



**LEGAL BULLETIN #2003 - 06
OFFICE OF LEGAL AFFAIRS**

**Health Insurance Portability and
Accountability Act of 1996
Part II**



Legal Flag: As of 14 April 2003, the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 have taken effect.

This LEGAL BULLETIN discusses and clarifies issues arising from the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, hereinafter "HIPAA."

**Release of Protected Health Information to
Members of the Media under HIPAA**

Department policy concerning the release of information to the news media is covered under General Order 02-07 entitled "Media Guidelines."

It is the policy of the Chicago Police Department to cooperate impartially with the news media in providing information on crime and police-related matters while simultaneously conforming to the protections guaranteed to individuals under the United States Constitution.

Nevertheless, members will not release identifying information regarding witnesses or cooperating individuals, sex-crime victims, juveniles or the content of any confession, statement or admission.

Beyond the rights provided for in the Constitution, further restrictions are placed on the release of protected health information in order to ensure compliance with the privacy provisions of HIPAA.

According to the City of Chicago's HIPAA policy, a member of the Police Department may release Protected Health Information (PHI) about an individual to a member of the media if:

1. The information was not obtained from a City of Chicago paramedic, firefighter, emergency dispatcher, or health department employee; or
2. The purpose of the release is to get help from the public:
 - a) To identify or locate a suspect or fugitive.
 - b) To identify or locate a material witness.
 - c) To identify or locate a missing person.

If the release is for a purpose listed in subparagraphs (a) through (c) above, the information may be released. However, the release of any information related to the individual's DNA or DNA analysis; dental records; or typing, samples or analysis of body fluids (other than ABO blood type and RH factor) or tissue is prohibited.

If the information was obtained from a City of Chicago paramedic, firefighter, emergency dispatcher or employee of the health department and the purpose of the release is **not** one of the above-stated purposes, the information may **not** be released to a member of the media.

Prior to releasing any information to the news media, the Department member should require the member of the media to identify themselves with their news media credentials.

Any questions regarding the release of information as outlined in G.O. 02-07, or under the additional restrictions under HIPAA, should be referred to the Office of News Affairs at 745-6110 (Bell) or 0541 (Pax).

HIPAA and Law Enforcement Request for Protected Health Information (PHI)

When a member of the Chicago Police Department is requesting the disclosure of a patient's protected health information, the below-stated information should be articulated:

1. That he/she is a law enforcement official employed by the City of Chicago Police Department;
2. That he/she is conducting an investigation and is making an administrative request for the protected health information of a patient under 45 C.F.R. § 164.512 (f).

The officer should provide as much information on the specific patient as possible, including name, date of birth and social security number. Furthermore, the officer must attest to the fact that:

- (1) The information sought is relevant and material to a legitimate law enforcement inquiry, including alleged incidents of child abuse, child neglect, or domestic violence;
- (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
- (3) The de-identified information (*i.e.*, information with personal identifiers removed) cannot be reasonably used.

All of the above-stated information should be articulated clearly to the person from whom the protected health information is requested.

Requesting Protected Health Information in Situations of Child Abuse

In situations of suspected child abuse, an officer

should first attempt to obtain the protected health information under the law enforcement exceptions just discussed under 45 C.F.R. § 164.512 (f).

However, an officer may also request the disclosure of protected health information under 45 C.F.R. § 164.512(a). This allows for the disclosure as required by Illinois law under 325 ILCS 5/11.1(a)(2) entitled "Abused and Neglected Child Reporting Act." According to this provision, access is allowed to "[a] law enforcement agency investigating known or suspected child abuse or neglect, known or suspected involvement in child pornography, known or suspected criminal sexual assault..."

Prisoner with Communicable Disease or Infection

Under 45 C.F.R. § 164.512 (k)(5), protected health information may be disclosed to a law enforcement official having lawful custody in certain situations. In all situations wherein an arresting officer is informed that the prisoner has a communicable disease or infection, the officer should write the warning "Universal precautions should be used when handling this prisoner" on the goldenrod (transportation) copy of the arrest report.

Since the goldenrod (transportation) copy stays with the prisoner at all times, the protected health information is not unnecessarily disseminated. Moreover, all officers who will come in contact with the prisoner are informed that universal precautions should be taken when interacting with the prisoner.

Denial of Request for Protected Health Information

Since the privacy provisions of HIPAA have only been in place since 14 April 2003, there will be situations when Department members and health-care providers will have conflicting interpretations of the HIPAA provisions. In these situations, Department members will follow the procedures in S.O. 81-26 "Liaison with Hospitals, Detoxification Facilities and Mental Health Facilities." The officer should notify his/her immediate supervisor and submit a detailed To-From-Subject Report to the Director of Strategic Services Division.

Conclusion

Lastly, any questions regarding the privacy provisions of HIPAA should be directed to the Office of Legal Affairs at 745-6115 (Bell) or 0245

(Pax).

This Bulletin was prepared by Legal Officer Ryan Nelligan, an attorney with the Office of Legal Affairs.

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