Process for Reporting: Questions and Answers

Health Insurance Portability and Accountability Act (HIPAA)

Family Educational Rights and Privacy Act (FERPA)
Who should report child abuse and neglect?

While any person who knows of or suspects child abuse or neglect can make a report, the individuals listed below are mandated by Colorado statute (CRS 19-3-304) to report child abuse and neglect.

In addition to those persons specifically required to report known or suspected child abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the local law enforcement agency or the county department of human services.

- physician or surgeon, including a physician in training;
- child health associate;
- medical examiner or coroner;
- dentist;
- osteopath;
- optometrist;
- chiropractor;
- chiropodist or podiatrist;
- registered nurse or licensed practical nurse;
- hospital personnel engaged in the admission, care or treatment of patients;
- christian science practitioner;
- public or private school official or employee;
- social worker or worker in a family care home or child care center;
- mental health professional;
- dental hygienist;
- psychologist;
- physical therapist;
- veterinarian;
- peace officer;
- pharmacist;
- commercial film and photographic print processor;
- firefighter;
- victim’s advocate;
- licensed professional counselor;
- licensed marriage and family therapists;
- unlicensed psychotherapists;
- clergy member;
- registered dietician;
- worker in the Colorado Department of Human Services;
- juvenile parole and probation officers;
- child and family investigators;
- officers and agents of the state bureau of animal protection, and animal control officers.
What should I do for a child who discloses abuse/neglect?

**Do**
- Believe the child and listen carefully to the child.
- Find a private place to talk.
- Reassure the child that she or he has done the right thing by reporting.
- Rephrase important thoughts; use the child’s vocabulary.
- Tell the child help is available.
- Let the child know you must report to someone who can help him/her.
- Report the incident immediately to the local department of human services.

**Don’t**
- Promise confidentiality.
- Panic or express shock.
- Ask leading or suggestive questions.
- Make negative comments about the alleged perpetrator.
- Suggest the abuse did not happen or the child is mistaken.

When should I report child abuse and neglect?

You should make a report immediately when you have reasonable cause to know or to suspect that a child has been subjected to abuse or neglect, or have observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect. Remember, it is not the responsibility of the reporter to prove that the child has been abused or neglected. It is the responsibility of the county department of human services and/or local law enforcement to investigate the case and to arrive at a definitive decision regarding follow-up.

How do I report child abuse and neglect?

Reports of known or suspected child abuse or neglect should be made immediately to the county department of human services or the local law enforcement agency and should be followed promptly by a written report prepared by those persons required to report. Child abuse reporting hotlines or phone numbers vary by county. For a list of these phone numbers go to: [http://www.cdhs.state.co.us/cyw/Child_Welfare/County_Phone_Numbers.htm](http://www.cdhs.state.co.us/cyw/Child_Welfare/County_Phone_Numbers.htm)

Learn the process for reporting child abuse and neglect for your community by calling your county department of human services or local law enforcement agency. Another resource for information on how and where to file a report of suspected child abuse and neglect is the Childhelp USA® National Child Abuse Hotline. Childhelp can be reached 7 days a week, 24 hours a day, at its toll-free number, 1-800-4-A-CHILD (1-800-422-4453).
What information should I be prepared to provide when I make a report of child abuse and neglect?

- family members and birth dates
- relationships of individuals in the household
- identified alleged victims, birth dates and their current location
- the identity of the person alleged to be responsible for the abuse or neglect, as well as the responsible person's date of birth, Social Security Number, and last known address
- presenting problems – specific allegations
- your name, address and phone number
- your relationship to the family
- other potential witnesses
- collateral agencies and other individuals involved with the family

Can I make an anonymous report or do I have to provide my name?

You are not required to give your name or contact information; however, knowing the identity of the reporter can help the child welfare worker gather information during the investigative process to ensure the child's safety. It also is important to note that states are required to preserve the confidentiality of all child maltreatment reports, except in certain limited circumstances. Confidentiality refers to protecting the information from public view, including protecting the identity of the reporter from the person suspected of abuse or neglect.

What happens after I make a report of child abuse and neglect?

The county department of human services and local law enforcement often work together in child abuse investigations, but their roles are different.

Law enforcement agencies investigate for the purpose of identifying criminal activity and bringing offenders to justice. If their investigation results in criminal charges and an arrest, the district attorney will be asked to prosecute the accused.

