DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

BULLETIN NO. 35 **AUGUST 2006 (New)**

Bulletin No. 35 consolidates and replaces Old Bulletin No. 57 issued September 1984 and Old Bulletin No. 59 issued July 2001.

HIPAA, FOIA, AND PRIVACY

Introduction

This Bulletin provides an overview of general management duties of the Office of Information and Privacy (OIP) which is responsible for the agency's release of documents requested under the Health Insurance Portability and Accountability Act (HIPAA) which was enacted in 1996, the Freedom of Information Act (FOIA), and other applicable programs. The office applies a thorough understanding of the significance of agency information and files, a detailed knowledge and understanding of HIPAA and FOIA laws and their application to agency records. OIP analyzes and evaluates material within the scope of requests to determine the release of documents to the public, local and Federal government, private sector, or media.

For the intent and purpose of this Bulletin, "Information" is defined as all records that are not exempt from disclosure in accordance with applicable laws. "Privacy" speaks to the protection of confidential medical and personnel information that may not be disclosed to members of the pubic (including the media) under any circumstances.

We are determined to meet the agency's goal to provide the best possible customer service in releasing agency records in accordance with established guidelines.

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PART 1. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Section 1. Overview

The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that became effective April 13, 2003, which regulates the disclosure of Protected Health Information (PHI). Because members of the D.C. Fire and EMS Department possess PHI through the use of the Form 151 (referred to here as a Patient Care Report or PCR), or are exposed to PHI as first responders, we must comply with the law.

Section 2. HIPAA Requirements

This directive serves to keep agency employees who have access to HIPAA covered information abreast of HIPAA requirements.

1. The Office of Information and Privacy (OIP) is the only entity within the agency authorized to release PHI to any person outside of the agency. All requests for copies of PCRs or for any information contained therein, are to be cleared through the OIP at 202-673-3297. This applies to both oral and written information. If there is no one available in the OIP, please contact the General Counsel at 202-673-3398.

2. Personnel who provide emergency medical services, including Emergency Medical Technicians, EMT/Is, Paramedics and Firefighters, are not permitted to release any information regarding their patient, either orally or in writing, without prior approval of the OIP. Providers may, however, release general information about the patient's medical status, including transport location, to members of the patient's family.

3. All personnel who provide emergency medical services must remember that it is a violation of HIPAA to provide PHI to members of the media. PHI includes, but is not limited to, the name of the patient, the general condition of the patient, extent of the patient's injuries, the treatment provided to the patient, patient prognosis, and the hospital destination. <u>All questions from the media about FEMS patients and their condition must be referred to the Public Information Office for a response.</u>

4. Providers who are contacted by law enforcement authorities, investigators, or attorneys, including attorneys from the D.C. Attorney General's Office (formerly Office of the Corporation Counsel), must consult with the Privacy Officer before providing information.

5. Providers who receive subpoenas that would require them to provide any medical information concerning a patient must consult with the OIP before responding to the subpoena.

6. In the event of an emergency involving a threat to public safety, including terrorists threats or if the information is requested to locate or identify a suspect, a fugitive, a material witness, or a missing person, providers may release information to law enforcement authorities, including the Metropolitan Police Department, the Office of the Attorney General, and the U.S.

Attorney's Office, without prior approval from the OIP. Personnel who release such information must contact the OIP as soon as possible to report the release.

Section 3. Sanctions

This is an important national law that must be complied with. Everyone who deals with PHI must take this seriously. Sanctions for violations of this law include fines to individuals.

Section 4. HIPAA Training

1. All employees shall be trained in HIPAA Fundamentals Online. Employees violating HIPAA will be required to take a refresher course through self-study, and may be subject to disciplinary action.

2. Employees who have access to PHI are required to have additional training on the agency policies and procedures regarding HIPAA.

3. Periodically, Special Orders will be issued to instruct employees on requirements for HIPAA training and required Refresher Courses. It is anticipated that most of this training will be done online.

4. Part 1 of this Bulletin shall remain the subject of company drills. All battalion commanders and EMS supervisors will insure that their members are cognizant of this information.

Section 5. HIPAA Contact Information

Ms. Tisa B. Smith is designated as the agency's Information and Privacy Officer. She is located at Headquarters (Grimke Building) on the second floor, and can be reached at 202-673-3297. Her role is to oversee and coordinate activities associated with establishing and maintaining HIPAA compliance within the agency. All employees shall extend to Ms. Smith their full support and cooperation.

Compliance with this directive is mandatory for all employees of the Department.

PART 2. NOTICE OF PRIVACY PRACTICES (NOPP)

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Policy requires that the D.C. Fire and Emergency Medical Services Department (FEMS) provide adequate written notice to each patient regarding the manner in which the Agency may use and disclose Protected Health Information (PHI).

The Notice of Privacy Practices (NOPP) is designed to give the patient written notice of the permitted uses and disclosures of PHI made by FEMS in connection with the medical services provided, as well as notice of the patient's rights, and FEMS' legal responsibilities, with respect

to such PHI.

