharing Scenarios](#) (COSSAP Resources)
- [Examples of Compliance Cases](#) (HHS)
- [ODMAP and PHI under HIPAA](#) (LAPPA)
- [Information Sharing in Criminal Justice – Mental Health Collaborations](#) (BJA)

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 (42 C.F.R. §§ 2.1 to 2.67)

- Confidentiality of substance use disorder (SUD) treatment records
- Authority from 42 U.S.C. § 290dd-2
- Regulations first adopted in 1975 (prior to electronic records)
- Restricts the disclosure and use of SUD **patient records** which are maintained in connection with the performance of any **part 2 program**
- More straightforward and direct than HIPAA Privacy Rule
- Changes forthcoming in 2023

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 – Scenario analysis

Do I even need to bother with Part 2?

- Does the **record** identify a **patient** as having or having had SUD either directly or by reference to other info. or person? and
- Does the **record** contain info. obtained by a **part 2 program** for purposes of SUD treatment, diagnosis, or referral?

Does Part 2 permit disclosure w/o **consent**?

**Generally, no**

Is it practical to get patient **consent**?

Does state or local law pose a hurdle?

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 – Patient, record, patient identifying info.

- Patient = individual who applies for or receives diagnosis, treatment, or referral for treatment for SUD at a **part 2 program**
- Record = any information, whether recorded or not, created by, received, or acquired by a **part 2 program** relating to a **patient** (e.g., diagnosis, treatment, and referral for treatment information, billing information, emails, voice mails, and texts)
- Patient identifying information (PII) = name, address, SSN, fingerprints, photo, or other information by which the identity of **patient** can be determined with reasonable accuracy

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 – Part 2 program

- Part 2 program = [federally assisted] [program]
- Federally assisted = defined in 45 C.F.R. § 2.12(b)
- Program = one of the following:
  - ❖ Individual or entity holding itself out as providing SUD diagnosis, treatment, or referral for treatment
  - ❖ Identified unit within a general medical facility doing the above
  - ❖ Medical personnel /other staff in a general medical facility whose primary function is providing SUD diagnosis, treatment, or referral for treatment and who are identified as providers

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 – Types of disclosures

- Disclosure without patient **consent**
- Disclosure with patient **consent**
- Court orders authorizing disclosure and use

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 – Disclosure without patient consent

- Disclosure of **PII** may occur in three (3) situations:
  - ❖ By medical personnel, during bona fide medical emergency
  - ❖ Scientific research, if researcher meets specific requirements
  - ❖ During the course of an audit or evaluation of the **Part 2 program** that provided the treatment



# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 – Disclosure with patient consent

- Nine (9) required elements for **consent**, including:
  - ❖ How much, what kind, and explicit description of info.
  - ❖ Names/entities to which disclosure will be made
  - ❖ Purpose of disclosure
  - ❖ **Patient's** right to revoke
  - ❖ Date, event, or condition upon which **consent** expires
- Disclosure itself must be accompanied by notice to recipient that re-disclosure is prohibited, absent further consent by **patient**

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 – Changes forthcoming (2023?)

- Required by Section 3221 of CARES Act (2020)
- NPRM published 11/28/2022; comments due 1/31/2023
- More closely aligns Part 2 with Privacy Rule
  - ❖ Permits use and disclosure of **patient records** based on a single patient **consent** given once for all future uses and disclosures
  - ❖ Permits re-disclosure of **patient records** in any manner permitted by the HIPAA Privacy Rule, with certain exceptions
  - ❖ Expands prohibitions on the use and disclosure of **patient records** in civil, criminal, administrative, and legislative proceedings
  - ❖ New HHS enforcement authority

# Federal information sharing laws/regulations

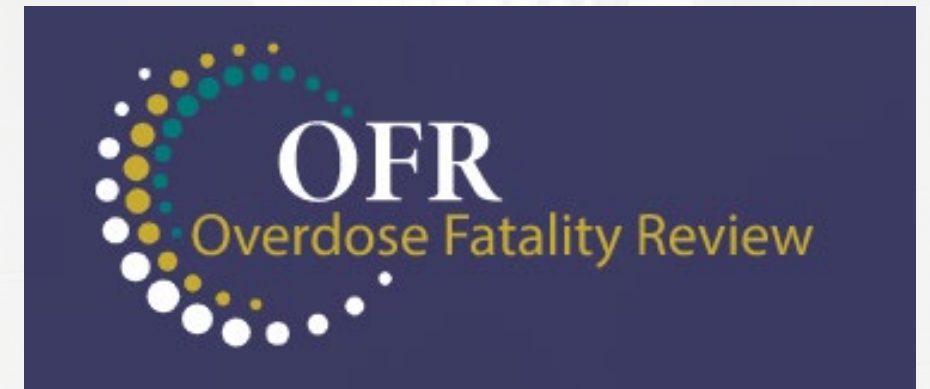
## 42 C.F.R. Part 2 – Decedents' records

