

The SouthEast Alaska Regional Health Consortium (“SEARHC”) is strictly limited by federal law in how it can release patient health information for use in judicial proceedings. This memorandum will help explain the proper steps for outside parties to follow when seeking these records. **This memorandum explains the procedure for obtaining patient health records that DO NOT Include Substance Use Disorder Records.** *If you are seeking substance use disorder records, additional legal requirements apply.*

Generally, patient records may be disclosed to third parties with the consent of the patient (or the patient’s authorized representative) or by following the procedures outlined below. Without the patient’s written consent, the laws and regulations discussed below have requirements that must all be met before SEARHC may release patient information. These restrictions apply to document production and to testimony in court, depositions, or before grand juries.

The principal laws are the Federal Privacy Act and the HIPAA Privacy Rule.

I. Federal Privacy Act.

Under the terms of SEARHC’s funding agreement with the Indian Health Service, SEARHC is subject to certain requirements of the federal Privacy Act, 5 U.S.C. § 552a. There are two principal routes to obtain patient health information under this law that apply in this context: (1) with patient consent, or (2) without patient consent.

First, the Privacy Act allows disclosures of records “pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.”ⁱ A parent or legal guardian may provide consent for a minor or a person who has been declared legally incompetent.ⁱⁱ If the patient consents, then SEARHC’s release of information forms should be used and are available here: <https://searhc.org/records/>. To submit a release of information form, please contact a SEARHC Health Records Technician by calling 907.463.6630.

Second, without written consent, medical records, financial records, and personnel records may only be disclosed “pursuant to the order of a court of competent jurisdiction.”ⁱⁱⁱ **This requires a court order or a subpoena signed by a judge.** A subpoena signed by the clerk of court or an attorney is insufficient.^{iv} This includes subpoenas for the production of records, for attendance at a deposition, or for testimony at trial or before a grand jury. Please note, the Privacy Act applies to requests for personnel records as well as medical records.

II. Federal HIPAA Privacy Rule.

As a health care provider, SEARHC is a “covered entity” that is required to comply with HIPAA, or the Health Insurance Portability and Accountability Act of 1996.^v HIPAA limits the use and disclosure of Protected Health Information, or “PHI,” which includes individual patients’ health records. Under HIPAA, covered entities, which include health care providers, are prohibited from

using or disclosing patient records unless they have the patient’s consent or the use or disclosure is specifically authorized by law. While there are some exceptions that allow records to be released in response to a court order or, in specific circumstances, to law enforcement, these exceptions are limited and must be carefully followed.

Patient consent. Just like the Privacy Act, HIPAA allows a patient to consent to the disclosure of their PHI. But, while the Privacy Act simply requires “written consent,” HIPAA’s consent requirements are far more detailed.^{vi} In order to ensure that patient consents meet these legal requirements, patients should use the SEARHC forms available here: <https://searhc.org/records/>.

Court orders and subpoenas. HIPAA allows the release of PHI without patient consent in response to a court order. **SEARHC may *only* release the PHI that is specifically identified in the court order.**^{vii} HIPAA also authorizes the disclosure of PHI in response to a subpoena (or discovery request or other lawful process) in limited circumstances.^{viii} Because the Privacy Act’s requirements are stricter, those rules apply and not the HIPAA rules.

Special protections for PHI related to reproductive health care. HIPAA has additional protections for PHI related to reproductive health care.^{ix} When SEARHC receives a request (including a court order) seeking PHI that is potentially related to reproductive health care and the request is for law enforcement purposes or for use in a judicial proceeding (among other purposes), the requestor *must* provide an attestation stating that they will not use the records to investigate or prosecute any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care, where the health care provided was legal. The requestor must use SEARHC’s attestation form for this purpose.

V. Conclusion

As noted above, SEARHC is **required** to follow multiple federal laws and regulations before releasing patient health information. Please contact SEARHC’s Legal Department at 3100 Channel Drive, Suite 300, Juneau, AK 99801, by calling 907.463.4054, or by email at courtdocs@searhc.org, if you have any questions about these requirements.

ⁱ 5 U.S.C. § 552a(b).

ⁱⁱ 5 U.S.C. § 552a(h).

ⁱⁱⁱ 5 U.S.C. § 552a(b)(12).

^{iv} 5 U.S.C. § 552a(b)(12); *see Doe v. DiGenova*, 779 F.2d 74, 81–85 (D.C. Cir. 1985) (holding that while a subpoena is a “judicial process” issued in the name of a court and subject to enforcement by the court, it is nonetheless not an “order of court” for purposes of the Privacy Act); *see also Doe v. Stephens*, 851 F.2d 1457, 1465–67 (D.C. Cir. 1988) (holding that an agency may not release Privacy Act-protected records in response to a subpoena by relying on a routine use).

^v 45 C.F.R. Parts 160 and 164, Subparts A and E.

^{vi} 45 C.F.R. § 164.508(a)(1).

^{vii} 45 C.F.R. § 164.512(e)(1)(i).

viii 45 C.F.R. § 164.512(e)(1)(ii)(A).

ix 45 C.F.R. § 164.509. HIPAA defines reproductive health care very broadly as: “health care . . . that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes.” 45 C.F.R. § 160.103. Examples include: “contraception, including emergency contraception; preconception screening and counseling; management of pregnancy and pregnancy-related conditions, including pregnancy screening, prenatal care, miscarriage management, treatment for preeclampsia, hypertension during pregnancy, gestational diabetes, molar or ectopic pregnancy, and pregnancy termination; fertility and infertility diagnosis and treatment, including assisted reproductive technology and its components (e.g., in vitro fertilization (IVF)); diagnosis and treatment of conditions that affect the reproductive system (e.g., perimenopause, menopause, endometriosis, adenomyosis); and other types of care, services, and supplies used for the diagnosis and treatment of conditions related to the reproductive system (e.g., mammography, pregnancy-related nutrition services, postpartum care products).” HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. 32,976, 33,006 (Apr. 26, 2024) (codified at 45 C.F.R. Parts 160 and 164).