Issue Brief- HIPAA and Public Health PDMPs

There are multiple interactions between aspects of the HHS HIPAA Privacy Rule and the operation of a Prescription Drug Monitoring Program. While the Privacy Rule does grant broad latitude for Public Health entities 45 CFR § 164.512(b), specific aspects of operation can also be evaluated to ensure overall compliance and the protection of PHI. In addition to section (b) below, St. Louis County also constructed the PDMP to be in accordance with section (d) for health oversight activities and sections (e) and (f) as they relate to how the PDMP will engage with judicial proceedings and law enforcement agencies. None of these uses require either individual authorization or HIPAA waivers of exemption.

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.
A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity’s information and the individual’s agreement may be given orally.

(b) Standard: Uses and disclosures for public health activities
(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 health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(d) Standard: Uses and disclosures for health oversight activities
(1) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:
(i) The health care system;
(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;
(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

(e) **Standard: Disclosures for judicial and administrative proceedings**

(1) **Permitted disclosures.** A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:
   (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or
   (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal

(f) **Standard: Disclosures for law enforcement purposes**

A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1) **Permitted disclosures: Pursuant to process and as otherwise required by law.**

A covered entity may disclose protected health information:
   (i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or
   (ii) In compliance with and as limited by the relevant requirements of:
       (A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
       (B) A grand jury subpoena; or
       (C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
           (1) The information sought is relevant and material to a legitimate law enforcement inquiry;
           (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
           (3) De-identified information could not reasonably be used.