- No expiration on protection of decedents' **PII** (unlike Privacy Rule)
- **PII** disclosable in two (2) circumstances:
  - ❖ PII related to **patient's** cause of death under laws: (1) requiring the collection of death or other vital statistics or (2) permitting inquiry into the cause of death
  - ❖ After **consent** by personal representative
- Personal rep. =
  - (1) executor, administrator, or other personal representative
  - (2) spouse, if no (1);
  - (3) any responsible member of the patient's family, if no (1) or (2)

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2– Overdose fatality review (OFR)

- How can an OFR team obtain behavioral health records?



<https://www.cossapresources.org/Tools/OFR/Resources>

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 – Deflection initiatives

- Post-overdose outreach program; mental health co-responder and a CRS
  - ❖ Are there any challenges to sharing the OD victim info with regards to 42 CFR Part 2?



<https://ptaccollaborative.org/ptacc-suite/>

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 - Resources

- [42 C.F.R. Part 2](#) (LII/Cornell Law School)
- [Proposed changes to 42 C.F.R. Part 2](#) (Federal Register)
- [Information Sharing Scenarios](#) (COSSAP Resources)

BJA's **Comprehensive** Opioid, Stimulant, and Substance Abuse Program

COSSAP GRANT PROGRAM    LEARNING OPPORTUNITIES    AREAS OF FOCUS    TOOLS & FRAMEWORKS    PUBLICATIONS & DIGITAL MEDIA

### INFORMATION SHARING SCENARIOS

Legislative Analysis and Public Policy Association (LAPPa), in partnership with IIR, developed information sharing fact sheets to provide guidance for overdose fatality review (OFR) teams, overdose detection mapping application program (ODMAP) programs, and law enforcement diversion partnership efforts on what can and cannot be legally shared regarding federal law (such as 42 C.F.R. Part 2 and HIPAA).

- Overdose Fatality Review (OFR)**  
OFR multidisciplinary teams share information about a decedent's life experiences to identify overdose prevention and intervention strategies.
- Overdose Detection Mapping Application Program (ODMAP)**  
ODMAP is a tool that supports the collection and surveillance of near real-time fatal and nonfatal overdose data that can help public safety and public health agencies mobilize prevention and intervention responses.
- Coming Soon: Diversion**  
Pre-arrest or post-arrest diversion programs focus on connecting individuals to community-based substance use disorder and behavioral health services.

**OFR** Overdose Fatality Review

### Overdose Fatality Review Teams: PDMP Records

#### How can we obtain Prescription Drug Monitoring Program (PDMP) records after a person dies?

**Response**

In the absence of a specific state statute or regulation authorizing the release of Prescription Drug Monitoring Program (PDMP) records to an OFR team, it is unlikely the team can directly receive prescription information from the state PDMP. However, OFR teams should contact the administrator of their state PDMP to determine if other avenues exist through which one or more team members can obtain PDMP records in the absence of direct authority, such as via the decedent's medical file or a next of kin request.

**PRACTICE TIP**

You can find your state PDMP administrator's contact information here: [pdmpqaast.org](http://pdmpqaast.org).

**Additional Discussion**

State statute or regulation may allow an OFR team access to PDMP records. Approximately 40 percent of state PDMPs are Health Insurance Portability and Accountability Act (HIPAA)-covered entities, while the other 60 percent are not. Regardless of a PDMP's status as a HIPAA-covered entity, disclosure and redisclosure of information held by PDMPs are governed by state law rather than by HIPAA, as state laws place tighter limits on disclosure. Due to concerns regarding patient privacy, states are very strict regarding the disclosure and redisclosure of PDMP information, and virtually all state PDMP laws include severe penalties for accessing or sharing PDMP records without authorization. Obtaining the prescription history of a decedent directly from the PDMP typically requires a statute or regulation that specifically allows the OFR team to receive such information. As of June 2021, only six states explicitly allow this.<sup>1</sup> However, if the OFR team is not located in one of those six states, the team should contact the PDMP administrator in its state and determine if there are any other ways in which PDMP records can be shared with the team.<sup>2</sup>

**PRACTICE TIP**

States expressly allowing OFR teams access to PDMP records (as of June 2021): Delaware, Indiana, Maryland, Utah, Oklahoma, and West Virginia.