In lieu of giving a copy of the NOPP to all patients at the time of treatment, it has been determined that the following alternative procedure meets the requirements of HIPAA:

1. If a patient is transported, the NOPP will be included in the initial ambulance transport bill sent to the patient by the Department's billing contractor.

2. If a patient is not transported and PHI is recorded by FEMS personnel, they shall give a copy of the NOPP to the patient.

3. When a patient walks away or otherwise refuses to accept the notice, that fact shall be appropriately recorded in the appropriate Part of the PCR.

4. Each fire station shall maintain an adequate supply of the NOPP for distribution to requesters.

Compliance with this directive is mandatory for all employees of the Department.

PART 3. FREEDOM OF INFORMATION ACT (FOIA)

The policy of the District of Columbia Government is one of full and responsible disclosure of its identifiable records consistent with the provisions of D.C. Official Code § 2-531et seq. All records not exempt from disclosure will be made available. Moreover, records which may be exempted from disclosure will be made available as a matter of discretion when disclosure is not prohibited by law or is not against the public interest.

Section 1. Purpose and Scope

These regulations are intended to inform interested persons the procedures by which a record may be obtained from any division, section or office within the D.C. Fire and Emergency Medical Services Department.

Employees may, however, continue to furnish to the public, informally and without compliance with these procedures, information and records which they customarily furnish in the regular performance of their duties prior to enactment of D.C. Official Code § 2-531 et seq.

Those seeking information or records from the department are urged to consult the Office of Information and Privacy before invoking the formal procedures outlined.

Section 2. Requests for Identifiable Records

1. Making a request. A request for a record of the department which is not ordinarily made available shall be submitted in writing with the envelope and letter clearly marked "FOIA REQUEST." All such requests shall be addressed to the District of Columbia Fire and

Emergency Medical Services Department, Office of Information and Privacy, Suite 201, 1923 Vermont Avenue, N.W., Washington, D.C. 20001. In the event a request for information is not marked or addressed as specified in this paragraph, proper identification will be made by department personnel and forwarded to the Office of Information and Privacy.

A request improperly addressed will not be deemed to have been received for purposes of computing the time period set forth in D.C. Official Code § 2-532 (c) of the Freedom of Information Act until forwarding to the Office of Information and Privacy has been complete. On receipt of an improperly addressed request forwarded as set forth above to the Office of Information and Privacy, such office shall notify the requester of the date on which the time period commenced to run.

2. Description of record sought. Those seeking access to a record must reasonably describe that record by reference to the subject matter, approximate date of issuance or occurrence: or such other similar information sufficient to enable personnel to locate the record with a reasonable amount of effort.

3. Nondescript requests. If it is determined that a request does not meet the requirements of this section, the requester will be extended the opportunity to confer with the Office of Information and Privacy in order to attempt to rephrase the request to meet the needs of the requester and the requirements of paragraph (2) of this section.

Section 3. Processing of Requests

1. Referral to proper authority. The Office of Information and Privacy shall make and retain a copy of each request and forward it to the proper authority having primary responsibility for the record requested. Additionally, it shall maintain records to show the date of receipt by the Office of Information and Privacy, proper division, section or office to which the request was forwarded; the date forwarded; the date an extension (if any) is taken under D.C. Official Code § 2-532 (d) of the Freedom of Information Act; the date returned from the proper authority within the division, section or office; and the date the requester is notified as specified in paragraph (2) of this section.

2. Action by proper authority. The person responsible may extend the time for initial determination on requests up to 15 days (excluding Saturdays, Sundays and legal holidays). Extensions shall be made by written notice to the requester which sets forth the reasons for the extension as provided in D.C. Official Code § 2-532 (d) of the Freedom of Information Act. A copy of the extension notice shall be filed with the Office of Information and Privacy. Within 15 days, or 25 days if an extension is taken, (excluding Saturdays, Sundays and legal holidays), or in the case of improperly addressed requests the date established by Section 2(a), the Office of Information and Privacy shall determine whether to comply with or deny the request, and is the "employee responsible for the decision to deny'' with the meaning of D.C. Official Code § 2-533 (a) (2).

Section 4. Responses to Request

1. Granting of Requests. The Office of Information and Privacy shall notify the requester in writing as to where and when the record may be inspected and copied if desired, and any applicable fee.

2. Denial of Requests. The Office of Information and Privacy shall notify the requester in writing of a denial, and shall include the reasons for the denial with references to the particular sections set forth in D.C. Official Code § 2-534 (exemptions) relied upon as authority and the name of any other employee responsible for the decision where the denial was made at the request of another division, section or office. A statement that the denial may be appealed as provided in Section 5 of these regulations shall also be included.

   If no determination has been dispatched at the end of the 15-day period, or the extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with Section 5 of these regulations.

3. Record Not Available. In the event a record cannot be located from the information contained in the request, or is known to have been destroyed or otherwise disposed of, the requester shall be notified.

Section 5. Appeal

1. Appeal to Mayor of judicial review. A requester may file an appeal to the Mayor or may file a civil action in D.C. Superior Court as provided in D.C. Official Code § 2-537.

