

Policy: Availability of Patient Data to Law Enforcement Investigators

Purpose: To provide for the timely and efficient of patient data to law enforcement investigators during and in the aftermath of significant criminal or terrorist attacks and active shooter incidents.

Definitions.

- **HIPAA.** The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of Health and Human Services to publicize standards for the electronic exchange, privacy and security of health information. Collectively these are known as the Administrative Simplification provisions.

The Department of Health and Human Services subsequently published privacy regulations governing individually identifiable health information. Known as the Privacy Rule, this regulation was published on December 28, 2000. Health and Human Services published modifications to the Privacy Rule on August 14, 2002. A text combining the final regulation and the modifications can be found at 45 CFR Part 160 and Part 164, Subparts A and E.

- **Protected Health Information (PHI).** The Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected health information (PHI)."

"Individually identifiable health information" is information, including demographic data, that relates to:

- the individual's past, present or future physical or mental health or condition,
- the provision of health care to the individual, or
- the past, present, or future payment for the provision of health care to the individual,
- and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

Authorities.

- A. Title 42, The Public and Welfare § 10607 (b), CFR 164.5,
- B. 45 CFR 164.512 (f)(1), the Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- C. The Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

Applicability.

- A. This policy applies to all HIPAA entities (e.g., hospitals, medical clinics, private medical facilities and offices) within the geographical area of the South East Texas Regional Planning Commission.

Support Components.

In accordance with Title 42, The Public and Welfare § 10607 (b), CFR 164.5, hospital and medical clinic administrators will make patient data available to law enforcement investigators during and in the aftermath of possible criminal or terrorist attacks and active shooter incidents.

Release of this information is authorized so as to:

- Provide victim access to information
- Enable legal compliance
- Expedite services and benefits for victims of crimes to facilitate recovery
- Provide timely, relevant and material information to appropriate law enforcement officials in the ongoing conduct of criminal and counterterrorism investigations

As permitted by 45 CFR 164.512 (f)(1), the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, Public Law 104-191, provides for the following exceptions to patient privacy by which the HIPAA entity may disclose Protected Health Information (PHI) to law enforcement authorities/investigators:

- The individual has signed a HIPAA authorization to that effect
- To respond to a request for PHI to assist in identifying and/or locating a missing person. This information is typically limited to basic demographics and health information relevant and material to the investigation. This information can be provided in paper and/or electronic format and will include:
 - Name
 - Address
 - Phone Numbers
 - Email Address(es)
 - Identification of Next of Kin or Guardian (of minors), if known

- Contact information (names, address, telephone numbers, and email addresses) for Next of Kin or Guardian
- To respond to a request for PHI about a crime victim and the victim agrees, or (in some circumstances), if the victim is unable to agree
- To respond to a subpoena or administrative request from a law enforcement official that includes a written statement that the information requested is relevant and material to the investigation

Typically, HIPAA entities are asked to provide basic demographic information for purposes of contact. Medical information such as diagnosis or treatments are not necessary for crisis intervention.

Release of this information to credentialed law enforcement officials will be made in a timely manner. Medical facilities are asked to designate an appropriate individual on-site to: assist in the identification of victims; develop a victims list of those admitted to the hospital and/or transferred to alternate medical facilities; assist in the collection of ante-mortem information; and to provide periodic updates to law enforcement investigators as the incident progresses and victim information changes or is updated.

Policy Review.

This policy will be reviewed by the *insert name and title* in January 2020.