



# INDIANA

## HIPAA-RELATED REGULATIONS

# TABLE OF CONTENTS

## **I. SUMMARY**

## **II. PREEMPTIVE LAWS**

## **III. MINOR LAWS**

## **IV. DECEASED LAWS**

## **V. RECORD FEES**

## **VI. HIV AND OTHER BLOODBORNE PATHOGENS**

## **VII. MENTAL HEALTH**

\*There may be additional regulations and updates in legislation that will affect your organization. The information provided does not serve as a substitute for legal counsel.

## **I. SUMMARY**

### **PREEMPTIVE LAWS:**

IC 16-39—5-3 allows the state to fine the provider for unauthorized release in addition to the federal fines.

IC 16-31-2-11 states that emergency medical transport must report certain information thus becoming allowable under the HIPAA provision that information can be released when required by law.

IC 16-39-7 designates state requirements on record retention.

Medical records = 7 years

X-rays = 5 years

Mammograms = 10 years

### **MINOR LAWS:**

IC 16-36 states Minors can consent to their own treatment if they are emancipated, 14 and living on their own, married, serving in the military, or covered by another law. In addition minors of 17 can donate blood without consent. A minor can also consent to their own treatment if they have, suspect they have or has been exposed to a venereal disease.

IC 16-39-2-9 states that without court action specifically limiting parent rights even a non-custodial parent has rights to the minor's records. (law located under MENTAL Health in this section).

### **DECEASED LAWS:**

If no personal representative has been established by the estate, consent for records can be given by a spouse or if no spouse, by any responsible member of the deceased family.

### **RECORD FEES:**

Indiana has designated what activities can be included when determining the cost of providing record copies. Fees cannot exceed these costs.

### **HIV AND OTHER BLOODBORNE PATHOGENS:**

No specific laws were discovered at this time to preempt HIPAA.

### **MENTAL HEALTH:**

IC 16-39-2 states that release of mental health records without the patients release should only be in certain prescribed situations such as within the agency and by court order. Authorization for release by the patient takes a more detailed form that as standard HIPAA release (see IC 16-39-2-5).

## II. PREEMPTIVE LAWS

### IC 16-39-5-3

#### Provider's use of records; confidentiality; violations

Sec. 3. (a) As used in this section, "association" refers to an Indiana hospital trade association founded in 1921.

(b) As used in this section, "data aggregation" means a combination of information obtained from the health records of a provider with information obtained from the health records of one (1) or more other providers to permit data analysis that relates to the health care operations of the providers.

(c) Except as provided in IC 16-39-4-5, the original health record of the patient is the property of the provider and as such may be used by the provider without specific written authorization for legitimate business purposes, including the following:

- (1) Submission of claims for payment from third parties.
- (2) Collection of accounts.
- (3) Litigation defense.
- (4) Quality assurance.
- (5) Peer review.
- (6) Scientific, statistical, and educational purposes.

(d) In use under subsection (c), the provider shall at all times protect the confidentiality of the health record and may disclose the identity of the patient only when disclosure is essential to the provider's business use or to quality assurance and peer review.

(e) A provider may disclose a health record to another provider or to a nonprofit medical research organization to be used in connection with a joint scientific, statistical, or educational project. Each party that receives information from a health record in connection with the joint project shall protect the confidentiality of the health record and may not disclose the patient's identity except as allowed under this article.

(f) A provider may disclose a health record or information obtained from a health record to the association for use in connection with a data aggregation project undertaken by the association. However, the provider may disclose the identity of a patient to the association only when the disclosure is essential to the project. The association may disclose the information it receives from a provider under this subsection to the state department to be used in connection with a public health activity or data aggregation of inpatient and outpatient discharge information submitted under IC 16-21-6-6. The information disclosed by:

- (1) a provider to the association; or
- (2) the association to the state department;

under this subsection is confidential.

(g) Information contained in final results obtained by the state department for a public health activity that:

- (1) is based on information disclosed under subsection (f); and
- (2) identifies or could be used to determine the identity of a patient;

is confidential. All other information contained in the final results is not confidential.

(h) Information that is:

- (1) advisory or deliberative material of a speculative nature; or
- (2) an expression of opinion;

including preliminary reports produced in connection with a public health activity using

information disclosed under subsection (f), is confidential and may only be disclosed by the state department to the association and to the provider who disclosed the information to the association.

(i) The association shall, upon the request of a provider that contracts with the association to perform data aggregation, make available information contained in the final results of data aggregation activities performed by the association in compliance with subsection (f).

(j) A person who recklessly violates or fails to comply with subsections (e) through (h) commits a Class C infraction. Each day a violation continues constitutes a separate offense.