The child protective services staff members at the county department of human services are interested in identifying the alleged abuser, but for different reasons. County staff members are focused on serving the needs of the child, attempting to protect the child from further abuse and offering services to the child and the child's family to assist in their recovery. If county staff members conclude that an abusive incident occurred, they will file that information in the state's automated data system. Information on child abuse incidents and the victims and perpetrators of abuse is maintained in the automated system to provide a record of previous referrals or to provide information if the person responsible for the abuse/neglect applies for employment working with children. The Colorado Department of Human Services provides an appeals process if the person responsible for abuse/neglect disagrees with the county human services department's finding.

Is there any liability for a person who makes a report of child abuse and neglect?

Any person making a report in good faith is immune from any civil or criminal liability or termination of employment that otherwise might result from such reporting. The law does not give immunity to a person who knowingly makes a false report.

Is there any liability for a person who fails to make a report of child abuse and neglect?

Any mandated reporter who willfully fails to report a case of suspected or known child abuse, or circumstances which may reasonably result in child abuse, may be found guilty of a Class Three misdemeanor and thus may be held liable for damages caused.

Where can I find sample agency policies for reporting child abuse and neglect?

Agency policies for reporting child abuse and neglect can help to define roles and responsibilities and to provide step-by-step intervention procedures. They may include

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- roles and responsibilities of professionals for reporting;
- steps for reporting and time frames required;
- concrete/practical tips for reporting.

Refer to [http://www.cdphe.state.co.us/ps/ccf](http://www.cdphe.state.co.us/ps/ccf) for sample policies and procedures for reporting child abuse and neglect for these jurisdictions:

- Boulder County Department of Social Services
- Jefferson County Department of Health and Environment
- Tri-County Health Department
- Denver City and County

Health Insurance Portability and Accountability Act

How does the Health Insurance Portability and Accountability Act (HIPAA) impact reporting child abuse and neglect?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was signed into law on August 21, 1996. This law has two key purposes. The first (Title I) protects health insurance coverage for workers and their families when they change or lose their jobs. The second (Title II) requires the U.S. Department of Health and Human Services (HHS) to establish national standards for electronic health care transactions and national identifiers for providers, health plans and employers. It also addresses, through new protections, the "security and privacy" of patient health data. This last area, regarding the protection of health information, raises some important questions about how information-sharing practices in child maltreatment cases may be affected by HIPAA's privacy provisions.

HIPAA includes various changes, such as limiting exclusions for preexisting conditions, prohibiting discrimination against employees and dependents based on their health status, promising renewability and availability of health coverage to certain employers and individuals, and protecting many workers who lose health coverage by providing better access to individual health insurance coverage.

The primary goal of HIPAA is administrative simplification. It achieves that simplification through regulation in four areas: transaction code sets to standardize data types, unique identifiers to act as an “index” for information, security and electronic signature standards to implement controls that guarantee confidentiality and integrity, and privacy standards to protect patient sensitive information. The broad privacy provisions are intended to protect the confidentiality of patient health records. HHS rules give individuals added control over how their protected health information is used and disclosed (Davidson, H. 2003).

HIPAA specifically permits reporting child abuse in the Privacy Rule. These regulations will be formally incorporated into the Code of Federal Regulations as 45 C.F.R., parts 160 and 164. Until these are published, the text of the regulations may be accessed at this Web site: [http://www.hhs.gov/ocr/hipaa/finalreg.htm](http://www.hhs.gov/ocr/hipaa/finalreg.htm) (Davidson, H. 2003).

Section 164.512 provides for disclosing information without first obtaining a signed authorization and specifically addresses two areas that apply to child abuse:

(b)(1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:
(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public

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How does HIPAA impact Child Protective Services?

HIPAA’s privacy protections will have important effects for child protective services agencies, other entities involved in child welfare work, and advocates when they seek – in child maltreatment cases – records or information on adults or children from “covered” hospitals, clinics, physicians, psychologists, psychiatrists, etc. As explained below, HHS has provided exceptions to clarify that health care providers suspecting child maltreatment still must report it. The exceptions, however, more clearly exempt disclosure of certain child victim records than they do physical or mental health information pertaining to perpetrators of child maltreatment, parents of child maltreatment victims generally, other adults or children in the child’s home or prospective adult caretakers (e.g., foster or kinship care providers). Therefore, it is important that those seeking health information on such adults for child safety-related purposes become familiar with HIPAA privacy protections generally, as well as the scope of the exceptions (Davidson, H. 2003).

Exceptions that apply to child maltreatment are addressed in three sections of the HIPAA regulations: sections 160.203; 164.502(g)(5); and 164.512, which are posted online at: http://www.hhs.gov/ocr/combinedregtext.pdf.

Section 160.203 sets forth the series of HIPAA privacy requirements that clarify that HIPAA generally overrides state laws where those laws are contrary to HIPAA.