**State statute may allow PDMP records to become part of a medical file**

An OFR team might be able to obtain a decedent's prescription history from other sources; however, the extent of that access also depends on state law. For instance, if state law allows (or does not specifically prohibit) an individual's PDMP records to be maintained in the patient's medical file, the OFR team could get the information with the decedent's other medical records.<sup>3</sup> Using this option requires the OFR team to have a basis to access medical records containing protected health information from one or more health care providers. OFR teams should contact the PDMP administrator in their state for more information about this option.

**PRACTICE TIP**

States where PDMP records may be part of the medical file (as of 2020): California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Nebraska, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

# Federal information sharing laws/regulations

## 42 C.F.R. Part 2 - Resources

- [42 C.F.R. Part 2](#) (LII/Cornell Law School)
- [Proposed changes to 42 C.F.R. Part 2](#) (Federal Register)
- [Information Sharing Scenarios](#) (COSSAP Resources)
- [Information Sharing in Criminal Justice – Mental Health Collaborations](#) (BJA)

# Federal information sharing laws/regulations

## 28 C.F.R. Part 23 – Criminal intelligence

- Assures all law enforcement agencies operating federally funded multijurisdictional or interjurisdictional **criminal intelligence systems** do so while conforming with the privacy and constitutional rights of individuals
- Adopted in 1980 with minor revisions in 1993
- Covers submission, entry, security, inquiry, dissemination, review, and purge of criminal intelligence information



# Federal information sharing laws/regulations

## 28 C.F.R. Part 23 – Criminal intelligence

- Applies to agencies:
  - ❖ Receiving funding from Omnibus Crime Control and Safe Streets Act of 1968, as amended
  - ❖ Required to comply by grant special condition (e.g., HIDTAs, homeland security grant) or
  - ❖ Required by state law
- Sets forth minimum operating principles and funding guidelines that a project must incorporate into its operating policies and procedures

# Federal information sharing laws/regulations

## 28 C.F.R. Part 23 – Criminal intelligence

- Agency operating a **criminal intelligence system** must develop its own operating policies and procedures, which should include:
  - ❖ Access to criminal intelligence (participation standards)
  - ❖ Participation agreements and other forms, as required
  - ❖ Submission/entry requirements
  - ❖ Types of criminal activity eligible to be maintained in the system
  - ❖ Inquiry, dissemination, review and purge or validation procedures
  - ❖ Audit and inspection, security requirements
  - ❖ Definitions of key terms, including “need to know” and “right to know”

# Federal information sharing laws/regulations

## 28 C.F.R. Part 23 – Criminal intelligence information

- Analyzed information related to an identified criminal subject and the definable criminal activity in which the subject is reasonably suspected of being involved.

# Federal information sharing laws/regulations

## 28 C.F.R. Part 23 - Resources

- [28 C.F.R. Part 23](#) (LII/Cornell Law School)
- [Online Training Resources](#) (BJA)
- [Online Training FAQs: Regulation Questions](#) (BJA)
- [Guide to Criminal Intelligence Policies](#) (BJA)

# Federal information sharing laws/regulations

## Family Educational Rights and Privacy Act (FERPA)

- Circumstances under which such records may be used and disclosed
- [20 U.S.C. § 1232g](#); [34 CFR Part 99](#)
- Privacy rights of an “eligible student” lapse upon death
- Did the decedent’s privacy rights in the records expire upon death?
- If not, does any individual hold the privacy rights from whom consent to disclose can be obtained?

# Federal information sharing laws/regulations

## Child Abuse Prevention and Treatment Act (CAPTA)

- [42 U.S.C. §§ 5101 to 5116i](#)
- State may share child services records only to:
  - ❖ Individuals who are the subject of the report
  - ❖ Federal, state, or local governmental entities, that have a need for such information in order to carry out their responsibilities
  - ❖ Child abuse citizen review panels and child fatality review panels
  - ❖ Grand jury or court, upon a finding of necessity
  - ❖ Other entities or classes of individuals statutorily authorized by the state
  - ❖ Public disclosure of the findings or information about cases that resulted in a child fatality or near-fatality

