



**OFFICE OF GENERAL COUNSEL
LEGAL OPINION**

TO: Sharilyn Stanley, M.D., Associate Commissioner for the
Associateship for Disease Control and Prevention

Ernest Oertli, Bureau Chief for the Bureau of Epidemiology

FROM: Office of General Counsel *fw*

DATE: April 22, 2003

RE: Texas Cancer Registry and HIPAA

BACKGROUND

The Texas Cancer Registry ("the Registry") conducts independent case finding audit reviews of randomly selected hospital facilities. One document that is critical for an accurate audit process is a copy of the hospital master patient index so the auditor is able to determine if all cancer cases were correctly identified and reported to the Registry. One hospital facility has indicated that this information cannot be provided because it is not allowed under the HIPAA Privacy regulations.

QUESTION

You asked whether the Texas Cancer Registry, or a contractor acting on your behalf, has the authority under state law and rules, and the Health Insurance Portability and Accountability Act ("HIPAA") Privacy Standards, to obtain a complete Disease Index from a facility.

ANSWER

Yes. A covered entity may rely, if the reliance is reasonable under the circumstances, on the representations of a public official regarding what is the minimum necessary information the public official will need to accomplish the purpose for which the request is made.

DISCUSSION

The Texas Cancer Registry is required by TEX. HEALTH & SAFETY CODE ANN. § 82.004 (Vernon 2001). The Registry is the "central data bank for accurate, precise, and current information that medical authorities agree serves as an invaluable tool in the

recognition, prevention, cure and control of cancer, pre-cancerous, and tumorous diseases.” Tex. Health & Safety Code Ann. § 82.005 (Vernon Supp. 2003)

The Board of Health (“the Board”) has authority to adopt rules to implement the Registry requirements. The Board can also require a hospital, clinical laboratory, and cancer treatment center to furnish information, on request that is derived from a medical record that the Board considers necessary and appropriate to accomplish the purpose of the Registry. Tex. Health & Safety Code Ann. § 82.008 (Vernon Supp. 2003). The Board of Health adopted the Cancer Registry rules in 25 Tex. Admin. Code, Ann. Chapter 91, Subchapter A (Vernon 2001).

If an entity is unable to separate the information required by rule, or requested by the Board or its representative, the Board has authority to request the information the Board requires to obtain the data.

The United States Department of Health and Human Services adopted federal Privacy Standards (“the Privacy Standards”), 45 C.F.R. Parts 160 and 164, to implement the privacy provisions required by the Health Insurance Portability and Accountability Act, codified at 42 U.S.C. § 1320d *et seq.* These regulations provide for numerous exceptions to the general requirement that an authorization of an individual must be obtained before a covered entity may use or disclose protected health information (“PHI”). In addition to eliminating the requirement to obtain an individual’s consent to use and disclose PHI for treatment, payment and health care operations, 45 C.F.R. § 164.502(a)(iii), the final regulations contain exceptions that permit a covered entity to disclose PHI, if the disclosure is required by law, for public health activities to a public health authority, and for health oversight activities. 45 C.F.R. § 164.512(a), (b), and (d) respectively.

The Privacy Standards provide no barrier to a covered entity disclosing PHI to a “public health authority that is authorized to collect and receive the information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to, the reporting of disease, injury, or vital events...” 45 C.F.R. § 164.512(b)(1)(i).

The Texas Department of Health (“TDH”) is the State of Texas’ public health authority. Texas Health and Safety Code, Chapter 82 requires the Board of Health to collect cancer data, and more specifically requires a hospital, clinical laboratory or cancer treatment center to provide the information on request.” Tex. Health & Safety Code Ann. § 82.008 (Vernon Supp. 2003).

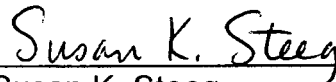
The Privacy Standards additionally provide no barrier to a covered entity relying on a public official’s determination of what information the official requires to accomplish the purpose for the request under 45 C.F.R. §§ 164.512 and 164.514 (d)(3)(iii). Where a covered entity cannot separate out the minimum necessary required by rule, TDH may request the information it determines will be necessary to comply with its request for data

Conclusion: A covered entity can reasonably rely on the Texas Department Health's determination that the Complete Disease Index is the minimum necessary disclosure, if under the circumstances the request is reasonable. If the hospital would not be able to otherwise provide any of the data required by Texas Department Health, this request would be reasonable under the circumstances to accomplish the purpose of the request.



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