

Legal Considerations for Providers: COVID-19 Testing and Vaccination

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Providers are permitted to take precautions

- Appropriate – and legal – precautions include (but are not limited to):
 - Mandatory masking
 - Temperature checks
 - Symptom checks
 - Collection of vaccine status
 - Rapid testing

- **Best practice:** provide a reasonable rationale for all precautions.
 - E.g. We ask that you wear a mask because there are people in our office who may not be vaccinated and we are trying to protect them.

- HIPAA governs the use and disclosure of protected health information – which could include an individual’s vaccination status.

- **However:**
 - HIPAA only applies to “covered entities” including health plans, health care clearinghouses, and healthcare providers. **It does not apply to employers acting as employers.**
 - Even if HIPAA applies, there may be an exception:
 - Where information is shared/volunteered by the patient
 - Where a patient authorizes the information be shared
 - Where such information is necessary to treat the patient or to treat a different patient
 - For disclosure to public health authorities
 - To family, friends, or others involved in an individual’s care

✓ **HIPAA generally does not apply to and/or restrict:**

- Vaccination status shared by patient
- Sharing of vaccine status for “public health activities”
- Sharing of vaccine status with other covered entities or business associates for treatment, payment, or healthcare operations

✗ **Precautions:**

- Assume all information, even if HIPAA exempt, is still confidential (**state laws** could apply)
- Patient authorization would be needed to share vaccination status with a third party in most instances (for example, patient’s employer)
- Consider other Federal laws, including the ADA when making decisions