



Las Cruces Police Department
GENERAL ORDERS
ADMINISTRATION VOLUME 1
GO-148 MEDICAL INFORMATION (Daily)
Revised 05/13/2005

148 MEDICAL INFORMATION

DISCUSSION

In 1996, Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) to address patient record privacy and can be found at 45 CFR, Parts 160 through 164.

HIPAA attempts to balance public responsibility with privacy protections. Without HIPAA regulation, covered entities would be forced to rely only on their professional judgment when deciding whether to disclose medical information to interested parties.

POLICY

It is the policy of the Las Cruces Police Department to comply with all HIPAA requirements when requesting the disclosure of medical information from covered entities and to consider such information confidential. The Department will provide such information only to law enforcement authorities with a need to know, prosecuting attorneys, or other appropriate judicial or administrative entities, and will not disclose such information to the public unless so ordered by the courts.

148.01 GENERAL

A. The HIPAA Privacy Rule provides the following standards regarding the confidentiality of individually identifiable health information:

1. **Individually Identifiable Health Information** - information created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and either identifies the individual, or includes information that there is a reasonable basis to believe could be used to identify the individual.
2. There are four types of “covered entities” under HIPAA:
 - a. Health plans (group and individual health insurance, HMO’s, Medicare, Medicaid and other government health plans).
 - b. Health care clearinghouses (billing services and providers).



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- c. Health care providers (doctors, nurses, paramedics, hospitals, clinics, ambulances and other emergency services personnel, hospitals, clinics, pharmacies).
 - d. Other health care providers as described under 45 CFR 160.103.
3. **Protected Health Information** – Individually identifiable health information transmitted by electronic media, maintained in any electronic medium, or transmitted or maintained in any other form or medium (essentially all health records identifiable by a patient’s name or other personal identifier e.g. social security number).
4. Generally, covered entities may not disclose protected health information unless one or more of the following exceptions are present:
- a. When the patient provides written authorization for the disclosure.
 - b. If the disclosure is for a certain law enforcement purpose.
 - c. If the disclosure is otherwise required by law, i.e. statute, subpoena and court order.
5. Law enforcement is not a covered entity under HIPAA, however, when law enforcement agencies seek protected health information from covered entities, the rules under HIPAA will dictate how the covered entities respond to those requests.

148.02 LAW ENFORCEMENT EXCEPTIONS TO HIPAA

- A. If a covered entity or a person speaking on behalf of a covered entity informs the officer seeking protected health information that they are not able to provide such information because of privacy laws, the officer can inform the entity or spokesperson of the following law enforcement exceptions:
- 1. **Required by law** - state law requires the reporting of certain types of wounds or injuries to law enforcement agencies. This allows only that information required by law to be released, nothing more. [45 CFR 164.512(f)(1)(i)]
 - 2. **Court order, warrant, subpoena or summons issued by a court** – a covered entity must comply with a court order, warrant, subpoena or summons issued by a competent court, having jurisdiction. [45 CFR 164.512(f)(1)(ii)(A)]



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3. **Grand Jury Subpoena** - a covered entity must comply with a Grand Jury Subpoena. [45 CFR 164.512(f)(1)(ii)(B)]
4. **Administrative subpoena or request** – District Attorneys, Attorney Generals, U. S. Attorneys, City Attorneys or federal investigators typically issue administrative subpoenas which have no judicial oversight before their issue. Departmental officers do not have this authority. [45 CFR 164.512(f)(1)(ii)(C)]
5. **Locate or identify** – applies to suspects, fugitives, material witnesses or missing persons, and permits access to eight (8) types of individually identifiable information (excludes DNA, dental records, body fluids or tissue; a subpoena is necessary for this information). [45 CFR 164.512(f)(2)] The eight types of individually identifiable information are:
 - a. Name and address
 - b. Date and place of birth
 - c. Social Security Number
 - d. ABO blood type and RH factor
 - e. Type of injury
 - f. Date and time of treatment
 - g. Date and time of death
 - h. Description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, presence of facial hair, scars and tattoos.
6. **Information about a victim of a crime** – includes persons thought or known to be victims of a crime and which the disclosure cannot be delayed for the victim's approval. This does not include victims of abuse, as there is a specific exception for this situation (see I). [45 CFR 164.512(f)(3)]
7. **Crime on premises** – When a covered entity believes that the information they hold is evidence of a crime that occurred on their premises (nursing home, hospitals, etc.), the covered entity can volunteer this information without having to wait for a request. [45 CFR 164.512(f)(5)]



