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