



State of New Jersey

DEPARTMENT OF HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES
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JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

December 1, 2021

VIA EMAIL & REGULAR MAIL

Matthew R. Streger, Esq.

Re: Lincoln Park First Aid Squad

Dear Mr. Streger:

The Department of Health (Department) is in receipt of your letter dated November 22, 2021, wherein you raise privacy and confidentiality concerns with the manner in which the Department shares health information with its State partners. Because the Department places great value on the importance of privacy and confidentiality for all patients and consumers within the State, we appreciate you contacting the Department with the concerns that you outlined in your letter. The Department would like to take this opportunity to respond to your concerns and provide you with background and guidance on matters relating to public health, the Health Insurance Portability and Accountability Act (HIPAA), and other State laws or initiatives relating to public health.

In your correspondence, you assume that the Department is sharing information with the New Jersey Department of Law and Public Safety (NJDLPS) for law enforcement purposes. Additionally, your letter assumes that the Department is violating HIPAA and the New Jersey Identity Theft Protection Act, specifically citing N.J.S.A. 56:8-164(a), because it is sharing health information with NJDLPS. Your assumptions are incorrect. As explained below, the HIPAA Privacy Rule permits the disclosure of information by a HIPAA covered entity, such as an EMS provider, to a public health authority, such as the Department of Health, and also permits a public health authority to share information with other governmental agencies, such as the NJDLPS, that are collaborating with the public health authority for public health purposes.¹

¹ In your correspondence, you also reference the Fatality Analysis Reporting System (FARS). FARS sits under the NJDLPS, Division of State Police, and is funded by the U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA). FARS may access the Department's EMS data repository to search for federal reporting data, namely information concerning victims of motor vehicle accidents, as mandated by federal regulation. Pursuant to correspondence issued by the Federal Office of Civil Rights, NHTSA is permitted to access and obtain individually identifiable information concerning victims of motor vehicle crashes, such as the data maintained in the EMS data repository. This correspondence can be found on the Department's website at www.state.nj.us/health/ems/ems-toolbox/.

The HIPAA Privacy Rule permits covered entities to disclose protected health information, without authorization, to public health authorities that are legally authorized to receive such information. See 45 CFR 164.512. A public health authority may use or disclose 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, and the conduct of public health surveillance, public health investigations, and public health interventions, or, at the direction of the public health authority. See 45 CFR 164.512(b)(1)(i). The Department is a State public health authority pursuant to the HIPAA Privacy Rule. The Department of Health is a hybrid entity under HIPAA, as defined at 45 CFR § 164.103, meaning that the Department is a single legal entity that performs both covered and non-covered functions. The State psychiatric hospitals are the HIPAA covered component part of the Department. The Department's Public Health Services branch, in which the Office of Emergency Medical Services sits, is not a HIPAA covered component part of the Department.

Pursuant to the Data Use Agreement (DUA) with the NJDLPS, the Department provides the NJDLPS, a government agency acting in collaboration with the Department, with a limited Emergency Medical Services (EMS) response dataset involving the EMS administration of naloxone. A copy of the DUA can be found on the Department's website at www.state.nj.us/health/ems/ems-toolbox/. The Department entered into the DUA under the authority of N.J.S.A. 26:2H-1, the statute that authorizes the Department to collect patient data to carry out the work of the agency, and N.J.S.A. 26:1A-15, the statute that authorizes the Department to work collaboratively with other State agencies on matters affecting public health. In addition, the Department entered into the DUA pursuant to the authority of N.J.S.A. 26:2K-67 and 26:2K-68, which require emergency medical services providers to report certain information to the Department in order for the Department to record and track data concerning types of medical emergencies for which emergency medical services are requested, response times for emergency medical services providers, patterns in the timing and location of requests for emergency medical services, patterns in the type or nature of emergency medical services provided, and patterns in dispatch and response activity.

The purpose of the DUA is to share a limited dataset with the NJDLPS in order to enable the NJDLPS's Division of State Police to support the Drug Monitoring Initiative (DMI), Overdose Detection Mapping Application Program (ODMAP), and public health efforts including situational awareness in order to lessen and prevent the threat to the public of overdoses due to possible opioid use or abuse, identify those who are being disproportionately affected, as well as to administer emergency care. Further, the DUA enables the NJDLPS's Office of the New Jersey Coordinator of Addiction Response & Enforcement Strategies (NJ CARES) to support the Integrated Drug Awareness Dashboard (IDAD), an inter-agency analytics platform that allows State agencies engaged in fighting the opioid epidemic to exchange and analyze data and obtain a more comprehensive picture of the impact of the opioid crisis and thereby helps State agencies develop better informed strategies to combat it. The DUA specifies that the NJDLPS may only use the limited dataset for public health purposes. Moreover, the DUA requires that the NJDLPS treat the data from the Department in a manner consistent with the legal requirements of HIPAA². Access to the limited dataset by the NJDLPS has remained current pursuant to the terms of the DUA. Accordingly, the Department's sharing of health information with NJDLPS is in no way contrary to HIPAA or N.J.S.A. 56:8-164(a).

² The Department is a hybrid entity under HIPAA as defined at, 45 CFR § 164.103, although the Department is a non-covered entity under HIPAA in its public health role discussed herein.

Your letter also states that you have advised your client, a provider of Emergency Medical Services in New Jersey, to cease complying with State reporting requirements of N.J.S.A. 26:2K-67 by recommending that your client cease submitting required electronic patient care reports (ePCRs) to the Department. Your guidance is problematic for several reasons. First, N.J.A.C. 8:40-3.6 requires an EMS provider to create a patient care report and provide a copy of the patient care report to an authorized representative at the receiving health care facility no later than 24 hours after completion of the call. Once an EMS provider completes an ePCR, the data is transmitted to the EMS Data Repository and when an EMS Provider transports a patient to a hospital emergency room, the ePCR becomes available to the receiving hospital in near real-time. Hospitals' access to the transporting EMS provider's ePCR provides the presenting patient's medical information relating to the pre-hospital treatment (such as medication administered, medical history, etc). EMS Providers failing to submit an ePCR can pose a serious health and safety risk to patients as there will be no ePCR that the hospital can access to receive records of any treatment or medications administered prior to the patient's arrival in the Emergency Department. Second, your guidance poses a risk to community health through the absence of aggregated data gaps, specifically concerning the opioid epidemic. Third, if providers do not report overdose information through the ePCR, as your letter suggests, it could affect surge alerting, which is used to provide resources and information to areas that are experiencing a surge in opioid overdoses. Lastly, your guidance could also jeopardize individual EMT certifications because an EMT is required to complete and submit patient care reports, as set forth above. See N.J.A.C. 8:40A-10.2 (providing that the Department may take enforcement action against an EMT for failing to comply with the Department's rules).

The Department is aware that you posted your letter dated November 22, 2021 on your public Facebook page. The Department encourages you to also post this letter (the Department's response) to educate and provide awareness to correct any confusion within the EMS community that your November 22nd letter may have caused.

Sincerely,

Terry Clancy, PhD, RN, NRP
Director
Office of Emergency Medical Services

cc: Rachel Hammond, CIPP/G/US, CIPM, HCISPP
Chief Ethics & Data Privacy Officer