



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



EFFECTIVE DATE: APRIL 28, 2003	REVISED DATE: JUNE 26, 2009	NO. PAGES: 1 of 7	NUMBER: 1.1.29
SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)			
ASSOCIATED MANUAL:		RELATED ORDERS:	
CHIEF OF POLICE: <p style="text-align: center;"><i>Michael McGrath, Chief</i></p>			

Changes/Additions are in Italics

PURPOSE: To establish guidelines for compliance with the HIPAA of 1996, and establish disciplinary action for violations and non-compliance with the privacy and disclosure mandates required of the City of Cleveland.

POLICY: The Division shall comply with the HIPAA, which is designed to protect individually identifiable health information that is transmitted or maintained in any form or medium.

DEFINITIONS:

Protected Health Information (PHI): Includes individually identifiable health information that is transmitted or maintained in any form or medium, including electronic, oral, or written. PHI does not include employment records held by a covered entity in its capacity as an employer.

Individually identifiable health information: Information that is created or received by the covered entity that relates to past, present or future physical or mental health or condition of an individual; or the rendering of health care to an individual; or the present or future payment for healthcare rendered to a person.

PROCEDURES:

- I. Administrative Requirements.
 - A. The city has designated the Officer in Charge of the Personnel Section as the privacy official/contact person, responsible to:
 - 1. Develop and implement these policies and procedures.

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2. Receive complaints under HIPAA and provide information about matters covered by the notice requirements contained within 45 Code of Federal Regulations (CFR) Part 164.520.
3. Train all members of the workforce on the policies and procedures with respect to the PHI covered by the Act.
4. Mitigate, to the extent possible, any harmful effect that is known to the City of Cleveland of a use or disclosure of PHI in violation of these guidelines or the requirements of the Act.
5. Document sanctions/discipline resulting from violations of or non-compliance with these policies.
6. Comply with all requirements of 45 CFR Part 164.530.

B. The Medical Unit Coordinator is the designated privacy official/contact person for the Safety Medical Unit under the guidance of the Medical Director.

II. Disciplinary Guidelines.

A. Disciplining an employee who violates these guidelines (or any of the requirements of HIPAA) regarding the use and disclosure of PHI is necessary for order and efficiency to prevail in the work place.

1. Intentional misuse or disclosure of PHI: First offense – up to suspension pending discharge.
2. Negligent misuse or disclosure of PHI:
 - First offense - Verbal instruction and cautioning.
 - Second offense - Written reprimand to personnel file.
 - Third offense - Five day suspension without pay.
 - Fourth offense - Ten day suspension without pay.
 - Fifth offense - Suspension pending discharge.
3. Accidental or inadvertent misuse or disclosure of PHI:

- First offense - Verbal instruction and cautioning.
- Second offense - Written reprimand to personnel file.
- Third offense - Five day suspension without pay.
- Fourth offense - Ten day suspension without pay.
- Fifth offense - Suspension pending discharge.

4. Threatening, intimidating, retaliating, coercing or discriminating against any individual for exercising rights established under the Act or against others for testifying, assisting or participating in an investigation, compliance review, proceeding or hearing: First offense - up to suspension pending discharge.

- B. The City of Cleveland may not require individuals to waive their rights under 45 CFR Part 160.306 of the Act as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

III. *Law Enforcement Access to Protected Health Information (PHI): HIPAA regulations provide for law enforcement access to Protected Health Information under several circumstances. If the information sought from a Covered Entity is covered under one of the following sets of circumstances, then generally the information will be available.*

A. *Pursuant to Law §164.512(a) and §164.512(c): If the PHI sought is in regards to, for example, gunshot wounds, child abuse or neglect, or domestic abuse as it relates to what is necessary for a law enforcement investigation then it is allowed to be supplied to a law enforcement officer.*

B. *Pursuant to Court Order, Subpoena, or Administrative Request §164.512(E): The PHI is allowed to be supplied to a law enforcement officer if it is the result of:*

1. *A court order or court-ordered warrant*
2. *A subpoena or summons issued by a judicial officer*
3. *A grand jury subpoena, or an administrative request, including an administrative subpoena or summons, a civil or authorized investigative demand, or similar process under state or federal law?*

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- C. *In addition to the above, the information sought in those circumstances must also be:*
1. *Relevant and material to a legitimate law enforcement inquiry.*
 2. *Specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.*
 3. *For a purpose for which de-identified information could not be reasonably used.*
- D. *PHI under this section is the minimum information necessary for a law enforcement investigation.*
- E. *Identification and Location Purposes §164.512(f)(2): If the PHI sought in response to a law enforcement officer's official request for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, the Covered Entity may disclose only the following information:*
- *Name and Address*
 - *Date and Place of Birth*
 - *Social Security Number*
 - *ABO blood type and rh factor*
 - *Type of injury*
 - *Date and time of treatment*
 - *Date and time of death, if applicable*
 - *A description of distinguishing characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or mustache), scars, and tattoos*
- F. *Note that PHI relating to DNA or DNA analysis, dental records, typing, and samples or analysis of body fluids or tissue (except as allowed above in ABO and rh factor) is specifically excluded under this section.*
- IV. *Identification and Location of Victims §164.512(f)(3) covers the PHI sought in response to a law enforcement officer's official request for such information about an individual who is, or is suspected to be, a victim of a crime.*
- A. *PHI may be provided if the individual agrees to the disclosure.*