(k) This chapter does not do any of the following:

(1) Repeal, modify, or amend any statute requiring or authorizing the disclosure of information about any person.

(2) Prevent disclosure or confirmation of information about patients involved in incidents that are reported or required to be reported to governmental agencies and not required to be kept confidential by the governmental agencies.

*As added by P.L.2-1993, SEC.22. Amended by P.L.102-1994, SEC.7; P.L.103-1994, SEC.1; P.L.2-1995, SEC.73; P.L.231-1999, SEC.15; P.L.44-2002, SEC.5; P.L.78-2004, SEC.23.*

Indiana Code 16-31-2-11 states that the following information, if contained in a pre-hospital ambulance rescue or report record regarding an emergency patient, is public information and must be made available for inspection and copying under IC 5-14-3:

1. The date and time of the request for ambulance services.
2. The reason for the request for assistance.
3. The time and nature of the response to the request for ambulance services.
4. The time of arrival at the scene where the patient was located.
5. The time of departure from the scene where the patient was located.
6. The name of the facility, if any, to which the patient was delivered for further treatment and the time of arrival at that facility.

## **IC 16-39-7**

### **Chapter 7. Maintenance of Health Records, X-rays, and Other Tests**

#### **IC 16-39-7-1**

##### **Maintenance of health records by providers; violations**

Sec. 1. (a) As used in this section, "provider" means the following:

- (1) A physician.
- (2) A dentist.
- (3) A registered nurse.
- (4) A licensed practical nurse.
- (5) An optometrist.
- (6) A podiatrist.
- (7) A chiropractor.
- (8) A physical therapist.
- (9) A psychologist.
- (10) An audiologist.
- (11) A speech-language pathologist.

- (12) A home health agency licensed under IC 16-27.
- (13) A hospital or facility licensed under IC 16-21-2 or IC 12-25 or described in IC 12-24 or IC 12-29.

(b) A provider shall maintain the original health records or microfilms of the records for at least seven (7) years.

(c) A provider who violates subsection (b) commits an offense for which a board may impose disciplinary sanctions against the provider under the law that governs the provider's licensure, registration, or certification under this title or IC 25.

(d) A provider is immune from civil liability for destroying or failing to maintain a health record in violation of this section if the destruction or failure to maintain the health record occurred in connection with a disaster emergency as declared by the governor under IC 10-14-3-12 or other disaster, unless the destruction or failure to maintain the health record was due to negligence by the provider.

*As added by P.L.2-1993, SEC.22. Amended by P.L.177-2009, SEC.7.*

### **IC 16-39-7-2**

#### **Maintenance of x-rays by providers; mammograms; violations; civil liability**

Sec. 2. (a) This section does not apply to original mammograms, which are governed by section 3 of this chapter.

- (b) As used in this section, "x-ray film" includes a microfilm copy of the x-ray film.
- (c) A provider shall maintain a patient's x-ray film for at least five (5) years.
- (d) At the time an x-ray film is taken, the provider shall do one (1) of the following:
  - (1) Inform the patient in writing of the following:
    - (A) The patient's x-ray film will be kept on file by the

provider for at least five (5) years.

(B) If the patient would like a copy of the x-ray film during that period, the provider will provide the patient with a copy of the x-ray film at the actual cost to the provider, as provided in IC 16-39-1-2.

(2) Have posted conspicuously in the x-ray examination area a sign informing patients of the following:

- (A) All x-ray films will be kept on file by a provider for at least five (5) years.
- (B) On request during that time, the provider will provide the patient a copy of the patient's x-ray film at the actual cost to the provider.
- (e) A provider is immune from civil liability for destroying or otherwise failing to maintain an x-ray film in violation of this section if the destruction or failure to maintain the x-ray film is inadvertent and not done in bad faith. However, this subsection does not prevent the imposition of disciplinary sanctions against the provider, as described in subsection (f).
- (f) A provider who violates this section commits an offense for which a board may impose disciplinary sanctions against the provider under the statute that governs the provider's licensure, registration, or certification under this title or IC 25.

*As added by P.L.2-1993, SEC.22. Amended by P.L.86-2001, SEC.1.*

### **IC 16-39-7-3**

#### **Original mammogram films; maintenance; transfer**

Sec. 3. (a) Except as provided in subsection (b), a provider shall maintain a patient's original

mammogram films and reports concerning the mammogram films in a permanent medical record of the patient for not less than:

- (1) five (5) years; or
- (2) if the provider performs no additional mammograms of the patient, ten (10) years; after the date the original mammogram films were taken.

