

# OCR Issues Guidance on HIPAA Privacy Rule Obligations for Same-Sex Couples

The U.S. Department of Health and Human Services Office for Civil Rights



(OCR) recently issued written guidance on the obligations health care providers face under HIPAA to couples in legally valid same-sex marriages. **United States v. Windsor Ruling** As previously drafted, Section 3 of the Defense of Marriage Act (DOMA) defined marriage (for federal benefits purposes) as “a legal union between one man and one woman.” However, the United States Supreme Court issued a landmark decision in 2013 that declared that definition unconstitutional. As a result of the ruling, the terms “spouse” and “marriage” are now covered under the definition of “family member” in the HIPAA privacy rule to cover both opposite-sex and same-sex unions. This ruling recognizes the role that family members play in a patient’s health care, regardless of sexual orientation. **OCR Guidance** The OCR’s written guidance, published on September 17<sup>th</sup>, 2014, clarifies that the terms “spouse” and “marriage” apply to individuals who are legally married, regardless of whether they live in a jurisdiction that recognizes their marriage. The guidance highlights two provisions of HIPAA where these changes will be most relevant:

- *Section 164.510(b)*: outlines the circumstances in which covered entities are permitted to disclose an individual’s protected health information with family members
- *Section 164.502(a)(5)(i)*: the genetic information disclosure provision that regulates which health plans can use or disclose genetic information for underwriting purposes

**What It Means for Your Practice** The recently written guidance clarifies how the Windsor decision affects privacy rule obligations. It clarifies that health care providers may share patients’ sensitive data with same-sex spouses and may not use those spouses’ genetic information for underwriting purposes. OCR will issue additional clarifications in the coming months and Seigfreid Bingham will stay abreast of changes to the privacy rule. Contact one of our Health Care Attorneys today for guidance and legal counsel to ensure you are compliant with the changing federal health privacy law. Image: Thinkstock/Thinkstock Images (86482614) \*This article is very general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.