

EMERGENCY MEDICAL SERVICES AUTHORITY

1930 9th STREET
SACRAMENTO, CA 95814-7043
(916) 322-4336 FAX (916) 324-2875



DATE: April 16, 2003
TO: All California Local EMS Agencies
FROM: Richard Watson, Interim Director
SUBJECT: Local EMS Agency HIPAA Responsibilities

The purpose of this memorandum is to provide statewide guidance regarding a Local EMS Agency's potential status as a "Covered Entity", "Business Associate", or "Trading Partner" as defined in HIPAA privacy regulation CFR 160.103. Local EMS Agencies (LEMSAs) are not a covered entity under HIPAA because of their oversight responsibilities, consistent with other similar programs. The citation referencing the exemption from business associate status for an oversight organization can be found in HIPAA 45 CFR 164.512 (d) of the Health Insurance Portability and Accountability Act of 1996, ("HIPAA"), 42 USC 1320d et seq.

LEMSA functions, as outlined in California Health and Safety Code, Division 2.5, Sections 1797 et seq., include EMS interagency coordination and medical control, public health surveillance activities, EMS data and quality of care, regulation and enforcement, trauma registry reporting, and other activities related to the oversight of the prehospital health care system in California. It is the opinion of the EMS Authority that these functions are primarily for the benefit of the counties they serve not the covered entities who are obligated by statute to provide the necessary patient data.

The California Health and Safety statutes allow for this oversight activity and the LEMSAs act as an extension of the State EMS Authority in those regional system oversight responsibilities. The further transmission of the information into a database by the State of California for the purpose of statewide system oversight activities is consistent with the directives of Division 2.5.

A business associate is defined as "one that performs certain functions or activities on behalf of or provides services to a covered entity, that involve the use of protected health information." The HIPAA privacy rule lists most of the services a business associate would perform for the covered entity as: claims processing or administration, utilization review, quality assurance, billing, management, legal services, accounting, consulting, data aggregation, accreditation, and financial services. Under normal circumstances, the LEMSAs do not perform these activities.

Local EMS Agency

April 16, 2003

Page 2

In utilizing the available information cited above, it is clear that EMS Authority and LEMSA oversight activities do not give rise to a business associate relationship and patient health care information may be disclosed by a covered entity to a LEMSA functioning as a trading partner under HIPAA regulations. However, if other activities occur separately from these oversight responsibilities, a business associate agreement may be appropriate.

The EMS Authority will forward this memorandum to the US Department of Health and Human Services, Office of Civil Rights. We recommend that all LEMSAs proceed accordingly and consult their respective counsels for further direction.

If you have any questions, please contact Ed Armitage at (916) 322-4336.