

HIPAA: The Intersection of Patient Privacy with Emergency Dispatch

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The Federal Health Insurance Portability and Accountability Act (HIPAA) has ushered in a new era of privacy with respect to patient information. The dense and complex HIPAA Privacy Rule, which went into enforcement on April 14, 2003, has left many communications centers and emergency dispatch agencies pondering how HIPAA may-or may not-affect them. Does HIPAA directly affect your dispatch agency? At the risk of perpetuating the, "why can't you just give me a straight answer" lawyer stereotype, the answer is simply, "it depends!"

First, let us address three of the top HIPAA / dispatch myths that have arisen.

Myth No. 1: Dispatch centers can't give out any identifiable information over the radio.

Fact: HIPAA doesn't prevent dispatch centers from communicating all information necessary for EMS response and treatment to EMS agencies. While patient names shouldn't be given out unless truly necessary, a dispatch center may transmit any information necessary to facilitate the EMS treatment of a patient.

Myth No. 2: Ambulance services are violating HIPAA if they give patient information to the hospital over the radio.

Fact: HIPAA permits any and all treatment-related disclosures of patient information between health care providers. Ambulances are freely permitted to give patient information to hospitals over the radio for treatment purposes.

Myth No. 3: Dispatch centers must convert all communications equipment to digital or institute new privacy technologies so that people with scanners can no longer hear radio dispatches.

Fact: HIPAA does not prohibit dispatch centers from communicating with ambulance services, which is necessary for response and patient treatment, even though everyone in "scannerland" can listen in! These are called "incidental disclosures" under HIPAA, meaning they are legitimate disclosures with unavoidable side-effects, and are permissible under HIPAA.

What about the question of whether your individual dispatch agency is itself covered by the HIPAA Privacy Rule? First and foremost, dispatch entities must determine if they are "covered entities" under the Privacy Rule.

What is a "Covered Entity?"

A covered entity is an organization that satisfies a two-part test under the Privacy Rule. First, the organization must fall under one of the following categories: (1) a "health plan"; (2) a "health care clearinghouse;" or (3) a "health care provider" that engages in certain electronic transactions involving Protected Health Information (PHI). Let's examine the three types of covered entities more closely to determine whether dispatch centers may fall under the Privacy Rule.

First, "health plans" include insurers, HMOs, and other entities or groups that pay for health care. This includes self-funded group health plans, which may be the case with many municipal

agencies. Once a municipality is a covered entity, the whole municipality is covered, including its dispatch operation.

However, as we explain later in this article, a covered entity can declare itself a "hybrid entity" when it performs both "covered" functions and "non-covered" functions under HIPAA.

Second, "health care clearinghouses" are entities that convert certain health care transactions into HIPAA-approved standard formats. Third party billing agencies are one example. It is very unlikely that most dispatch centers would fall under the definition of a "health care clearinghouse."

Third, "health care providers" are any person or entity that furnishes or provides health care to patients. An argument can be made that EMDs and any dispatch agency that provides EMD services are health care providers. However, recall from above that health care providers must engage in certain types of electronic transactions in order to trigger the "health care provider" definition of a "covered entity" under the Privacy Rule.

Under this "electronic transactions" part of the definition, an organization must transmit health information electronically in its performance of a "covered transaction." One example of a covered transaction is electronic billing for health care services. Other types of "covered transactions" include coordination of benefits, making electronic inquiries with insurers regarding health plan eligibility or enrollment, making health plan premium payments, and certain other types of administrative or financial transactions.

Obviously, most dispatch entities do not engage in any of these types of administrative or financial electronic transactions and would not therefore trigger the "health care provider" component of the covered entity definition by virtue of their dispatch operations alone. However, the inquiry cannot end there. Some dispatch entities are part of ambulance services, hospitals, or other "health care providers" that very likely do satisfy the "covered entity" test. This means that every manager and every employee of any emergency services dispatch operation are likely to be considered part of a larger covered entity and should be concerned about HIPAA!

Provider-Based Dispatch Agencies

A provider-based dispatch agency can be an ambulance service's own dispatch or communications center, or a dispatch operation that is part of a hospital or some other HIPAA-covered entity. As a covered entity, the ambulance service is responsible for applying the Privacy Rule requirements and protections throughout its operation. However, these types of organizations can also make a "hybrid entity" designation to reduce the HIPAA compliance requirements in other parts of their organizations.

The dispatch service within a covered entity may serve as the front-end receiver of patient information. For example, the dispatch agency that also functions as a Public Safety Answering Point (PSAP) answers the call of the public; receives pertinent patient information including patient location and physical condition; and transmits that information to crewmembers responsible for direct treatment of the patient.

The identifiable patient information received by the dispatch service is considered PHI, received on behalf of the covered entity (the ambulance service). Simply because the information is received before the initiation of treatment does not change the fact that the information received by the dispatch portion of the covered entity is PHI subject to the protections of the Privacy Rule. If the ambulance service has not declared itself a "hybrid entity", then the dispatch service,

as a department of the covered entity, is a covered entity. As such, all dispatch personnel must adhere to the same privacy standards as field providers and administrative personnel within the covered entity's organization, including following all of the privacy policies and procedures, receiving mandatory privacy training and much more.

Conclusion

Dispatch agencies provide an important function in patient care. In most cases, dispatch agencies are free to do their jobs with minimal worries imposed by HIPAA. HIPAA permits all communications necessary to treat a patient-from call intake to initial dispatch to on-scene coordination to the communication of medical information to the hospital. However, some dispatch entities may themselves be "covered entities" under the HIPAA Privacy Rule, which means they have a host of administrative policies and procedures they must implement.

Also see this August 2010 article from APCO: <http://psc.apcointl.org/2010/08/26/hipaa-radio-emd/>