(b) Upon request by or on behalf of a patient, a provider shall permanently or temporarily transfer a patient's original mammogram films and copies of any reports concerning the mammogram films to:

- (1) a medical institution;
- (2) a physician or other health care provider of the patient; or
- (3) the patient.

(c) Any fee charged to a patient for providing mammogram films and copies of reports under subsection (b) may not exceed the provider's actual cost in providing the films and reports.

(d) At the time a mammogram is taken, the provider shall inform the patient in writing of:

- (1) the length of time that the patient's original mammogram films will be maintained; and
- (2) the procedure for obtaining the original mammogram films and copies of reports concerning the mammogram films as described in subsection (b).

(e) A provider is immune from civil liability for destroying or otherwise failing to maintain a patient's original mammogram films or reports concerning the mammogram films in violation of this section if the destruction or failure to maintain the original mammogram films or reports is inadvertent and not done in bad faith. However, this subsection does not prevent the imposition of disciplinary sanctions against the provider, as described in subsection (f).

(f) A provider who violates this section commits an offense for which a board may impose disciplinary sanctions against the provider under the statute that governs the provider's licensure, registration, or certification under this title or IC 25.

(g) Upon receiving written notice of a change in federal regulations regarding the maintenance and storage of x-ray film taken as a supplemental medical diagnostic tool to mammography, the state department shall make reasonable attempts to promptly notify all x-ray facilities providing mammographic x-ray services regarding the change.

As added by P.L.86-2001, SEC.2.

### III. MINOR LAWS

#### IC 16-36

##### ARTICLE 36. MEDICAL CONSENT

###### IC 16-36-1

###### Chapter 1. Health Care Consent

###### IC 16-36-1-1

###### Health care defined

Sec. 1. As used in this chapter, "health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. The term includes admission to a health care facility.

*As added by P.L.2-1993, SEC.19.*

###### IC 16-36-1-2

###### Representative defined

Sec. 2. As used in this chapter, "representative" means an individual appointed to consent to health care of another under this chapter.

*As added by P.L.2-1993, SEC.19.*

###### IC 16-36-1-3

###### Consent for own health care; minor's blood donation

Sec. 3. (a) Except as provided in subsections (b) through (d), unless incapable of consenting under section 4 of this chapter, an individual may consent to the individual's own health care if the individual is:

- (1) an adult; or
- (2) a minor and:
  - (A) is emancipated;
  - (B) is:
    - (i) at least fourteen (14) years of age;
    - (ii) not dependent on a parent for support;
    - (iii) living apart from the minor's parents or from an individual in loco parentis; and
    - (iv) managing the minor's own affairs;
  - (C) is or has been married;
  - (D) is in the military service of the United States; or
  - (E) is authorized to consent to the health care by any other statute.

(b) A person at least seventeen (17) years of age is eligible to donate blood in a voluntary and noncompensatory blood program without obtaining parental permission.

(c) A person who is sixteen (16) years of age is eligible to donate blood in a voluntary and noncompensatory blood program if the person has obtained written permission from the person's parent.

(d) An individual who has, suspects that the individual has, or has been exposed to a venereal disease is competent to give consent for medical or hospital care or treatment of the individual.

*As added by P.L.2-1993, SEC.19. Amended by P.L.4-2010, SEC.1.*

#### IV. DECEASED LAWS

##### **IC 16-39-2-10**

###### **Decedents' records; consent to release**

Sec. 10. For the purposes of this chapter, consent to the release of a deceased patient's record may be given by the personal representative of the patient's estate. If there is no appointment of a personal representative, consent may be given by:

- (1) the patient's spouse; or
- (2) if there is no spouse, any responsible member of the patient's family, including a parent, guardian, or custodian of the deceased patient's minor child.

*As added by P.L.2-1993, SEC.22. Amended by P.L.4-1997, SEC.8.*

## V. RECORD FEES

### **IC 16-39-9**

#### **Chapter 9. Charges Permitted for Providing Copies of Medical Records**

### **IC 16-39-9-1**

#### **Chapter exemptions**

Sec. 1. This chapter does not apply to x-rays covered by either of the following:

- (1) IC 16-39-1-2.
- (2) IC 16-39-7-2.

*As added by P.L.102-1994, SEC.9.*

### **IC 16-39-9-2**

#### **Maximum copying fees**

Sec. 2. A provider may not charge a person for making and providing copies of medical records an amount greater than the amount set in rules adopted by the department of insurance under section 4 of this chapter.

*As added by P.L.102-1994, SEC.9. Amended by P.L.173-2007, SEC.1.*

### **IC 16-39-9-3**

#### **Repealed**

*(Repealed by P.L.173-2007, SEC.47.)*

### **IC 16-39-9-4**

#### **Cost adjustments by department**

Sec. 4. (a) As used in this section, "department" refers to the department of insurance created by IC 27-1-1-1.

