Medical Privacy

HIPAA Rules and the UIPA: A Short Guide

The federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 required the U.S. Department of Health and Human Services to make rules for handling health information. Different rules cover different topics, such as privacy of health information, information security, code set/transaction standards, and employer identifiers.

➤ HIPAA Rules and UIPA

The HIPAA rules apply to healthcare providers and health plans, among others. In some cases, these rules apply to government agencies. A government agency subject to the HIPAA rules should be aware that the Uniform Information Practices Act (UIPA) still applies, and sometimes the UIPA and the HIPAA rules will interact.

➤ Information Security Rule

The information security rule under HIPAA covers security measures to prevent an unauthorized disclosure, including computer security issues and physical security issues. For example, questions about whether medical records can be sent by e-mail, or whether computers with access to patient files must be kept in a locked room, would be addressed by the security rule. The security rule does not directly interact with the UIPA, but the standards it sets might be persuasive if a question arises under the UIPA of whether confidential information was securely kept.
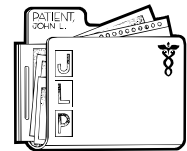
➤ Privacy Rule

The privacy rule under HIPAA, which sets standards for when disclosure of health information is authorized, will directly interact with the UIPA at times. (The privacy rule is also the most similar rule to Hawaii's short-lived medical privacy law, the former chapter 323C, Hawaii Revised Statutes.)

The privacy rule interacts directly with the UIPA in three situations. First, when someone makes a request for government records to an agency that is subject to HIPAA for health information that is covered by the privacy rule, the agency will need to respond to the request as required by the UIPA, with reference to HIPAA's standards on whether health information may be disclosed. OIP Opinion Number 03-05 (April 11, 2003) discusses the interaction between part II of the UIPA and the privacy rule in greater detail.

➤ Right of Access to One's Personal Records

The privacy rule also interacts with an individual's right of access to his or her personal records under part III of the UIPA. A patient has a right of access to his or her own medical record under the privacy rule.

There are some important differences between the right of access under the UIPA and the privacy rule. For instance, the UIPA has shorter response deadlines than those in the privacy rule. The UIPA right of access to personal records is not limited to medical records or to an official record set, so it will typically apply to more records than the privacy rule right of access does. Also, the privacy rule and the UIPA have different review procedures when access is denied.

When an individual requests access to records that are covered by both part III of the UIPA and the privacy rule, the agency responding to the request should comply with requirements of both laws. As an example, when the UIPA and HIPAA both have a response deadline, this means following the shorter deadline.

Similarly, when a record is a requester's personal record under the UIPA but is not a part of the requester's medical record so as to provide a right to access under the privacy

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HIPAA Information on the Internet

➡ **www.hhs.gov/ocr** - information on DHHS Office of Civil Rights, the federal office responsible for implementing the HIPAA privacy rule, including information on filing a health information privacy complaint, the text of HIPAA rules, guidance, and related information.

➡ **www.hhs.gov/ocr/regmail.html** - headquarters and regional addresses for the DHHS Office of Civil Rights (Hawaii is in Region IX).

➡ **aspe.os.dhhs.gov/admnsimp** - text of HIPAA rules, FAQs, and related information.

HIPAA Rules   *(from p. 1)*

rule, this means following the UIPA and providing access to the record if the UIPA so requires.

However, when the privacy rule authorizes denying access to a medical record (the privacy rule lists grounds for denial of access), an agency can also withhold under the UIPA, because the UIPA does not require providing access to personal records that are authorized to be withheld by statutory privilege.

➤ Right to Correct or Amend Personal Records

The third situation where the privacy rule directly interacts with the UIPA is in an individual's right to correct or amend personal records. The privacy rule includes the right to amend one's own medical record. As with the right of access to records, there are some differences between the two laws. For instance, there are differences in the review procedures when a request is denied, and an agency should consult both laws in determining what sort of review it must provide.

➤ Indirect Effects of HIPAA on UIPA

The privacy rule may also indirectly affect the UIPA in the sense that it may set a new general standard for privacy, which could affect the way that the UIPA is interpreted in the future.

For instance, in past opinions, the OIP has said that an individual's privacy interest is extinguished by the individual's death. The privacy rule takes a different approach, as it protects the privacy of health information even after a patient's death.

Although the privacy rule does not directly affect the treatment of nonmedical records under the UIPA, the privacy rule may have changed the general state of the law regarding privacy enough for the OIP to reconsider the issue of a privacy interest after death, the next time the question arises.

➤ Questions?

The federal rules under HIPAA and the UIPA are complex, and this article has simply pointed to some of the situations in which the UIPA and the HIPAA rules interact. When you have questions about a specific situation where the UIPA and the HIPAA rules both apply, please remember that the OIP's Attorney of the Day is available to help you. You may also consult your own attorney.


Staff Update

The Office of Information Practices welcomes **Cindy Yee**, who joins the staff as Secretary to the Director. Cindy comes to the OIP after 12 years with the Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office (RICO). Cindy extends a big mahalo to everyone at RICO. Welcome, Cindy!

Recent OIP Opinion

➤ Kauai Planning Commission and Subdivision Committee Meetings

Written reports of the Subdivision Committee of the Kauai Planning Commission containing the Committee's recommendations to the Commission on subdivision applications need not be available to the public at the time that the Commission provides notice of the public meeting at which the subdivision applications are to be considered.
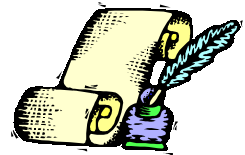
The "Sunshine Law" does not require that records relating to items on an agenda be available to the public at the time the notice and the agenda are filed.

The UIPA requires that agency records that are open for public inspection and copying be available upon request; thus the written reports should be made public once they are completed. Haw. Rev. Stat. § 92F-11(b) (1993).

As the reports are not yet in existence at the time an agenda is posted, they need not be created in order to satisfy a record request. Haw. Rev. Stat. § 92F-11(c) (1993). *[OIP Op. Ltr. No. 03-08, June 18, 2003]*

Editor's Note . . . Summaries of all the OIP opinion letters, from 1989 to the present, are available at **www.state.hi.us/oip/opinions**.