

## **Can churches ask their attendees if they have been vaccinated?**

**Summary: Most likely, yes.** Although I am not aware of any court decisions based on this question, my research suggests that HIPPA would not be used (and could not be used) to punish most churches that ask for vaccination status for the purpose of protecting church attendees. HIPPA requires that the disclosure be minimized to the extent possible to protect private health information (PHI). Although not falling directly under the public health exception, it would likely still be permitted under what a court would see as the public policy behind HIPPA.

HIPPA only protects information maintained by certain entities: health care providers and employers (which must protect private health care information in their possession). Churches (other than the context of churches as employers who maintain health-related records on employees) are not what are described as “covered entities.” Covered entities under HIPAA include health plans, healthcare providers, and healthcare clearinghouses. Health plans include health insurance companies, health maintenance organizations, government programs that pay for healthcare (Medicare for example), and military and veterans’ health programs. Healthcare clearinghouses are organizations that process nonstandard health information and convert data.

Even employers and government entities are subject to an exemption for efforts undertaken in good faith for the protection of the public (“the public health exception”).

The Office for Civil Rights (OCR), the enforcement arm of the Department of Health and Human Services, has issued a variety of notices that they will waive enforcement of and penalties for a variety of good faith efforts pertaining to vaccines which result in disclosure. Local health departments have been demanding information about Covid-19 health status throughout the pandemic under this exception, as well as the public health exception. It is unlikely for the OCR to reverse course to bring enforcement actions against churches for asking if their members are vaccinated. Frankly, such an action would in most cases be beyond the enforcement jurisdiction of the OCR.

Finally, it is doubtful that HIPPA even applies to this situation. If a congregant voluntarily discloses their vaccination status (as opposed to being compelled to do so), there is no issue of privacy. Patients can choose to disclose the information voluntarily. I would caution that any written or other recording of this information should be stored and protected in the same way as other health information.

John Pawloski, J.D., M.Div.  
[JPawloski@MSN.com](mailto:JPawloski@MSN.com)