



Oregon

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To Oregon EMS Agencies
From Robert Leopold, Director
Oregon EMS and Trauma Systems Program
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Several EMS Agencies have inquired about whether an EMS Agency can properly send data to the EMS and Trauma Systems Program if it includes patient identifying information. You are concerned, and properly so, about the security of medical information. You are also concerned about your legal responsibilities under HIPAA and similar laws.

Please be assured that the Oregon Department of Human Services, Division of Public Health, Emergency Medical Services and Trauma Systems Program (this agency) is permitted, under HIPAA, to receive data which includes patient identifiers. HIPAA classifies the Department as a "Public Health Authority" and a covered entity is permitted to share individually identifiable health information with a public health authority without a patient's consent. *See* 45 C.F.R. 164.501, 164.512(b)(1)(i). The Department is tasked with developing a comprehensive emergency medical services system, in cooperation with the emergency medical services professions. ORS 431.607, 431.623. To accomplish this, the Department needs individually identifiable pre-hospital patient information.

In addition, under both HIPAA and state law, the Department can and will protect the information it receives, from disclosure. In particular, ORS 41.685, 192.518, and 192.502(2) protect personal medical information from unauthorized disclosure.

Attached are portions of the relevant statutes.

If we can be of further assistance, please let me know.

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Relevant Federal and State Statutes

HIPAA Statutes

Section 164.512(b)

- (1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:...
 - i. A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions...

HIPAA final rule, published in the Federal Register, December 28, 2000

SUMMARY: This rule includes standards to protect the privacy of individually identifiable health information. The rules below, which apply to health plans, health care clearinghouses, and certain health care providers, present standards with respect to the rights of individuals who are the subjects of this information, procedures for the exercise of those rights, and the authorized and required uses and disclosures of this information.

The use of these standards will improve the efficiency and effectiveness of public and private health programs and health care services by providing enhanced protections for individually identifiable health information. These protections will begin to address growing public concerns that advances in electronic technology and evolution in the health care industry are resulting, or may result, in a substantial erosion of the privacy surrounding individually identifiable health information maintained by health care providers, health plans and their administrative contractors. This rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996. (F.R., page 82462)

Purpose of the Administrative Simplification Regulations

This regulation has three major purposes: (1) To protect and enhance the rights of consumers by providing them access to their health information and controlling the inappropriate use of that information; (2) to improve the quality of health care in the U.S. by restoring trust in the health care system among consumers, health care professionals, and the multitude of organizations and individuals committed to the delivery of care; and (3) to improve the efficiency and effectiveness of health care delivery by creating a national framework for health privacy protection that builds on efforts by states, health systems, and individual organizations and individuals. (F.R., page 82463)

Section 164.512(b) – Uses and Disclosures for Public Health Activities

The final rule continues to permit covered entities to disclose protected health information without individual authorization directly to public health authorities, such as the Food and Drug Administration, the Occupational Safety and Health Administration, the Centers for Disease Control and Prevention, as well as state and local public health departments, for public health purposes as specified in the NPRM [Notice of Proposed Rulemaking]. (F.R., page 82526)

Health Oversight Agency

...a “health oversight agency” is an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or grantees, that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine

eligibility or compliance, or to enforce civil rights laws for which health information is relevant. (F.R., pp 82491-82492).

Oregon Statutes

ORS 431.623 Program created in Department of Human Services. (1) The Emergency Medical Services and Trauma Systems Program is created within the Department of Human Services for the purpose of administering and regulating ambulances, training and certifying emergency medical technicians, establishing and maintaining emergency medical systems including trauma systems and obtaining appropriate data from the Oregon Injury Registry as necessary for trauma reimbursement, system quality assurance and assuring cost efficiency.

(2) For purposes of ORS 431.607 to 431.619 and ORS chapter 682, the duties vested in the department shall be performed by the Emergency Medical Services and Trauma Systems Program.

(3) The program shall be administered by a director.

(4) With moneys transferred to the program by ORS 442.625, the program shall apply those moneys to:

- (a) Developing state and regional standards of care;
- (b) Developing a statewide educational curriculum to teach standards of care;
- (c) Implementing quality improvement programs;
- (d) Creating a statewide data system for prehospital care; and
- (e) Providing ancillary services to enhance Oregon's emergency medical service system.

41.685 Inadmissibility of certain data relating to emergency medical services system. (1) All data shall be privileged and are not public records as defined in ORS 192.410 and shall not be admissible in evidence in any judicial proceeding except as provided under ORS 676.175. However, nothing in this section affects the admissibility in evidence of a party's medical records dealing with a party's medical care.

(2) On request, an emergency medical service provider shall submit data not subject to ORS 676.175 to any committee or governing body of the county, counties or state as provided for by state or county administrative rule.

(3) A person serving on or communicating information to any governing body or committee shall not be examined as to any communication to that body or committee or the findings thereof.

(4) A person serving on or communicating information to any governing body or committee shall not be subject to an action for civil damages for affirmative actions taken or statements made in good faith.

(5) As used in this section:

(a) "Committee or governing body" means any committee or governing body that has authority to undertake an evaluation of an emergency medical services system as part of a quality assurance program and includes any committee of an emergency medical service provider undertaking a quality assurance program.

(b) "Data" means all oral communications or written reports, notes or records provided to, or prepared by or for, a committee or governing body that are part of an evaluation of an emergency medical services system and includes any information submitted by any health care provider relating to training, supervision, performance evaluation or professional competency.

(c) "Emergency medical service provider" means any public, private or volunteer entity providing prehospital functions and services that are required to prepare for and respond to

medical emergencies including rescue, ambulance, treatment, communication and evaluation.

(d) "Emergency medical services system" means those prehospital functions and services that are required to prepare for and respond to medical emergencies, including rescue, ambulance, treatment, communication and evaluation.