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- B. *In the event of the individual's incapacity or other emergency circumstance, the information may be provided if:*
- 1. The law enforcement officer represents that the information needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim.*
 - 2. The law enforcement officer represents that immediate law enforcement activity that depends on the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.*
 - 3. The disclosure is in the best interests of the individual as determined by the Covered Entity, in the exercise of professional judgment.*
- C. *PHI under this section is the minimum information necessary for a law enforcement investigation.*
- V. *Information Relating to a Death §164.512(f)(4): PHI may be supplied by a Covered Entity for the purpose of alerting or reporting to a law enforcement officer the suspicion that a death may have resulted from criminal conduct. The Covered Entity determines the nature and extent of PHI that they will provide for law enforcement to conduct a criminal investigation.*
- VI. *Suspected Crime on Premises of Covered Entity §164.512(f)(5): PHI may be released if the Covered Entity believes in good faith that the PHI is evidence of a crime that may have occurred on the premises of the Covered Entity. The Covered Entity determines the nature and extent of the information which will be disclosed for the purposes of a law enforcement investigation.*
- VII. *Information in Response to Medical Emergency §164.512(f)(6): PHI may be provided by a Covered Entity in response to a medical emergency off the premises of the health care provider or Covered Entity. The health care provider may provide the following information:*
- Commission and nature of crime*
 - Location of such crime or of the victim(s) of such crime*
 - Identity, description, and location of the perpetrator*

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- VIII. *Information to Avert a Serious Threat to Health Or Safety §164.512(J): PHI may be released if the PHI is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is law enforcement reasonably able to prevent or lessen the threat, including the target of the threat; or The PHI is necessary for law enforcement authorities to identify or apprehend an individual because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim or where it appears from all circumstances that the individual has escaped from a correctional institution or from lawful custody.*
- IX. *Information to Correctional or Custodial Facility §164.512(k)(5): For a person who is in lawful custody at a correctional or custodial facility, the PHI may be released for the purposes of:*
- *Provision of health care to the individual.*
 - *The health and safety of other inmates.*
 - *The health and safety of officers or other employees of the correctional or custodial facility, or persons transporting the individual.*
 - *Other activities necessary to the maintenance of safety, security and good order of such facilities.*
 - *PHI received by an officer under these circumstances shall be transported with the individual and immediately turned over to the staff of the custodial facility (jail) upon arrival. Generally speaking, the PHI will pertain to the care of the individual while in the facilities custody, so there should seldom be a need for the Division to maintain a copy of such information.*
- X. *Information from Other than a Covered Entity: Information from victims, relatives, suspects, witnesses, and others.*
- A. *Information that may otherwise have been PHI, but has been given to a Division member in the course of their duties or investigations, is not covered by HIPAA regulations, only if it is obtained from a source other than a Covered Entity.*
1. *When PHI obtained under this section is relayed or reported by a Division member to representatives of a Covered Entity, the information is protected under HIPAA regulations only as it appears in the Covered Entity records.*

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2. *Information obtained in questioning of victims, relatives, suspects, witnesses, and others.*
3. *Information that may otherwise have been PHI, but has been given to a Division member in the course of questioning persons during a criminal investigation, is not covered by HIPAA regulations if it is obtained from a source other than a Covered Entity.*

B. *When PHI obtained under this section is relayed or reported by a Division member to representatives of a Covered Entity, the information is protected under HIPAA regulations only as it appears in the Covered Entity records.*

XI. *Information Obtained by Employee Personal Observations: Information that may otherwise have been PHI, but is based on the personal observations of the member, is not covered by HIPAA regulations. This exclusion does not apply if the member is summarizing or basing his or her personal observations on the actions, treatment, or records of a Covered Entity.*

An officer investigating a traffic accident may make observations of a victim's injuries that are readily evident to a layman. An arm or leg may appear as contorted into unusual angles, leading even a layman to conclude that the limb is broken. The member may report that the victim had a fractured limb, and such statement is not PHI. Observations of cuts and bleeding, bruises, or even the victim's verbal reports of pain are things that may be reported by the member, and are not subject to HIPAA regulations.

XII. *Any questions regarding HIPAA shall be directed to the Officer-in-Charge of the Medical Unit.*