THE GOLD STANDARD?
COMPARING PRIVACY IN
HIPAA, VAWA, FVPSA & VOCA

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HIPAA

• Health Insurance Portability and Accountability Act
  – Federal law
  – protecting privacy of health care information
  – collected by health care industry
VAWA

• Violence Against Women Act
  – Federal law
  – protecting privacy of all information collected
  – when grantees provide services
  – to domestic violence, sexual violence, dating violence and stalking survivors
FVPSA

- Family Violence Prevention & Services Act
  - Federal law
  - protecting privacy of all information
  - collected when grantees provide services
  - to victims of family, domestic or dating violence
VOCA Regulation - NEW in 2016!

• Victims of Crime Act regulation
  – Federal rule
  – protecting privacy of all information
  – collected when grantees provide services
  – to victims of crime
POLL

A DV victim shares information with her doctor and with her advocate at the shelter.

- Which one has stricter rules about disclosing her information:
  - The doctor following HIPAA rule?
  - The advocate following VAWA/FVPSA?VOCA rule?
VAWA/FVPSA/VOCA
Who decides?

VAWA, FVPSA & VOCA put the decision whether to share any identifying information in the hands of the survivor.
Assumptions?

HIPAA
assumes the information
will be shared
&
gives medical staff
some discretion to share
POLL

• “I have heard victim service providers say ‘we follow HIPAA’ to explain their privacy standards.”

True
False
<table>
<thead>
<tr>
<th>Medical Services</th>
<th>Victim Services</th>
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<tbody>
<tr>
<td>• Information moves between entities</td>
<td>• Information stays within receiving entity</td>
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<tr>
<td>• Combine patient information &amp; doctor expertise</td>
<td>• Survivors experts in own lives</td>
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<tr>
<td>• Medical staff make decisions for patients</td>
<td>• Survivors decide using information made available</td>
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Medical Services

• What happens if expert medical staff lacks information?
  – Doctor could make wrong judgment call
  – Resulting in harm

Victim Services

• What happens if someone without survivor approval shares information?
  – Survivor could be located, outing, targeted
  – Resulting in harm
Goal of HIPAA Privacy Rule

• “assure that individuals’ health information is properly protected while allowing the flow of health information
  – to provide and promote high quality health care
  – to protect the public’s health and well being.”

www.hhs.gov/ocr/privacy/hipaa/understanding/summary/
Quality Healthcare & Public Health
Characteristics of HIPAA Privacy

• “strikes a balance that permits important uses of information”
• “designed to be flexible and comprehensive”

www.hhs.gov/ocr/privacy/hipaa/understanding/summary/
Basic HIPAA Privacy Rule

• A covered entity or business associate may not use or disclose protected health information except for:
  – Treatment
  – Payment
  – Health care operations
  – Sharing with business associates
  – Organized healthcare arrangements
  – Affiliated entities
  – Some researchers
  – Public policy exceptions
Goal of VAWA/FVPSA Privacy

- “to ensure safety” of victims
- “grantees and subgrantees shall protect confidentiality and privacy”

Section 3 of VAWA, 42 USC §13925(b)(2); Family Violence Prevention and Services Act, 42 USC 10406(c)(5)
& preventing disclosures that violate privacy
VOCA adopts VAWA/FVPSA Privacy standard

• Recipients of victim services funds:
  – “Shall, to the extent permitted by law, reasonably protect the confidentiality and privacy of persons receiving services”

• Privacy requirements follow VAWA

28 CFR §94.115
Grantees and subgrantees shall not disclose personally identifying information except when:

– There is written consent from the individual;
– There is a requirement in a statute;
or
– There is a lawful requirement from a court.
Courts, Prosecutors & Police

• VAWA/FVPSA/VOCA Privacy rule does not apply to
  – Information *generated* by court, prosecutor & law enforcement
  AND
  – Used for court, prosecutorial & law enforcement purposes within legal system
How are the two privacy standards different?
Differences I See: #1