(b) The department may adopt rules under IC 4-22-2 to set the amounts that may be charged for copying records under this chapter. In adopting rules under this section, the department shall consider the following factors relating to the costs of copying medical records:

- (1) The following labor costs:
  - (A) Verification of requests.
  - (B) Logging requests.
  - (C) Retrieval.
  - (D) Copying.
  - (E) Refiling.
- (2) Software costs for logging requests.
- (3) Expense costs for copying.
- (4) Capital costs for copying.
- (5) Billing and bad debt expenses.
- (6) Space costs.

*As added by P.L.102-1994, SEC.9. Amended by P.L.173-2007, SEC.2.*

## **VI. HIV AND OTHER BLOODBORNE PATHOGENS**

No preemptive laws on this subject have been located in Indiana at this time.

## VII. MENTAL HEALTH

### IC 16-39-2-5

#### Access to patient's designee or legal representative; written request

Sec. 5. (a) This section applies to private and public treating providers.

(b) Upon a patient's written request and reasonable notice, a patient's mental health record shall be made available for inspection and copying by the provider at any time to an individual or organization designated by the patient or to the patient's legal representative.

(c) A patient's written request for the release of the patient's mental health record under this section must include the following:

(1) The name of the patient.

(2) The name of the person requested to release the patient's mental health record.

(3) The name of the person, provider, or organization to whom the patient's mental health record is to be released.

(4) The purpose of the release.

(5) A description of the information to be released from the mental health record.

(6) The signature of the patient.

(7) The date the request is signed.

(8) A statement that the patient's consent to release of mental health records is subject to revocation at any time, except to the extent that action has been taken in reliance on the patient's consent.

(9) The date, event, or condition on which the patient's consent to release of mental health records will expire if not previously revoked.

(d) Unless otherwise specified in a written request under this section, a request for release of records is valid for one hundred eighty (180) days after the date the request is made.

(e) A request for release of records under this section may be revoked by the patient at any time, except to the extent that action has been taken in reliance on the consent.

(f) Mental health records requested by the patient to be released under this section may be released by the provider receiving the request, regardless of whether the patient is still receiving services from the provider.

*As added by P.L.2-1993, SEC.22. Amended by P.L.4-1997, SEC.5.*

### IC 16-39-2-6

#### Disclosure without patient's consent; interpretation of records; immunities

Sec. 6. (a) Without the consent of the patient, the patient's mental health record may only be disclosed as follows:

(1) To individuals who meet the following conditions:

(A) Are employed by:

(i) the provider at the same facility or agency;

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(ii) a managed care provider (as defined in IC 12-7-2-127); or

(iii) a health care provider or mental health care provider, if the mental health records are needed to provide health care or mental health services to the patient.

(B) Are involved in the planning, provision, and monitoring of services.

(2) To the extent necessary to obtain payment for services rendered or other benefits to which the patient may be entitled, as provided in IC 16-39-5-3.

(3) To the patient's court appointed counsel and to the Indiana protection and advocacy services commission.

(4) For research conducted in accordance with IC 16-39-5-3 and the rules of the division of mental health and addiction, the rules of the division of disability and rehabilitative services, or the rules of the provider.

(5) To the division of mental health and addiction for the purpose of data collection, research, and monitoring managed care providers (as defined in IC 12-7-2-127) who are operating under a contract with the division of mental health and addiction.

(6) To the extent necessary to make reports or give testimony required by the statutes pertaining to admissions, transfers, discharges, and guardianship proceedings.

(7) To a law enforcement agency if any of the following conditions are met:

(A) A patient escapes from a facility to which the patient is committed under IC 12-26.

(B) The superintendent of the facility determines that failure to provide the information may result in bodily harm to the patient or another individual.

(C) A patient commits or threatens to commit a crime on facility premises or against facility personnel.

(D) A patient is in the custody of a law enforcement officer or agency for any reason and:

(i) the information to be released is limited to medications currently prescribed for the patient or to the patient's history of adverse medication reactions; and

(ii) the provider determines that the release of the medication information will assist in protecting the health, safety, or welfare of the patient.

Mental health records released under this clause must be maintained in confidence by the law enforcement agency receiving them.

(8) To a coroner or medical examiner, in the performance of the individual's duties.

(9) To a school in which the patient is enrolled if the superintendent of the facility determines that the information will assist the school in meeting educational needs of a person with a disability under 20 U.S.C. 1400 et seq.

