

Introduction to HIPAA Compliance for Entry Level Paralegals
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The Health Insurance Portability and Accountability Act (HIPAA)¹ was passed in 1996 by the U.S. Congress. HIPAA is:

An Act to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.

These federal regulations are meant to protect and keep private patient records produced within the healthcare industry when they are needed as discovery for court cases. These protections are also a matter of civil rights, in that patients have a right to know what is in their medical records, the right to correct medical records when warranted, and the right to control where these records go and how they are distributed. Because these rights need to be protected, there are very strict rules and regulations around how the legal industry may access these records when they are needed for litigation purposes. Therefore, a paralegal working with sensitive healthcare information must be very careful about how these records are obtained, how the information gets distributed and above all else, protect this confidential information with utmost care.

¹ [HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, 1996 Enacted H.R. 3103, 104 Enacted H.R. 3103, 110 Stat. 1936, 104 P.L. 191, 1996 Enacted H.R. 3103, 104 Enacted H.R. 3103](#)

Three very important things paralegals always need to keep in mind are issues of confidentiality and attorney/client privilege, conflict of interest and the unauthorized practice of law. When dealing with HIPAA rules and regulations and sensitive healthcare information, these issues become especially important.

When working with HIPAA materials, knowing when to disclose information, how to obtain HIPAA records and how to read and organize this material would be among some of the most important tasks. Above all, know your state statutes and case law around HIPAA cases before asking for medical records from providers to avoid making costly compliance errors.

When working with HIPAA regulated information, there are several tasks where paralegals would be involved, and would therefore need to know proper protocol. These tasks would include:

- obtaining and asking for medical records properly**

Paralegals are not considered business associates² with regard to HIPAA rules. Your supervising attorney would be considered the business associate³ at the law firm, and the attorney *only* should be signing any requests for information under HIPAA rules and regulations.

² [45 C.F.R. § 160.103 \(Lexis Advance through the October 7, 2016 issue of the Federal Register\)](#)

³ <http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/>

- **confidentiality concerns around handling these records at every phase of a case**

Patient rights under HIPAA rules and regulations include the right to expect healthcare organizations to keep their healthcare related communication private. It is a patient's civil right to file privacy related issues to the Human & Health Services Dept. Legal professionals have the same obligation under HIPAA law.

Discovery work product using HIPAA materials always contains personally identifiable information (PII). For this reason, a strict confidentiality protocol must be followed. Ask to obtain training in confidentiality matters, and consult your law firm's policy and procedure manual for best practices to ensure confidentiality of all HIPAA records in compliance with HIPAA rules.

- **disclosure of HIPAA records outside of your law firm**

Email is a commonplace communication tool these days, even in the medical field, where patient-doctor communication is often via email. In fact, the U.S. government is investing heavily in a healthcare IT infrastructure in the years ahead, seeing a major need for it.⁴

With regard to distributing HIPAA covered materials in this way, it is very important to have a strong IT security and risk management policy in place at your law firm to handle compliance issues around

⁴ **United States Department of Health and Human Services, "Secretary Leavitt Takes New Steps to Advance Health IT," press release on HHS website June 6, 2005. <http://www.os.dhhs.gov>**

dissemination of HIPAA records, especially when it comes to compliance audits. Therefore, it is always wise to check with your IT department to find out what the proper protocol is for distributing HIPAA materials, or even emails referencing HIPAA matters without HIPAA materials attached, to make sure you are always in compliance when it comes to using digital technology in HIPAA related cases.

- **conflict of interest issues for paralegals working on a HIPAA case**

The NFPA (National Federation of Paralegal Associations) provides a comprehensive explanation of conflict of interest concerns when it comes to working with sensitive information.⁵ Basically, if you find you have worked on a case in the past involving *any party* who is a part of a HIPAA case you are currently working on, then you must alert your supervising attorney to this fact so that he/she can determine how to best handle the situation, and make a decision as to whether you are able to work on the current case, or not.

- **destruction of HIPAA records once a case is over**

Destruction schedules, and clear destruction policies and procedures that include appropriate methods of destruction for each medium on which information is maintained are both essential parts of a law firm's destruction policy for HIPAA materials once a HIPAA case is over. As a

⁵ <https://www.paralegals.org/i4a/pages/index.cfm?pageID=3373>

paralegal you would not be primarily responsible for maintaining this policy—rather, your IT department should take the lead when it comes to destruction policy and instruct the legal staff as to what must be done to comply with HIPAA law with regard to the disposal and destruction of HIPAA records. Consulting with your IT department and letting them know once a HIPAA case is completed would be helpful towards doing your part in making sure any HIPAA materials in possession of the law firm are properly disposed of. You can find a lot more information on disposal of records compliance at the AHIMA (American Health Information Management Association) website.⁶

Non-compliance of HIPAA rules and regulations can have both civil and criminal consequences for business associates who fail to comply with HIPAA. Since your supervising attorney is responsible for your actions as a paralegal working under his/her supervision, ultimately it would be the attorney who suffers the consequences if you were to violate HIPAA rules. Therefore, it is very important to make sure you understand HIPAA rules and regulations thoroughly, and comply at every turn. If you aren't sure about something, make sure to ask your supervising attorney how to handle a task so that you are always following proper protocol as a paralegal working under HIPAA rules and regulations.

⁶ http://library.ahima.org/doc?oid=107114#.V_8g8ZMrLxQ

Other resources consulted:

Medical Records Release for Paralegals

Published January 8, 2013 on theparalegalresource.com

<http://www.theparalegalresource.com/articles/view.php?article%20id=7213>

HIPAA and Email – How Does Your Practice Deal with Compliance in a Digital Age?

Author Marilee Veniegas

Published July 2011 on myparalegalplace.com

<http://ww.myparalegalplace.com/2011/07/hipaa-and-email-how-des-your-practice.html?m=0>

Is Your Court Reporting Firm HIPAA Privacy and Security Compliant?

Author Judy Stevens

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<http://skreporting.com/is-your-court-reporting-firm-hipaa-privacy-and-security-compliant/>