

<b>STANDARD OPERATING PROCEDURE</b>	
<b>SUBJECT:</b>	EMS BILLING
<b>TOPIC:</b>	HIPAA COORDINATION WITH LAW ENFORCEMENT
<b>Reference Number:</b>	EMS- 06-006
<b>Effective Date:</b>	July 1, 2006
<b>Date Last Reviewed:</b>	
<b>Signature of Approval:</b>	Frank E. Wright, Fire & Rescue Chief

1.01 **PURPOSE:**

To maintain patient confidentiality as required by applicable state, federal, and local laws and to establish a consistent process when there is a request for patient information from law enforcement authorities. When using, disclosing or requesting protected health information (PHI), every reasonable effort shall be utilized to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

1.02 **GENERAL:**

To stay within the guidelines of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 to protect healthcare information obtained. To safeguard the use of the PHI.

1.03 **RESPONSIBILITY:**

It is the responsibility of the Privacy Officer and Alternate Privacy Officer, to thoroughly train and familiarize WFRD members regarding HIPAA policies and procedures.

1.04 **POLICY:**

It is the policy of WFRD to ensure compliance with the HIPAA.

1.05 **PROCEDURE:**

Law Enforcement authorities within the City of Winchester, and or the County, State and Federal Law Enforcement Authorities are not covered entities for the purposes of HIPAA compliance. Therefore, shall abide by use and disclosure restrictions as provided by law.

- **Treatment, Payment, and Health Care Operations:**

1. In-station review of PHI with law enforcement and other non-health care professionals present is limited to confidential Critical Incident Stress Management Sessions for those personnel and law enforcement officers that had a common experience with a patient or event.
2. Law Enforcement custodial situations may require limited disclosure of PHI for the purposes of providing treatment to the inmate and the protection of the health and safety of the officer, deputy, or others.
3. Communications dispatch of PHI to Emergency Communications Center call-takers is permissible if such disclosure necessary for the treatment of a patient within an emergency environment.

- **Incidental Disclosure:**

While on-scene, law enforcement personnel may overhear verbal communication of PHI during emergency treatment operations. Verbal disclosures to law enforcement personnel and bystanders should be minimized in accordance with operational protocols.

- **Mandatory Disclosure Laws:**

1. Department personnel shall disclose PHI to law enforcement pursuant to the mandatory disclosure laws of the Commonwealth related to wounds and physical injuries sustained by weapons such as guns and knives.
2. Department personnel shall disclose PHI to fire investigation officers pursuant to the mandatory disclosure laws of the Commonwealth related to wounds sustained by explosives.
3. Department personnel shall disclose PHI to designated protective services personnel pursuant to the mandatory disclosure laws of the Commonwealth related to victims of child or adult abuse, neglect, and domestic violence.
  - a. The victim must agree to the disclosure.
  - b. Exceptions to disclosures are valid if the disclosure could put the patient or an individual in serious harm or if the disclosure would be given to the suspected perpetrator.

- **Verbal Disclosure Permissions from the Patient:**
  1. Disaster relief notification situations permit department personnel to disclose information to law enforcement provided the patient has had an opportunity to verbally agree or object to the disclosure of PHI.
  2. Emergency circumstances permit department personnel to disclose information to law enforcement provided the patient has had an opportunity to verbally agree or object to the disclosure of PHI
  
- **Court Orders and Warrants:**
  1. Department personnel may disclose PHI to law enforcement in compliance with and limited by the relevant requirements of a:
    - a. Court order
    - b. Court-ordered warrant
    - c. Subpoena
    - d. Summons issued by a judicial officer
    - e. Administrative subpoena or authorized investigative demand provided
      - The information sought is relevant and material to a legitimate law enforcement inquiry.
      - The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.
      - Unidentified (without name, SSN, address, etc.) information could not reasonably be used.
  
- **Fraud and Abuse Detection within Health Care Industry**

Law enforcement may be participating in investigations of fraud and abuse within the health care industry. PHI may be disclosed for these fraud and abuse investigations.
  
- **Permissive disclosures that are not mandated by law**
  1. The disclosure of PHI to law enforcement for these purposes requires department personnel to:
    - a. Obtain patient authorization.
    - b. Consider if a law enforcement officer with knowledge of the PHI can prevent or lessen a serious and imminent threat to a person or the public.
    - c. Act in good faith, with the best professional judgment that the disclosure of such PHI will not harm the patient.

2. The following is a list of situations in which PHI may be shared with law enforcement:
  - a. To locate and identify a suspect, fugitive, material witness, or missing person the following limited information may be disclosed in response to a law enforcement official's verbal or written request.
    - Name, address, social security number, and date of birth
    - Type of injury
    - Time of treatment, date of treatment
    - Place of birth
    - ABO blood type, RH factor, date of death, time of death

A description of distinguishing physical characteristics also may be provided, such as:

- Height, weight, gender
- Race, eye color, hair color
- Facial hair, scars, tattoos

Information that can be disclosed based upon an official request:

- b. When the PHI is evidence of a crime that occurred on its premises.
- c. PHI may be disclosed if it constitutes potential evidence of criminal conduct on the property or against a member.
- d. Information about a victim of a crime, personnel may disclose PHI to determine a violation of law by a person other than the victim, when:
  - e. The individual (victim) agrees to the disclosure.
  - f. The individual is incapacitated or has other emergency circumstances.
  - **Permitted disclosure of PHI Provided that:**
    - g. The information will not be used against the victim.
    - h. Immediate disclosure is necessary to avoid materially or adversely affecting law enforcement activity.
    - i. The disclosure is in the best interests of the individual as determined by the professional judgment of the member.
    - j. Department personnel providing health care while on-duty or off-duty as a "Good Samaritan" provider can disclose PHI to alert police to a suspected

crime, the nature of the crime, and the identity, description or location of victim(s) and perpetrator(s).

- k. Patient is deceased and law enforcement personnel are handling notification of medical examiner, coroner, justice of the peace, or funeral director. Department personnel also may give PHI directly to medical examiners and coroners.
- l. Threat to health and safety. Department personnel may disclose (in good faith, ethical conduct, and consistent with applicable law) in order to avert serious threat to the health and safety of the person, a member, or the public PHI that is necessary for a law enforcement authority to identify or apprehend an individual:
  - Who has made of a statement of admission of violent crime that may have caused serious physical harm to a victim or not.
  - Who appears to be an escapee from correctional institution or other lawful custody.
  - Coordination with law enforcement-164.512 (J)(2):  
Disclosures in such situations is not permitted if the PHI was obtained in the course of treating the individual's propensity to commit the criminal conduct (counseling or therapy) or was obtained through a request by an individual for the above described treatment or a referral for such treatment
- m. National security and lawful intelligence of National Security Act.
- n. Protective services for the President and others under Secret Service protection.
- **Disclosures to law enforcement not permitted**
  1. Disclosure of PHI as obtained through deemed consent following communicable disease risk exposures shall be communicated to law enforcement through appropriate public health authorities.
  2. Law enforcement shall not be given identification information by their direct viewing of the patient care report.
  3. Law enforcement shall not be permitted to participate in in-station debrief and training sessions where PHI is discussed unless such session is designated a confidential CISM debriefing.

- **Law enforcement required information independent of PHI classification**

1. Information that is contained on a patient's driver's license and automotive insurance card is not PHI by itself and can be given to law enforcement for their reporting requirements.
2. It is permissible to give law enforcement information about a patient's hospital destination.
3. Unidentified information may be provided for statistical purposes.

1.06 **REVOCATION:**

1.07 **REVISION:**