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(10) To the extent necessary to satisfy reporting requirements under the following statutes:

(A) IC 12-10-3-10.

(B) IC 12-24-17-5.

(C) IC 16-41-2-3.

(D) IC 31-25-3-2.

(E) IC 31-33-5-4.

(F) IC 34-30-16-2.

(G) IC 35-46-1-13.

(11) To the extent necessary to satisfy release of information requirements under the following statutes:

(A) IC 12-24-11-2.

(B) IC 12-24-12-3, IC 12-24-12-4, and IC 12-24-12-6.

(C) IC 12-26-11.

(12) To another health care provider in a health care emergency.

- (13) For legitimate business purposes as described in IC 16-39-5-3.
- (14) Under a court order under IC 16-39-3.
- (15) With respect to records from a mental health or developmental disability facility, to the United States Secret Service if the following conditions are met:
  - (A) The request does not apply to alcohol or drug abuse records described in 42 U.S.C. 290dd-2 unless authorized by a court order under 42 U.S.C. 290dd-2(b)(2)(c).
  - (B) The request relates to the United States Secret Service's protective responsibility and investigative authority under 18 U.S.C. 3056, 18 U.S.C. 871, or 18 U.S.C. 879.
  - (C) The request specifies an individual patient.
  - (D) The director or superintendent of the facility determines that disclosure of the mental health record may be necessary to protect a person under the protection of the United States Secret Service from serious bodily injury or death.
  - (E) The United States Secret Service agrees to only use the mental health record information for investigative purposes and not disclose the information publicly.
  - (F) The mental health record information disclosed to the United States Secret Service includes only:
    - (i) the patient's name, age, and address;
    - (ii) the date of the patient's admission to or discharge from the facility; and
    - (iii) any information that indicates whether or not the patient has a history of violence or presents a danger to the person under protection.
- (16) To the statewide waiver ombudsman established under IC 12-11-13, in the performance of the ombudsman's duties.
- (b) After information is disclosed under subsection (a)(15) and if the patient is evaluated to be dangerous, the records shall be interpreted in consultation with a licensed mental health professional on the staff of the United States Secret Service.
- (c) A person who discloses information under subsection (a)(7) or

(a)(15) in good faith is immune from civil and criminal liability.

*As added by P.L.2-1993, SEC.22. Amended by P.L.23-1993, SEC.77; P.L.40-1994, SEC.68; P.L.6-1995, SEC.37; P.L.149-1996, SEC.1; P.L.1-1997, SEC.95; P.L.4-1997, SEC.6; P.L.111-1997, SEC.8; P.L.253-1997(ss), SEC.20; P.L.1-1998, SEC.120; P.L.1-1999, SEC.46; P.L.272-1999, SEC.53; P.L.215-2001, SEC.85; P.L.141-2006, SEC.91; P.L.145-2006, SEC.141; P.L.1-2007, SEC.136; P.L.134-2013, SEC.1.*

## **IC 16-39-2-7**

### **Discovery or admissibility without patient's consent**

Sec. 7. Except as provided in section 8 of this chapter, the mental health record is not discoverable or admissible in any legal proceeding without the consent of the patient.

*As added by P.L.2-1993, SEC.22.*

## **IC 16-39-2-8**

### **Court ordered release**

Sec. 8. The court may order the release of the patient's mental health record without the patient's consent upon the showing of good cause following a hearing under IC 16-39-3 or in a proceeding under IC 31-30 through IC 31-40 following a hearing held under the Indiana Rules of

Trial Procedure.

*As added by P.L.2-1993, SEC.22. Amended by P.L.1-1997, SEC.96.*

**IC 16-39-2-9**

**Exercise of patient's rights by others; equal access to records; fees**

Sec. 9. (a) For the purposes of this chapter, the following persons are entitled to exercise the patient's rights on the patient's behalf:

(1) If the patient is a minor, the parent, guardian, or other court appointed representative of the patient.

(2) If the provider determines that the patient is incapable of giving or withholding consent, the patient's guardian, a court appointed representative of the patient, a person possessing a health care power of attorney for the patient, or the patient's health care representative.

(b) A custodial parent and a noncustodial parent of a child have equal access to the child's mental health records unless:

(1) a court has issued an order that limits the noncustodial parent's access to the child's mental health records; and

(2) the provider has received a copy of the court order or has actual knowledge of the court order.

If the provider incurs an additional expense by allowing a parent equal access to a child's mental health records, the provider may require the parent requesting the equal access to pay a fee under IC 16-39-9 to cover the cost of the additional expense.

*As added by P.L.2-1993, SEC.22. Amended by P.L.4-1997, SEC.7.*