• HIPAA assumes information will flow
  – *routinely*

• VAWA/FVPSA/VOCA assumes no flow
  – unless an individual survivor decides differently
  – or statute/court specifically mandates it
Differences I See: #2

- HIPAA applies to “protected health information”

- VAWA/FVPSA/VOCA applies to all “personally identifying information” collected
Differences I See: #3

• HIPAA balances:
  – public health &
  – personal privacy

• VAWA/FVPSA/VOCA centers:
  – individual safety &
  – personal control
Differences I See: #4

• HIPAA allows “business associates” to access protected health information

• VAWA/FVPSA/VOCA does not address or authorize sharing personally identifying information with outside contractors
Differences I See: #5

• HIPAA allows sharing a “limited data set” of protected health information with researchers.

• VAWA/FVPSA does not contain any exception for identifying information to be shared with researchers.
Differences I See: #6

• HIPAA gives professionals some discretion to decide to disclose
  – & not even tell patient.

• VAWA/FVPSA/VOCA do not give grantees discretion to decide to disclose
  – & require attempts to tell survivor if disclosure mandated by court/statute.
Differences I See: #7

• HIPAA allows sharing some information with law enforcement at doctor’s discretion
  – without a specific statute or court order

• VAWA/FVPSA/VOCA does not allow disclosure to law enforcement unless consent, court mandate or statutory mandate
Differences I See: #8

• HIPAA allows some disclosures based on oral or informal consent
  – or even “failure to object”

• VAWA/FVPSA/VOCA require affirmative, written consent
Differences I See: #9

• HIPAA allows disclosure of PHI for audit & government oversight

• VAWA/FVPSA forbids disclosure of PII for government grant compliance

• VOCA forbids disclosure to comply with data-collection for “any program”
Differences I See: #10

• HIPAA: Can refuse some services if patient declines to disclose PHI

• VAWA/FVPSA/VOCA: Can never make consent to release PII a condition of services
Practical Application

• Sexual assault victim comes in to the emergency room with her sister. Victim meets with an advocate from local rape crisis center and is treated by doctor and nurse team. Victim becomes distraught when sister is out of the room and doctor sedates her to help her sleep.

• When sister returns she asks everyone in the room, “Why is she asleep? Do we know who did this to her?”
POLL

• True or False:
  – My organization can choose whether to follow HIPAA privacy or VAWA/FVPSA/VOCA privacy.
Following the rules

• Covered Entity/Business Associate?
  – Must follow HIPAA Privacy rule

• VAWA/FVPSA/VOCA Grantee or Subgrantee?
  – Must follow VAWA/FVPSA/VOCA privacy

• If you are BOTH, you follow the most protective rule
  – Typically, VAWA/FVPSA/VOCA
  – HIPAA provides more detailed requirements on electronic records
Hybrid Organization?

• HIPAA: all HIPAA rules apply to whole organization

• Unless you identify as a “hybrid entity”
  – Then HIPAA rules apply to healthcare unit
  – Information kept within healthcare unit
  – Sharing outside healthcare unit is disclosing to a third-party
Multi-Service Agency?

- Identify VAWA/FVPSA/VOCA-funded victim services unit
- Keep information inside unit
- Sharing outside of unit is disclosing to a third party
Resources for help

• Technical Assistance
  – safetynet@nnedv.org
  – alicia@confidentialityinstitute.org

• Local Legal Advice

• On-line materials
  – techsafety.org/confidentiality
  – www.hhs.gov/ocr/privacy/
“But, what if...?”

• How do VAWA, FVPSA, VOCA & HIPAA apply in your specific situation?
1. Don’t assume they are the same
2. Read the actual rules
   – Start research with comparison chart at techsafety.org/confidentiality
3. Ask for technical assistance and/or get legal advice
Bottom Line

• HIPAA vs. VAWA/FVPSA/VOCA?
  – Different Purposes
  – Different Assumptions
  – Different Professions

  — *Different Levels of Privacy Protection*
THANK YOU!

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