

 HAWAII HEALTH SYSTEMS C O R P O R A T I O N "Quality Healthcare For All" POLICY	Department: Quality Through Compliance	Policy No.: CMP 050A
	Issued by: Audit and Compliance Committee	Revision No.:
Subject: HIPAA Release of Information for Law Enforcement Purposes	Approved by:  HHSC Board of Directors By: Carol A. VanCamp Its: Secretary/Treasurer	Effective Date: September 19, 2013
		Supersedes Policy: Page: 1 of 5

Last Reviewed: August 26, 2013. Next Review: August 26, 2016

I. **PURPOSE:** To establish how Hawaii Health Systems Corporation (HHSC) may disclose protected health information (PHI) without patient authorization to law enforcement officials for law enforcement purposes in accordance with federal, state and/or city and county laws.

II. **DEFINITIONS:**

Law enforcement official – an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory or an Indian tribe who is empowered by law to investigate or conduct an official inquiry into a potential violation of law or prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

Protected Health Information (PHI) – Health information, including demographic information collected from an individual, created or received by HHSC that:

1. Identifies the individual or for which there is reasonable basis to believe the information can be used to identify an individual.
2. Relates to:
 - a. The individual's past, present, or future physical or mental health or condition;
 - b. The provision of health care to the individual, or;
 - c. The past, present, or future payment for the provision of health care to the individual.
3. Is stored or transmitted in any medium.
4. Are not federally funded educational records (FERPA-Family Educational Rights and Privacy Act), or in employment records held by a covered entity in its role as employer, or in records described at 20 U.S.C. 1232g(a)(4)(B)(iv), or regarding a person who has been deceased for more than 50 years.

III. **POLICY:**

- A. HHSC may disclose PHI without individual authorization to a law enforcement official for the law enforcement purposes described below. HHSC will disclose PHI to a law enforcement official as required by federal, state, or county laws and to the extent that the disclosure complies with and is limited to the relevant requirements of the law.
- B. *Report of wounds* – Every attending or treating provider shall report to the chief of police or his/her authorized subordinates the following injuries:
 1. Knife wounds, bullet wounds, gunshot wounds, powder burns, or;
 2. Any injury that would seriously maim, produce death or has rendered the injured

person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner.

3. The report should include:
 - a) The name of the injured person, and;
 - b) A description of the nature, type and extent of the injury, and other pertinent information which may be of use by the chief of police.
4. This reporting shall not apply to such wounds received by a member of the armed forces while engaged in the actual performance of duty.

C. *Alcohol and drug testing in the event of a vehicle collision resulting in injury or death:*

1. Driver Identified:
 - a) A health care provider, as soon as reasonably possible, shall notify a law enforcement officer present at the facility if that provider is providing medical care to an individual involved in a vehicle collision if the provider:
 - i. Has a reasonable belief that the individual was the operator of a vehicle involved in a collision, and;
 - ii. Becomes aware, as a result of any blood or urine test performed in the course of treatment of the individual, that:
 - a. The alcohol concentration in the individual's blood meets or exceeds .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood; or
 - b. The individual's blood or urine contains one or more drugs that are capable of impairing an individual's ability to operate a vehicle in a careful or prudent manner.
 - iii. A strict reading of the statute (HRS 291E-21) only allows a provider to tell the law enforcement official "to investigate the collision" but does not allow the disclosure of PHI as that option only occurs in the following situation.
 - b) Driver Not Yet Determined:
 - i. If a health care provider becomes aware, as a result of any blood or urine test performed in the course of treatment of an individual, that:
 - a. the alcohol concentration in the individual's blood meets or exceeds .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood, or;
 - b. the individual's blood or urine contains one or more drugs that are capable of impairing an individual's ability to operate a vehicle in a careful or prudent manner; and
 - ii. If the health care provider is unable to form a reasonable belief as to the identity of the operator involved in the vehicle collision, the health care provider shall notify law enforcement of blood and urine test results of each person involved in the collision if such results meet the above standards.
 - iii. The notice from the health care provider shall consist of the following information:
 - a. The name of the individual being treated;
 - b. The blood alcohol concentration or drug content disclosed by the test, and;
 - c. The date and time of the administration of the test.
 - iv. In the event of a collision resulting in injury or death and if a law enforcement officer has probable cause to believe that a person violated the law, the law enforcement officer shall request that a sample of blood or urine be recovered from the vehicle operator or any other possible violators. The law enforcement officer shall provide a written request for testing to HHSC. Upon receipt of a written request, HHSC will:

