



THE GOLD STANDARD?

COMPARING PRIVACY IN HIPAA, VAWA, FVPSA & VOCA

Alicia L. Aiken, J.D.
Confidentiality Institute

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



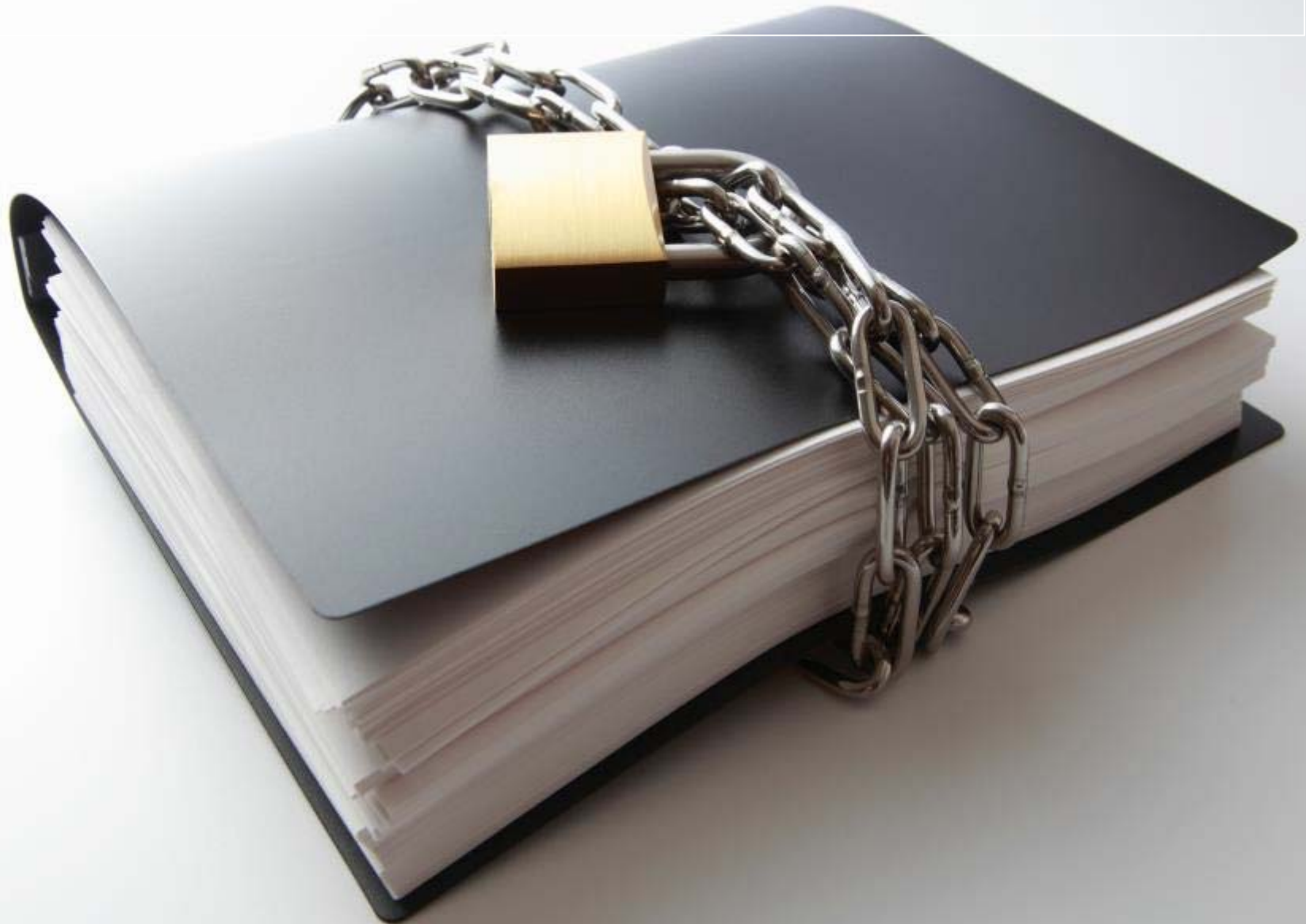
POLL

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



HIPAA



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



Medical Services

- Information moves between entities
- Combine patient information & doctor expertise
- Medical staff make decisions *for patients*

Victim Services

- Information stays within receiving entity
- Survivors experts in own lives
- *Survivors decide* using information made available



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, outed, 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.**”



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)





SAFETY



& 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



VAWA/FVPSA/VOCA on Privacy

- 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@nnev.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!

Alicia L. Aiken, J.D.
Confidentiality Institute
alicia@confidentialityinstitute.org