   The authority to act on behalf of the Mayor is delegated to the General Counsel, Executive Office of the Mayor. This delegation expires on December 31, 2006 when it reverts back to the Office of the Secretary.

2. Appeal to Fire/EMS Chief. Prior to undertaking one of the options available under paragraph (1) of this section, a requester is urged to submit an appeal of the denial to the Fire/EMS Chief except where the "employee responsible for the decision" appealed from is the Fire/EMS Chief. An appeal to the Fire/EMS Chief shall be in writing addressed to the Fire/EMS Chief, District of Columbia Fire/EMS Department, 1923 Vermont Avenue, N.W., Washington, D.C. 20001. Both the envelope and letter should be clearly marked "FOR APPEAL." All appeals shall be acted upon within 5 days of receipt (excluding Saturdays, Sundays and legal holidays).

3. Decision on Appeal. The decision shall be in writing and contain at a minimum the explanation required by Section 4 paragraph (2).

Section 6. Records of Requests, Grants, Denials and Appeals

Maintenance of records. The Office of Information and Privacy shall be responsible for maintaining a file, open to the public, which shall contain copies of all requests, grants, denials and appeals.

Section 7. Fees

1. Copies. The fee for copies of documents is .25 per copy of each page. (Maximum of 2 copies will be provided).

2. Searches. There is no fee for the first hour of research. Each quarter hour of research in excess of the first hour is based upon researcher as follows:

- Clerical personnel (DS 1-8) $4 per quarter hour
- Professional personnel (DS 9-13) $7 per quarter hour
- Supervisory personnel (DS 14 and above) $10 per quarter hour

3. Waiver or Reduction. Documents may be furnished without charge or at a reduced charge where it is determined the information to be released will primarily benefit the general public rather than the requester.

PART 4. DISCLOSURE OF CONFIDENTIAL INFORMATION

Employees of the D.C. Fire and Emergency Medical Services Department routinely gain access to confidential medical and personnel information in the course of the performance of their duties. **This information may not be disclosed to members of the public (including the media) under any circumstances.**

Employees who receive requests, either orally or in writing, for medical or personnel information should follow the procedures described below:

Section 1. Medical Information

1. Patient Care Reports (PCR/Form 151) are not to be disclosed to the public or the media. All outside callers requesting a copy of a PCR should be instructed to dial the Office of Information and Privacy (OIP) "Document Hotline" at 202-671-2592, which provides information on how to make requests. If the request is from the media, it should be directed to the Public Information Office (PIO) at 202-673-3331.

2. Providers are allowed to discuss the medical treatment or condition of a patient with members of the immediate family, i.e., parent, spouse, child, or sibling.

3. Employees should take care to protect the privacy of the patients receiving treatment.

Personal information, especially the name of the person being treated, as well as details of medical treatment and condition should not be disclosed to members of the public or the media. Requests for this type of information should be referred to the OIP a 202-673-2039. If the request is from the media, it should be directed to the PIO.

4. Employees who receive subpoenas for medical information (usually Patient Care Reports), should forward the subpoena to the OIP for a response.

Section 2. Personnel Information

1. Chapter 31A of the District of Columbia Personnel Regulations, "Records Management and Privacy" prohibits the disclosure of personnel information to members of the public. "Personnel information" includes, but is not limited to, disciplinary, EEO, and medical and psychological information. Employees who obtain information concerning disciplinary actions, EEO complaints, or the medical condition of an employee are prohibited from disclosing such information to members of the public or the media. This restriction applies to recommendations for disciplinary actions, investigations into disciplinary actions or EEO complaints, special reports related to any of these matters, notice of proposed and final disciplinary actions, letters of determination from the EEOC or the Office of Human Rights, medical certificates, medical records, drug tests results, referrals to the Employee Assistance Program, information on leave status, and other similar information.

2. Employees are free to disclose their own personnel information, as long as it does not result in the disclosure of personnel information concerning another employee.

3. Employees who acquire access to personnel information as part of their job duties are prohibited from sharing this information with other employees, except on a "need-to-know" basis, as necessary in the performance of their duties.

4. Employees who receive requests for personnel information should refer the request to either the General Counsel or the PIO, if the request is from the media.

Section 3. General Instructions

1. Employees who receive subpoenas to testify in court or give a deposition in a case involving the D.C. Fire and Emergency Medical Services Department are required to immediately call the General Counsel for instructions. Employees who receive requests for interviews from a private attorney or a private investigator should consult with the General Counsel prior to agreeing to the interview. Employees are encouraged, however, to provide information to law enforcement authorities, the United States Attorney, an assistant Attorney General (D.C.), the D.C. Human Rights Commission, the EEOC, or the Inspector General; prior approval is not necessary in those cases.

2. Official documents that are marked "attorney-client privileged" may be disclosed to agency personnel on a "need to know" basis **ONLY.**

   Under no circumstances may documents marked "attorney-client privileged" be released to the public or the media.

Section 4. Penalty for Violations

Employees who violate this policy shall be subject to disciplinary action.