

Health Insurance Portability and Accountability Act of 1996 (HIPAA) Law Enforcement Issues

With the implementation of the HIPAA Privacy Rule Pre-hospital EMS providers are limited in the amount of information that they can release to law enforcement agencies. There are specific Federal requirements to the release of Protected Health Information (PHI) to law enforcement officials. Under the Privacy Rule, ambulance services and other covered entities may disclose PHI for a law enforcement purpose to a law enforcement official only when several conditions are met. These include:

1. Disclosures pursuant to laws that require the reporting of certain types of conditions, like firearm injuries, burns, child or elder neglect and other disclosures required of pre-hospital providers by Washington State law.
2. Disclosures pursuant to a court-ordered warrant or a subpoena or summons issued by a judicial officer. (note: this is different than a subpoena issued by an attorney or a party in litigation)
3. Disclosures as ordered by a grand jury subpoena.
4. Disclosure as ordered by an administrative subpoena or summons by an authorized agency if the information sought is relevant and material to a legitimate law enforcement inquiry, and provided that the request is specific and limited in scope.
5. Disclosure to a law enforcement official for purpose of identifying or locating a suspect, fugitive, material witness or missing person. However, the only PHI that may be released for such purpose includes name, address, date and place of birth, social security number, blood type, type of injury, date and time of treatment, date and time of death, if applicable, and description of distinguishing physical characteristics such as weight, hair color, eye color, gender, presence or absence of facial hair, scars and tattoos.

Note: Absent of a subpoena or other legal process, HIPAA Privacy Rule *does not permit* disclosure of PHI to law enforcement officers for purpose of assisting generally in their investigation or building a case against the suspect.

6. Disclosures regarding victims of a crime. Pre-hospital EMS providers may disclose PHI about a crime victim to a law enforcement official *if* the affected individual agrees to the disclosure. However, PHI may be disclosed to law enforcement without the individual's agreement if the agreement cannot be obtained due to the individual's incapacity or other emergency, and if the law enforcement officer needs the information to determine whether a violation of the law has occurred. Law enforcement must assure the pre-hospital provider that the information will not be used against the victim. Law enforcement also must represent that waiting until the patient is capable of agreeing to the disclosure would compromise an immediate law enforcement activity.
7. Pre-hospital providers and other covered entities may disclose PHI to a coroner or medical examiner for the purpose of identifying the deceased person, determine a cause of death or other duties authorized by law.
8. Pre-hospital providers and other covered entities may disclose PHI if they believe in good faith that disclosure is necessary to prevent or lessen a serious and imminent threat to health or safety of a person or the public; or is necessary for law enforcement authorities to identify or apprehend a suspect because the individual made a statement admitting participation in a violent crime, or where it appears that the individual has escaped from a correction facility.