

EMERGENCY MEDICAL SERVICES AUTHORITY

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DATE: February 26, 2014

TO: All California Local EMS Agencies

FROM: Howard Backer, M.D., MPH, FACEP
Director

SUBJECT: Local EMS Agency HIPAA Responsibilities

A handwritten signature in black ink, appearing to read 'Howard Backer', written over the printed name and title.

The purpose of this memorandum is to provide statewide guidance to all Local EMS Agencies (LEMSA) regarding protected health information under the Health Insurance Portability and Accountability Act (HIPAA). Both LEMSAs and EMSA have the authority to collect and disclose personal health information (PHI) for the oversight of a health care system.

Health and Safety Code State and local requirements

LEMSA functions, as outlined in California Health and Safety Code, Division 2.5, Sections 1797 et seq., include EMS interagency coordination and medical control, public health surveillance activities, EMS data and quality of care, regulation and enforcement, trauma registry reporting, and other activities related to the oversight of the prehospital health care system in California. It is the opinion of the EMS Authority that these functions are primarily for the benefit of the counties they serve not the covered entities who are obligated by statute to provide the necessary patient data. LEMSAs are required to collect information from both EMS providers and hospitals to comply with their statutory requirements.

The California Health and Safety statutes allow for this oversight activity, and the LEMSAs also act as an extension of the State EMS Authority in those regional system oversight responsibilities. The further transmission of the information into a database by the State of California for the purpose of statewide system oversight activities is consistent with the directives of Division 2.5. Pursuant to the H&S Code, the EMS Authority (EMSA) is required to develop planning and implementation guidelines for local emergency medical services (EMS) systems which address data collection and evaluation (*H&S Code § 1797.103(f)*).

In addition, EMSA is required to use regional and local information to assess EMS systems in order to determine the need for additional EMS; coordinate EMS; and evaluate the effectiveness of EMS (*H&S Code § 1797.102*). EMSA is required to report to the Legislature on the effectiveness of the EMS systems, including systems impact evaluations on death and disability (*H&S Code § 1797.121*). In order to comply with the above requirements, EMSA must collect and analyze LEMSA data.

Health Insurance Portability and Accountability Act (HIPAA)

Pursuant to Title 45, Code of Federal Regulations (CFR), § 164.512(d), a covered entity has the authority to collect and disclose personal health information (PHI) for the oversight of a health care system.

45 CFR § 164.512(d)

“A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law...including...oversight of (i) The health care system;...(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards...”

Covered entity is defined as a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 CFR, Subchapter C (CFR § 160.103).

Oversight agency is defined as an entity who is authorized by law to oversee a health care system (45 CFR § 164.501).

Since LEMSAs and EMSA are responsible for the oversight of EMS systems as part of a two-tiered regulatory system, which is a part of California’s health care system, both LEMSAs and EMSA are considered health oversight agencies.

Local EMS Agencies (LEMSAs) and EMSA are not a covered entity under HIPAA because of their oversight responsibilities, consistent with other similar programs. The citation referencing the exemption from business associate status for an oversight organization can be found in HIPAA 45 CFR 164.512 (d) of the Health Insurance Portability and Accountability Act of 1996, (“HIPAA”), 42 USC 1320d et seq. Therefore, “Business Associate”, or “Trading Partner” agreements are not required since LEMSAs and EMSA are not “Covered Entities” when carrying out the role of a health oversight agency, as defined in HIPAA privacy regulation 45 CFR 160.103.

A business associate is defined as “one that performs certain functions or activities on behalf of or provides services to a covered entity, that involve the use of protected health information” (45 CFR § 160.103). The HIPAA privacy rule lists most of the services a business associate would perform for the covered entity as: claims processing or administration, utilization review, quality assurance, billing, management, legal services, accounting, consulting, data aggregation, accreditation, and financial services. Under normal circumstances, the LEMSAs do not perform these activities.

California Civil Code

The Confidentiality of Medical Information Act (CMIA) permits disclosure of medical information when specifically authorized by law (Civil Code § 56.10(c)(14)). Since HIPAA expressly authorizes the disclosure of protected health information to health oversight agencies, that disclosure is specifically authorized by law and meets this exception in the CMIA.

Summary

In utilizing the available information cited above, it is clear that EMS Authority and LEMSA oversight activities do not give rise to a business associate relationship, and patient health care information may be disclosed by a covered entity to a LEMSA functioning as a trading partner under HIPAA regulations. However, if other activities occur separately from these oversight responsibilities, a business associate agreement may be appropriate.

EMS data received from the LEMSAs will be maintained by an entity that EMSA contracts with for operation and maintenance of its State level data system. This entity is one of the LEMSAs in the State and they are prohibited from accessing or using the EMS data except to the extent necessary to maintain the database on behalf of EMSA. The further transmission of the information into a database by the State of California for the purpose of statewide system oversight is consistent with the directives of H&S Code, Division 2.5, § 1797 et seq.

The EMS Authority has consulted with the California Office of Health Information Integrity (CalOHII) in providing this statewide guidance. We recommend that all LEMSAs proceed accordingly and consult their respective counsels for further direction if necessary.

If you have any questions, please contact Tom McGinnis, EMS Systems Division Chief at (916) 431-3695.