

November 14, 2023

IHA is collaborating with the Illinois Dept. of Children and Family Services (DCFS) to disseminate education regarding medical records requests related to DCFS investigations of abuse or neglect.

Every day, Illinois hospitals receive an extremely high volume of time sensitive medical records requests from a broad array of stakeholders, and we appreciate your efforts to respond to all requests as quickly as possible. Medical records requests from DCFS may come to the hospital via phone call, email, or through an investigatory letter. If a response to an investigatory letter is not received within a timely manner, DCFS may escalate the request by sending an administrative subpoena to the hospital.

Earlier this year, DCFS considered submitting all future medical record requests through one avenue of communication, via administrative subpoena. Following discussions with IHA, the department agreed instead to pursue education to strengthen communication with hospitals on the different avenues department staff may use to request medical records.

An investigatory letter from DCFS outlines the statutory authority under the Abused and Neglected Child Reporting Act (ANCRA, 325 ILCS 5/) of the department's Division of Child Protection staff to investigate reports of abuse and neglect of minors in Illinois. Additionally, authority is provided under:

- The federal Health Insurance Portability and Accountability Act of 1996's (HIPAA, 45 CFR 164.512(b)(1)(ii)) exception allowing disclosure of protected health information without written authorization to an "appropriate government authority authorized by law to receive reports of child abuse or neglect." Since DCFS is identified under ANCRA (325 ILCS 5/7.3) as the sole agency in Illinois responsible for receiving and investigating reports of child abuse and neglect, with limited exceptions permitting additional investigations by other agencies, like law enforcement, disclosure to DCFS would fall within HIPAA's exception.
- The Illinois Mental Health and Developmental Disabilities Code (MHDD Code, 740 ILCS 110/11(i)):
  - Permits the disclosure of mental health records to DCFS' Division of Child Protection without a consent, in accordance with: (1) provisions in ANCRA, (2) the Children and Family Services Act (20 ILCS 505/5(u)), or (3) the Child Care Act of 1969 (225 ILCS 10/7.4).
  - Provides that any person or institution that makes a report under ANCRA, or in the disclosure of records in good faith under Section 11 of the MHDD Code, has immunity from any liability, civil, criminal or otherwise, resulting from such disclosure.
- Finally, the Alcoholism and Other Drug Abuse and Dependency Act (20 ILCS 301/30-5) provides that substance use disorder patient records are exempt from confidentiality protections described in federal regulations (42 C.F.R. Section 2.12(c)) for reports of suspected abuse and neglect. At the same time, the state provision clarifies that confidentiality restrictions continue to apply to the records and any follow-up information from disclosure and use in civil or criminal proceedings arising from the report of suspected abuse or neglect.

Questions regarding this memo may be directed to the Advocacy & Policy Contact Us form.



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