# State (specific) laws/regulations

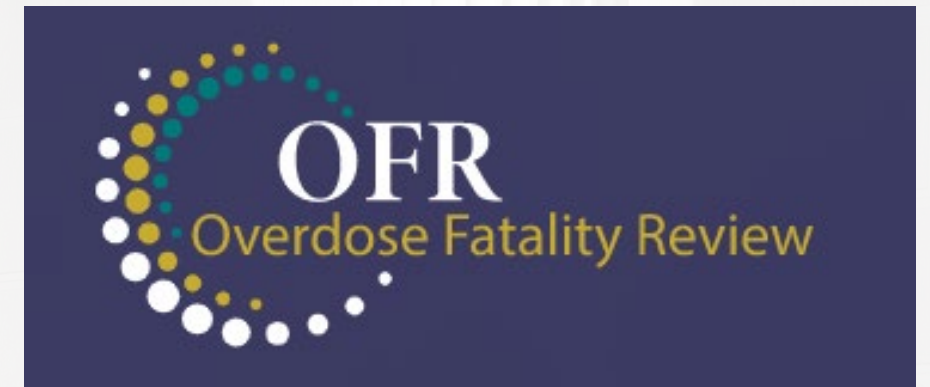
## Key issues

- Open meeting and open records laws
- PDMP information
- Criminal justice information
- Access to death certificates
- Educational records (institution-specific)
- Persons to approach for more information

# State (specific) laws/regulations

## Key issues – OFRs

- Are OFR team records (meetings) subject to state open records (meeting) laws?
- Can OFRs obtain PDMP information?



<https://www.cossapresources.org/Tools/OFR/Resources>



# State (specific) laws/regulations

## Key issues – Deflection initiatives

- Post overdose outreach program; mental health co-responder and a CRS
  - ❖ Should OD victim info be considered criminal history information? If so, with whom can it be shared?
  - ❖ What agreements or background checks need to be in place?



<https://ptaccollaborative.org/ptacc-suite/>

# State (specific) laws/regulations

## Key issues – Resources

- [Open Government Guide](#) (RCFP) – open records and open meetings

The screenshot shows the website for the Reporters Committee. The navigation bar includes: REPORTERS COMMITTEE, OUR WORK +, LEGAL RESOURCES +, FREE PRESS TOPICS +, WHO WE ARE +, and GET INVOLVED +. The left sidebar menu lists: 11. Fines, 12. Other penalties, 13. Settlement, pros and cons, F. Appealing initial court decisions (with sub-items: 1. Appeal routes, 2. Time limits for filing appeals, 3. Contact of interested amici), G. Addressing government suits against disclosure (with sub-items: Open Meetings, I. Statute - basic application (with sub-item: A. Who may attend?), B. What governments are subject to the law? (with sub-items: 1. State, 2. County, 3. Local or municipal)), and C. Open records.

The main content area displays the following sections:

- G. Addressing government suits against disclosure**  
**COMPARE**
- Open Meetings**  
**COMPARE**
- I. Statute - basic application**  
**COMPARE**
- A. Who may attend?**  
All meetings shall be open to the public as provided in Va. Code Ann. § 2.2-3707.A., unless the topic of discussion at such meetings falls within one of the enumerated exemptions in Va. Code Ann. § 2.2-3711.A. [listing grounds for closed meetings] or Va. Code Ann. § 2.2-3707.01 (concerning meetings of the General Assembly and its committees). No closed meeting shall be held unless the public body proposing to convene such meeting has followed the procedures for closing a meeting. Va. Code Ann. § 2.2-3712.  
**COMPARE**

# State (specific) laws/regulations

## Key issues – Resources

- [Open Government Guide](#) (RCFP) – open records and open meetings
- [First Responder Deflection Resource Library](#) (COSSAP)

Concord (New Hampshire) Project First 2019 Program Evaluation Concord, NH	Concord (New Hampshire) Project First Brochure Concord, NH	Concord (New Hampshire) Project FIRST Good Samaritan Postcard Concord, NH
Douglas (Arizona) CARP Promotional Flyer Douglas, AZ	Erie County Naloxone Response Packet Erie County, NY	Workflow Procedures for Cheetawonga Police Department Overdose Response Erie County, NY

# State (specific) laws/regulations

## Key issues – Resources

- [Open Government Guide](#) (RCFP) – open records and open meetings
- [First Responder Deflection Resource Library](#) (COSSAP)
- [OFR Resources](#) (COSSAP)

# QUESTIONS?

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