

DISCLOSURE OF PROTECTED HEALTH INFORMATION TO GOVERNMENT TO LOCATE PERSONS

Prepared by: Office of General Counsel, Texas Department of State Health Services (April 18, 2006)

ISSUE: May a health care provider disclose protected health information (PHI) to DSHS or a local governmental agency for disaster relief purposes (generally, locating persons)?

ANSWER: Disclosure to government is allowed under federal and state law and regulations.

DISCUSSION: The HIPAA privacy regulations allow disclosure for disaster relief purposes. See 45 Code of Federal Regulations (CFR) Parts 160 and 164, Section 164.510(b)(4). (The US DHHS Office of Civil Rights previously issued bulletins related to disaster relief and hurricane response at www.hhs.gov/ocr/hipaa.) This subsection allows disclosure of PHI to a public entity (DSHS or local government) or a private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such public and private entities the disclosures permitted under Subsection (b)(1)(ii) (see next paragraph). DSHS and local government are so authorized by the Government Code, Chapter 418, Texas Disaster Act, that addresses state and local governments' roles in a disaster and the state's emergency management plan activation. DSHS is the primary state agency responsible for health and medical needs, including medical special needs, of individuals and coordinates health and medical activities. Local government is responsible for local disasters until the point of needed state assistance.

Subsection (b)(1)(ii) allows disclosure of PHI to notify or assist in notification, including identifying or locating, family members, personal representatives of individuals, or another person responsible for the care of the individual of the individual's location, general condition or death. So for this purpose, HIPAA allows disclosure without patient consent or authorization.

The provider should get verbal permission to disclose from the individual, when possible, but if the individual is not available, providers may share the information if, in their professional judgment, doing so is in the patient's best interest. When sharing with disaster relief organizations, it is unnecessary to obtain the patient's permission if doing so would interfere with the organization's ability to respond to the emergency.

Records on drug or alcohol abuse patients (federally funded) are confidential under 42 USC Sections 290dd-3 and 290ee-3 and 42 CFR Part 2 and may not be released for the above purpose.

State law does not prevent disclosure to governmental entities. For example, the Medical Practice Act, Occupations Code, Section 159.004 allows a physician to disclose medical records to a governmental agency if disclosure is required or authorized by law (such as HIPAA or the Disaster Act) or to other professionals involved in the individual's treatment. Health and Safety Code, Section 611.004 allows a mental health professional to disclose for the same purposes. Health and Safety Code, Section 241.153 allows a hospital to disclose for the same purposes.

DSHS programs that are health care providers under HIPAA may disclose PHI pursuant to the above just as any other provider may.

WAIVER OF LAW OR RULES: None

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