

## Preliminary Thoughts on a Social Worker's Disclosure Responsibilities During the Pandemic

NASW Office of General Counsel

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Cases have recently arisen where clinical social workers have been asked to disclose the names of their clients to public health officials, to assist in tracing exposure to the novel coronavirus.

The social worker's responsibility in this instance includes aspects of the HIPAA Privacy Rule, NASW's Code of Ethics, and local laws including licensure rules, health care confidentiality, and public health regulations. We will outline here how these national rules are likely to apply.

### The Short Answer

#### HIPAA

As a general rule, HIPAA prohibits disclosure of protected health information without the prior consent of the client. The HIPAA Privacy Rule identifies a number of situations where this prohibition does not apply. However, if the state's privacy law is more protective than HIPAA, the state's restrictions on disclosure of protected health information will continue to apply.

HIPAA permits disclosures:

- When required by law (e.g., by public health law), to an authorized public health authority;
- For the control of disease, even if not legally required, the minimum necessary information may be disclosed to an authorized public health authority;
- In either case, the social worker must verify the identity of the official, as described below.

#### Ethical Considerations

The *Code of Ethics* strictly protects client confidentiality. While several provisions of the *Code* arguably permit the public health disclosures described above, disclosure even of a client's name might be viewed as a breach of confidentiality. If disclosure is necessary:

- Notify the client regarding exactly what information will be shared and why;
- If possible, notify the client in advance and obtain their signed consent before the disclosure;
- Only the minimum necessary information should be disclosed. For example, their name and the date and type of contact may be required, but not the professional relationship with the social worker.

## A Summary Explanation

### **HIPAA - Disclosures for Public Health Activities** [45 CFR 164.512(b)]<sup>1</sup>

The HIPAA Privacy Rule allows covered entities to disclose protected health information (PHI) to public health authorities when required by federal, tribal, state, or local laws [45 CFR 164.512(a)]. The Privacy Rule expressly permits PHI to be shared for specified public health purposes. The Privacy Rule permits covered entities to disclose PHI, without prior client consent, to public health authorities or other entities who are legally authorized to receive such reports for the purpose of preventing or controlling disease, injury, or disability. This includes the reporting of disease or injury and conducting public health surveillance. [45 CFR 164.512(b)].

For disclosures not required by law, covered entities may still disclose, without client consent, to a public health authority authorized by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability, the minimum necessary information to accomplish the intended public health purpose of the disclosure [45 CFR 164.512 (b)].

To protect the health of the public, public health authorities might need to obtain information related to the individuals affected by a disease. In certain cases, they might need to contact those affected to allow for actions to prevent further illness. [45 CFR 164.512(b)(1)(i)].

In the event a social worker is requested to disclose PHI to public health authorities for public health purposes, be sure to have public health authorities verify their status and identity as public health authorities. To verify its identity, an agency could provide any one of the following:

- if the request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status;
- if the request is in writing, the request is on the appropriate government letterhead;
- if the disclosure is to a person acting on behalf of a public health authority, a written statement on appropriate government letterhead that the person is acting under the government's authority [45 CFR § 164.514(h)(2)].

In addition, the social worker should request the legal authority of the health authority to request or require such disclosures.

### **The NASW [Code of Ethics](#)**

The *Code of Ethics* strictly protects a client's confidential information, though disclosure is authorized with client consent. [Standard 1.07(b).] If consent has not been obtained, then the

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<sup>1</sup> Ideally, the social worker's Notice of Privacy Practices would cover the potential for this type of disclosure, and the client would have signed an Acknowledgement of Privacy Practices at the beginning of the professional relationship. Please see <https://www.socialworkers.org/About/Legal/HIPAA-Help> for information as well as a toolkit with sample policies and other forms for compliance with the HIPAA Privacy Rule. Member log-in is required.

social worker should consider whether “disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or others,” in which case the disclosure is permitted. [1.07(c).]

The *Code* recognizes that a social worker may receive a legal order to disclose confidential information, even without client consent. In that case, if the disclosure could cause harm to the client, the social worker should seek to avoid or limit disclosure; e.g., that the disclosure be as limited as possible and that the information be protected from public disclosure. [1.07(j).] Here, the social worker should consider whether disclosure might be harmful. Also, you might confirm whether, as in many jurisdictions, public health officials are obligated to maintain confidentiality of contact information.

Finally, it is best if the social worker is able to discuss this possibility with their clients proactively, before any request for information is received. Standard 1.07(e) notes that social workers should discuss confidentiality with clients and review circumstances where disclosure of confidential information may be legally required; “this discussion should occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship.”

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