

## ODMAP: Emergency Medical Services Providers

# Can an EMS provider or other HIPAA-covered entity report overdose information to ODMAP without violating HIPAA?

## Response

Yes. Numerous entities covered by HIPAA (the Health Insurance Portability and Accountability Act), including emergency medical services (EMS) providers, county ambulance authorities, and combined fire/EMS departments, currently report overdose incident information to ODMAP.<sup>1</sup> Each such entity's decision to participate depends on both the applicable state law and the legal conclusion by the entity, or the jurisdiction it serves, regarding the information being reported and the extent to which HIPAA's privacy protections apply.

The decision that a HIPAA-covered entity may report overdose information to ODMAP without violating HIPAA will be based on one of the following four conclusions by the entity or jurisdiction it serves:

**Conclusion 1—Overdose information reported to ODMAP does not contain protected health information (PHI); therefore, a HIPAA-covered entity may freely report it.** This conclusion is rooted in two facts: (1) names of overdose victims are not reported to ODMAP; and (2) it is almost impossible to identify a person based solely on the approximate location of a known or suspected overdose. There is one possible exception to this conclusion, explained in more detail below, with respect to rural locations.

**Conclusion 2—Overdose information reported to ODMAP includes PHI, but at least one of three "exceptions" to HIPAA's patient authorization requirement applies.** HIPAA allows PHI to be disclosed without patient authorization for several reasons, including: (1) for certain public health activities and purposes; (2) to avert a serious threat to health or safety; and (3) for certain law enforcement purposes.<sup>2</sup> How each of these reasons applies to ODMAP is explained in more detail below.

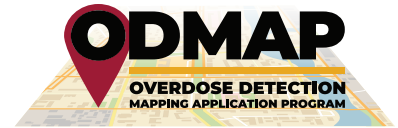
**Conclusion 3—State law requires an entity to report overdose information to ODMAP, which is another "exception" to HIPAA's patient authorization requirement.** At the time of writing, four states (Florida, Illinois, Maryland, and West Virginia)<sup>3</sup> have laws in effect that require the submission of overdose information to ODMAP or a similar database.

**Conclusion 4—The entity employs an ODMAP reporting method that does not invoke HIPAA; therefore, whether overdose information reported to ODMAP contains PHI or not is irrelevant.** For example, law enforcement is not a HIPAA-covered entity; therefore, agencies may report information to ODMAP without violating HIPAA privacy protections.

## Additional Discussion

### Conclusion 1 Analysis

For each known or suspected overdose incident, an authorized ODMAP user (such as an EMS provider, fire department employee, or hospital emergency department representative) must report at least four pieces of information to ODMAP: (1) date/time of the incident; (2) location of the incident or first encounter; (3) whether the overdose incident resulted in a fatality; and (4) whether a first responder administered naloxone to the victim and, if so, how much.<sup>4</sup> Other types of information regarding the incident may be reported



but are not required.<sup>5</sup> With one possible exception that arises under very specific conditions, the types of information submitted to ODMAP do not constitute PHI.<sup>6</sup>

The possible exception involves the remote chance that an ODMAP user with National Map access could use the location of an overdose incident in a sparsely populated area, in combination with information gleaned from another source, to determine either the identity of the overdose victim or of a very limited group of persons that includes the victim. ODMAP mitigates this risk by: (1) limiting the ability to zoom in on the location map; and (2) not labeling the location with a physical address (only GPS coordinates are available). If one concludes that it is not reasonably possible to identify the victim in this manner, the reported information is not PHI and is not, therefore, subject to limitations on disclosure under HIPAA. Under Conclusion 1, EMS providers and other HIPAA-covered entities are free to report overdose information to ODMAP without fear of violating HIPAA privacy protections. The Offices of the Attorney General in three states—Maryland,<sup>7</sup> South Carolina,<sup>8</sup> and Nevada<sup>9</sup>—recently issued legal memoranda analyzing the interplay between ODMAP and HIPAA. In each opinion, the respective attorney general’s office concluded that HIPAA allows covered-entity users to report overdose information to ODMAP (See *ODMAP: Geolocation of Overdose Incident*).