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8. **Reporting crime in emergencies** – emergency health care workers who respond to a medical emergency outside of a hospital and who can provide information to officers about the commission and nature of the crime, location of the crime and victims, and the identity, description or location of the perpetrator. This includes the EMT or Paramedic. [45 CFR 164.512(f)(6)]
 9. **Victims of abuse, neglect or domestic violence** – This exception is limited to specific scenarios, and, if possible, the officer should obtain a subpoena or the individual’s consent to use his / her medical information instead of relying on this exception. [45 CFR 164.512(c)] Disclosures are permitted as follows:
 - a. The hospital believes the person is a victim of abuse, neglect, or domestic violence AND
 - b. The Department is authorized by law to receive a report of such incidences and,
 - c. Law authorizes disclosure.
 10. **Medical Investigators** – to determine the cause of death or perform his / her other duties. [45 CFR 164.512(g) (1)]
 11. **To avert a serious threat to health or safety** – if the disclosure is necessary to avert a serious and imminent threat to a person’s safety or the public, the hospital can make a disclosure to an authority who can prevent or lessen the threat, or to identify or apprehend an individual because that individual admitted participating in a violent crime that may have caused serious physical harm to the victim, or to identify or apprehend someone who escaped from a correctional institution or from lawful custody. [45 CFR 164.512(j)]
 12. **Other important miscellaneous exceptions** – national security and intelligence, protective services for the President and others, jails, prisons, law enforcement custody to safeguard the person or persons in custody, or corrections employees who are in proximity of the person or persons in custody.
- B. In the course of law enforcement activities, officers and other Departmental employees have access to Protected Health Information (PHI) in the form of reports, both written and verbal, from covered entities. These reports may also be transmitted electronically or by FAX. No matter the method in which the PHI is provided or transmitted, the covered entity is still responsible for protecting and securing the PHI in the report from other than authorized persons and purposes under HIPAA.



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- C. Because of the nature of law enforcement and our internal methods for storing and archiving crime reports, the PHI of persons involved in crimes, either as victims or suspects, may be held for a period of several years. During the time such records are maintained by the Department, all employees are required to comply with the provisions of this policy and HIPAA, as currently written or later amended.

148.03 REQUEST FOR INFORMATION TO BE IN WRITING

- A. Unless law mandates otherwise, the covered entity providing PHI must limit their disclosure of information to the minimum amount of information necessary to comply with the request. Regulations allow the covered entity to rely on Departmental representations to determine what minimum amount of information is necessary to comply with the request. Therefore, officers requesting information must know what minimal information is necessary to comply with their requests, and will request additional information only when it can be shown that the additional information is needed for law enforcement purposes.
- B. Officers shall make all requests for disclosure of information relating to HIPAA in writing on Departmental letterhead, as a supplement to the request form, unless emergency conditions exist. When a request is made either verbally or in writing, Departmental personnel must realize that the covered entity will likely want to verify their identity and status as a police officer with the Las Cruces Police Department. Therefore, all officers are required to provide the representative with their commission card, badge, officer identification number, and the telephone number of the Administrative Offices as requested.
- C. It may be necessary to keep requests for PHI confidential. Personnel seeking PHI from a covered entity should attempt limit the occasions that a covered entity keep a request confidential. If a request for confidentiality is made, the request will be in writing on Departmental letterhead and the following guidelines will be adhered to:
1. The officer will specify the time period for which the covered entity is to keep the request confidential.
 2. Thirty days is the typical length of time for confidentiality of any disclosure, however, a longer period may be provided if needed.

148.04 REPORTS CONTAINING MEDICAL INFORMATION

- A. All Departmental personnel are required to document all suspected information or known information of a crime in a Departmental incident report. However, personnel



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who have medical information concerning a crime, will be required to document such information in a supplemental report only, separate from any other information in the matter, so that the information is not accidentally released to the public.