Section 160.203(c) states that HIPAA rules do not apply when the “provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.” This might be construed to allow, assuming relevant authorization in state legislation, the sharing of both health records and information concerning adults and children, since this
broadly worded exception to HIPAA’s privacy protections not only permits “reporting” but also appears to authorize disclosure of public health-related case information on child maltreatment and child fatalities to those conducting activities related to “investigation” and “intervention” in such cases (Davidson, H. 2003).

Section 164.502(g)(5) addresses situations in which a “personal representative” of an individual entitled to HIPAA protections (e.g., a parent of a child patient) need not be provided access and control over the individual’s records. Such situations exist when there is a “reasonable belief” that the individual “has been or may be subjected to domestic violence, abuse, or neglect by such person” or where treating that person as the personal representative “could endanger the individual.” Before restricting such access and control, there must be a professional judgment that “it is not in the best interest of the individual to treat the person as the individual’s personal representative.” These are important provisions that can help keep a maltreated child’s medical information out of the hands of an abusive parent.

Section 164.512 addresses a range of situations in which a patient’s authorization or opportunity to agree or object to the release of information (i.e., the subject’s consent) may not be required. There are three relevant subsections:

- 164.512(a) provides exceptions when uses and disclosures of information are “required by law.”

- 164.512(b)(1) permits disclosure of information for “public health activities,” which include prevention of injuries as well as disclosures to an “appropriate government authority authorized by law to receive reports of child abuse or neglect.”

- 164.512(c) addresses information on victims and permits disclosure of information (beyond mere reporting) about victims of child maltreatment or domestic violence to appropriate government authorities – even if otherwise “protected health information” is disclosed – only if:
  1. Such disclosure would be authorized or required by law or regulations; and
  2. Disclosure of information on the victim is considered necessary to prevent serious harm to the victim or to other potential victims; or
  3. The victim consents to the disclosure.

Final Facts on HIPAA

- HIPAA does not inhibit reporting of child abuse and neglect.
- HIPAA supports the disclosure of health information for public health prevention, surveillance, investigation and intervention activities.
- HIPAA provides protections for the child victim’s personal health information, but disclosures still can be made with the victim’s consent or when it is necessary to prevent serious harm to the child or other potential child victims.
- The ability to access health information is given to relevant agencies, such as courts, law enforcement and those determining the cause of child deaths.
- When contrary to the child’s best interests, HIPAA will protect health information from being disclosed to parents or other adult representatives.
Ambiguities within HIPAA’s privacy exception do require clarification. There are questions about how many exceptions will apply in practice and about how extensive the information can be that health care providers provide on children’s families. The answers are unclear. More guidance is needed, but more information may be obtained from fact sheets and other materials provided by the U.S. Department of Health and Human Services Office on Civil Rights. Visit its web site at http://www.hhs.gov/ocr/hipaa.

Successful Implementation of HIPAA

❖ Health care providers or “covered entities” under HIPAA will require training and educational materials about the sharing of information in child maltreatment cases.
❖ Judges and attorneys who handle child maltreatment proceedings must receive education on HIPAA privacy protections and their exceptions.
❖ Child welfare agencies must collaborate with health and mental health providers to minimize the adverse impact of HIPAA on accessing critical child safety-related patient records and other information. Staff also will require some HIPAA training.
❖ State and legislative changes may be necessary to meet disclosure provisions contained in the HIPAA privacy regulations that require a state law authorizing or requiring sharing of information.

Family Educational Rights and Privacy Act (FERPA)

Does FERPA prevent school records from being disclosed when reporting child abuse and neglect? Ordinarily, parental consent is required before information contained in school records can be released. However, there are exceptions that can apply in cases of suspected child abuse and neglect. Prior parental consent is not required when disclosing information from school records if a “health or safety emergency” exists. Federal officials interpreting the Family Educational Rights and Privacy Act (FERPA) concluded that child abuse and neglect generally may be considered a “health or safety emergency” if the state definition of child abuse and neglect is limited to situations in which a child’s health or safety is endangered. That responsibility for determining whether a “health or safety emergency” exists must be made by the school official involved, on a case-by-case basis. Thus, if a school official determines that an emergency exists, information in school records can be disclosed without parental consent and without violating the provisions of FERPA.

For more information on FERPA, as well as reporting child abuse and neglect in school settings, please refer to the Colorado Department of Education’s on-line resources:

http://www.cde.state.co.us/cdesped/download/pdf/nur-Child_Abuse.pdf

http://www.cde.state.co.us/cdeprevention/pichildabuse.htm

Reference