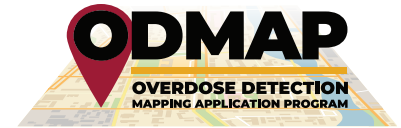
### Analysis of Conclusions 2 and 3

If an EMS entity or the jurisdiction it serves determines that overdose incident information reported to ODMAP is subject to HIPAA privacy protections, the entity can still report that information via one of the many ways by which HIPAA authorizes disclosure of PHI without requiring patient authorization or the opportunity for the patient to agree or object. Pursuant to 45 C.F.R. § 164.512, there are several “exceptions” to the patient authorization requirement that have the effect of allowing disclosure of an individual’s PHI without the patient’s direct authorization (Conclusion 2).<sup>10</sup> These “exceptions” include reporting information: (1) for certain public health activities and purposes;<sup>11</sup> (2) to avert a serious threat to health or safety;<sup>12</sup> and (3) for certain law enforcement purposes.<sup>13</sup> Moreover, if a state or local law *requires* the reporting of overdose information to ODMAP or a similar database, HIPAA permits the disclosure (Conclusion 3). A detailed discussion of how these HIPAA provisions apply to ODMAP is beyond the scope of this document, but can be found [here](#).<sup>14</sup>

### Conclusion 4 “Catch-All” Analysis

Should a particular EMS entity or jurisdiction decide not to rely on Conclusions 1, 2, or 3, there are other ways in which overdose incident information can be submitted to ODMAP (Conclusion 4). One potential option is for local law enforcement to respond to some (or maybe even all) overdose incidents, even when another first responder entity is also present. Law enforcement is not a HIPAA-covered entity. Therefore, if law enforcement obtains overdose information directly from observation and reports it to ODMAP, HIPAA is not implicated, although state laws may be more restrictive.<sup>15</sup> Anecdotal reports in jurisdictions where this method has been tried indicate that lack of resources can be a major hurdle, so programs may only wish to attempt this as a last resort.

Another option is to follow the method used in Connecticut. There, EMS responders report overdose incident information to the state Poison Control Center (PCC) pursuant to state law. Under the law, EMS responders must report certain patient information for each suspected opioid overdose case to the Department of Public Health, “in a form and manner prescribed by the Commissioner.”<sup>16</sup> The subsequently prescribed “form and manner” requires EMS agencies to report to PCC. PCC workers then record the information in their software and enter a portion of the data into ODMAP.<sup>17</sup> A similar law could work in other states as well.



## Definitions

**HIPAA-Covered Entity [45 C.F.R. § 160.103]**—Health plan, health care clearinghouse, or health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA.

**Individually Identifiable Health Information [45 C.F.R. § 160.103]**—Health information that:

- identifies the individual, or provides a reasonable basis to identify the individual; and
- relates to (1) the individual's past, present, or future physical health or condition; (2) the provision of health care to the individual; or (3) the individual's past, present, or future payment for health care.

**National Map**—The data visualization area of ODMAP where overdose incident information is plotted on a nationwide electronic map. The area was called Level 2 prior to the release of ODMAP Version 4.0 in January 2021. Not all ODMAP users can access this area.

**Protected Health Information (PHI) [45 C.F.R. § 160.103]**—Subject to a few exceptions, PHI is individually identifiable health information that is maintained or transmitted in any form or media. In the context of HIPAA-protected information, PHI does not include information about a person deceased for more than 50 years.

<sup>1</sup> On the main ODMAP Web page, Washington/Baltimore HIDTA (W/B HIDTA), the agency that developed ODMAP, provides a list of state and local agencies across the United States that participate in ODMAP ("participating agencies"). There are numerous public and private EMS agencies listed. See <http://www.odmap.org/#agency>. For example, as of June 4, 2021, the ODMAP Web page identifies 90 participating agencies in Oklahoma. Of these, there are 21 EMS-only or fire/EMS rescue providers.