- B. When officers with medical information obtained from any covered entity are dictating a supplemental report containing the information, the officer shall not add any non medical information to the supplemental report and shall begin his or her supplemental dictation by stating that the following information is “confidential medical information not for public release”. The Secretarial Unit employee typing the report shall place this information in the subject matter of the supplemental report.
- C. Records Unit personnel shall not release to the public any supplemental report having in its subject matter “confidential medical information not for public release” to any member of the public without a valid court order.

148.05 DOCUMENTATION PROVIDED TO THE DEPARTMENT BY COVERED ENTITIES

- A. Documentation or information obtained from covered entities shall be used only for judicial or administrative proceedings. Public Information Officers or any other personnel authorized to release information concerning Departmental actions will not provide any medical information obtained from a covered entity at any time, since this information is confidential and not for public release.
- B. Examples of information that should not be released to the public or media are as follows:
 - 1. Medical or legal blood test obtained by medical personnel.
 - 2. Patient condition.
 - 3. Type of wounds as provided by emergency medical personnel, hospital staff etc.
 - 4. Mental condition of a suspect.
 - 5. Type of medication a patient may be taking.
 - 6. Any other information which has been provided by a covered entity.



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148.06 INFORMATION FROM VICTIMS, RELATIVES, SUSPECTS, WITNESSES AND OTHERS

- A. Information that may otherwise have been PHI, but has been given to a Departmental employee in the course of their duties or investigations, is not covered by HIPAA regulations. This includes information obtained by Departmental employees during questioning of victims, relatives, suspects, witnesses and other persons in conjunction with a criminal investigation. When PHI obtained under this section is relayed or reported by a Department employee to representatives of a covered entity, the information is protected under HIPAA regulations only as it appears in the covered entities records.
- B. **Information obtained by employee personal observations.** Information that may otherwise have been PHI, but that is based on the personal observations of a Departmental employee, is not covered by HIPAA regulations. This exclusion does not apply if the employee is summarizing or basing his or her personal observations on the actions, treatment, or records of a covered entity.
- C. As an example, an officer investigating a traffic accident may make observations of a victim's injuries that are evident to a layman. The employee may report that the victim has a fractured limb, and such statement is not PHI. An observation of cuts and bleeding, bruises, or even the victim's verbal reports of pain is information that may be reported by the employee and is not subject to HIPAA regulations.

148.07 RELEASE OF PROTECTED HEALTH INFORMATION (PHI)

- A. No Departmental employee is authorized to release protected health information to anyone not authorized to receive it. Persons inquiring for information that would be PHI shall be referred to the covered entity that gathered and currently holds the information.
- B. Information which is gathered by officers from other than a covered entity may be released in a limited manner. A press release can state that a victim received a gunshot wound. However, a press release should not state the victim is undergoing treatment for a lacerated liver from a gunshot wound. Another example would be a press release stating that victims from an auto accident were transported to the hospital for injuries. This press release should not state that the victim is receiving treatment for a skull fracture.



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148.08 ACCESS TO PROTECTED HEALTH INFORMATION (PHI)

- A. Departmental employees shall have access to PHI kept by the Department in the course of the investigation of crimes. Incidental access to PHI is permitted as it relates to employees that transcribe, copy, and file Departmental reports.
- B. Any time that a PHI is laying in plain sight where it could be seen by persons not authorized under this policy, the PHI shall be turned face down on the desk, or covered with a blank sheet of paper. PHI shall not be left out in the open at the end of the work day.
- C. PHI of an individual shall not be spoken about or disclosed to unauthorized persons outside the Department other than disclosure to recognized officers of the Court or the City Attorney's Office when necessary in the course of prosecution of a public offense.

148.09 FAILURE TO COMPLY

Penalties for violation of HIPAA are severe and apply to the covered entity which provided the information to our Department. The Secretary of the Department of Health and Human Services has directed the Office for Civil Rights to enforce the privacy regulations of HIPAA. The civil penalties can include a fine of up to \$25,000 per person per year, and criminal penalties of up to \$250,000 and ten years in prison. In addition to any other penalty which may apply under HIPAA, employees violating this policy are subject to disciplinary action up to and including termination of employment, and possible referral for prosecution and personal sanctions under HIPAA (Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Part C, Title III, Subtitle F, Sections 1176 and 1777).