<sup>2</sup> 45 C.F.R. § 164.512(b), (f), (j) (2020).

<sup>3</sup> 45 C.F.R. § 164.512(a) (2020) (disclosure when "required by law"). A handful of states have such legislation. See FLA. STAT. ANN. § 401.253 (West 2021) (effective October 1, 2017); 210 Ill. COMP. STAT. ANN. 50/3.233 (West 2021) (effective August 9, 2019); MD. CODE ANN., HEALTH – GEN. § 13-3602 (West 2021) (effective July 1, 2018); W. VA. CODE ANN. § 16-5T-4 (West 2021) (effective June 3, 2019). In each case, the enacted legislation requires the reporting of overdose incident information, including the location of known or suspected overdoses, via ODMAP or a similar database application.

<sup>4</sup> The name and/or agency of the user reporting the information also is included in the report.

<sup>5</sup> The optional permissible categories of information include age of victim, gender of victim, suspected drug involved, additional drugs involved, if the victim was one of multiple victims, if the victim was taken to the hospital, if the incident involved a motor vehicle, and case number.

<sup>6</sup> See 45 C.F.R. § 164.514(b)(2)(i)(A)-(R) (2020). HIPAA regulations do not affirmatively delineate the identifiers that make health information personally identifiable and, thus, PHI. However, the cited regulation lists 18 identifiers that must be removed to turn personally identifiable health information into de-identified health information.

<sup>7</sup> Memorandum from Adam Snyder to Carolyn Quattrochi, "Emergency Medical Services Providers' Potential Use of HIDTA Overdose Detection Map; Compliance with HIPAA and the Maryland Confidentiality of Medical Records Act," October 19, 2017.

<sup>8</sup> Letter from Robert D. Cook to Joseph Y. Shenkar, March 5, 2019, [https://www.scemsportal.org/media/forms/upload/form\\_af9f03e4-11e7-4522-af4e-96cbad874c76/d87a3719-dff5-499f-9a3e-06d112ec91f4/odmap\\_final-opinion-3-5-2019.pdf](https://www.scemsportal.org/media/forms/upload/form_af9f03e4-11e7-4522-af4e-96cbad874c76/d87a3719-dff5-499f-9a3e-06d112ec91f4/odmap_final-opinion-3-5-2019.pdf).

<sup>9</sup> Letter from Aaron D. Ford to Richard Whitley, June 25, 2019, [https://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/AGO\\_2019-03.pdf](https://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/AGO_2019-03.pdf).

<sup>10</sup> 45 C.F.R. § 164.512(a)-(l) (2020). These activities are termed "uses and disclosures for which an authorization or opportunity to agree or object is not required."

<sup>11</sup> 45 C.F.R. § 164.512(b) (2020).

<sup>12</sup> 45 C.F.R. § 164.512(j) (2020).

<sup>13</sup> 45 C.F.R. § 164.512(f) (2020).

<sup>14</sup> Legislative Analysis and Public Policy Association, "ODMAP and Protected Health Information Under HIPAA: Guidance Document," March 2020, <http://legislativeanalysis.org/wp-content/uploads/2020/03/ODMAP-Data-Privacy-Guidance.pdf>.

<sup>15</sup> If law enforcement agencies learn of the overdose indirectly, such as via a permitted disclosure under HIPAA, there may be limits on their ability to disclose that information to ODMAP; however, that exception to the general rule is unlikely to apply in these circumstances.

<sup>16</sup> CONN. GEN. STAT. ANN. § 19a-127q (2020).

<sup>17</sup> Connecticut Department of Public Health, "Statewide Opioid Reporting Directive (SWORD) 2020 Annual Report," August 2020, at 5, <https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/ems/pdf/SWORD/SWORD-newsletters/2020/20200812-SWORD-Annual-ReportFINAL.pdf>.