- a. Have sample drawn by a physician, registered nurse, phlebotomist or other person licensed in a clinical laboratory occupation;
 - b. Recover the sample in accordance with the appropriate procedures for specimen selection, collection, handling and analysis, and;
 - c. Provide the law enforcement officer with the blood or urine sample.
 - v. HHSC may deny the law enforcement officer's request for a sample of blood or urine from the individual if the responsible attending personnel determines, in good faith, that recovering or attempting to recover the blood or urine sample from the individual presents an imminent threat to the health of the medical personnel or others.
- D. *Fireworks Incidents:* HHSC shall report all incidents of serious injuries and fatalities caused by legal or illegal fireworks to the Department of Health and the local Police Department of the county in which the person was attended or treated. The report shall be made in writing or in the manner specified by the Department of Health.
- E. *Decedents:* PHI shall be disclosed for the purpose of alerting law enforcement about the death of an individual if HHSC has a suspicion that such death may have resulted from violence or by casualty or by apparent suicide or suddenly when in apparent health or when not under the care of a physician or when in jail or in prison or within twenty-four (24) hours after admission to HHSC or in any suspicious or unusual manner. See also the HHSC policy on Uses and Disclosures of Protected Health Information on Decedents (CMP 032A). Domestic Violence is covered in the HHSC policy on Disclosures about Victims of Abuse, Neglect or Domestic Violence (CMP 048A).
- F. *Abuse or Neglect of Children and/or Vulnerable Adults:* Disclosure of protected health information related to possible child or vulnerable adult abuse, neglect or domestic violence of an individual shall be directed by HHSC policy on Disclosure of Protected Health Information of Victims of Abuse or Neglect (CMP 048A).
- G. *Correctional institutions and other law enforcement custodial situations:* Protected health information about an individual in custody may be disclosed to a correctional institution or law enforcement official having lawful custody of an inmate or other individual if:
- 1. The correctional institution or law enforcement official represents that the information is necessary for:
 - a) The provision of health care to the individual;
 - b) The health and safety of such individual or other inmates;
 - c) The health and safety of the officers, employees, or others at the correctional institution;
 - d) The health and safety of the individual and officers or other persons responsible for transporting or transferring the individual;
 - e) Law enforcement on the premises of the correctional institution, and;
 - f) The administration and maintenance of the safety, security, and good order of the correctional institution.
 - 2. Release of PHI under this provision is no longer applicable once the individual has been released on parole, probation, supervised release or otherwise and is no longer in lawful custody.
- H. *Identification and location purposes:* PHI may be disclosed in response to a law enforcement official's request for the purpose of identifying or locating a suspect, fugitive, material witness or missing person. Except for disclosures required by law as outlined in

Sections A, B and C, information disclosed shall be limited to:

1. Name and address;
2. Date and place of birth;
3. Social security number;
4. ABO blood type and Rh factor;
5. Type of injury;
6. Date and time of treatment;
7. Date and time of death, if applicable, and;
8. Description of distinguishing physical characteristics (including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or mustache), scars, and tattoos).
9. Information disclosed shall not include the individual's DNA or DNA analysis, dental records, blood typing, samples or analysis of body fluids or tissue.

- I. *Victims of a crime (other than mandated injury reports):* Other than disclosures for public health activities and victims of abuse, neglect or domestic violence, protected health information may be disclosed in response to a law enforcement official's request for such information about an individual who is suspected to be a victim of a crime on the condition that:
 1. The individual agrees to the disclosure, or;
 2. The individual is unable to agree to the disclosure because of incapacity or other emergency circumstance, and;
 - a) The law enforcement official represents that:
 - i. The information is needed to determine whether a violation of law by a person other than the individual has occurred, and the information is not intended to be used against the individual, and;
 - ii. The immediate law enforcement activity that depends upon the disclosure of such information would be materially and adversely affected by waiting until the individual is able to agree to the disclosure, and;
 - iii. The disclosure is in the best interest of the individual as determined by HHSC in the exercise of its professional judgment.
- J. *Workforce Members who are Victims of Crime:* A workforce member who is a victim of a criminal act shall not be prohibited from releasing limited PHI about a suspected perpetrator of the criminal act to a law enforcement official provided that such release is limited to the information that may be released for identification and location purposes (Section H).
- K. *Crime on premises:* PHI may be disclosed to a law enforcement official if HHSC, in good faith, believes the information constitutes evidence of criminal conduct that has occurred on its premises.
- L. *Reporting crime in emergencies off HHSC premises:* PHI may be disclosed to a law enforcement official for the purposes of reporting information gained while providing emergency health care in response to a medical emergency, other than such emergency on the premises of HHSC, if it believes the disclosure appears necessary to alert law enforcement to:
 1. The commission and nature of a crime;
 2. The location of such crime or of the victim(s) of such crime, and;
 3. The identity, description, and location of the perpetrator of such crime.
 4. If HHSC believes that the medical emergency is the result of abuse, neglect or domestic violence, any disclosure to a law enforcement official for law enforcement

purposes is subject to the HHSC policy on Disclosures about Victims of Abuse, Neglect or Domestic Violence (CMP 048A).

- M. *Avert serious threat to health or safety:* Disclosure of PHI for the purpose averting a serious threat to the health and safety of a person or the public or for alerting law enforcement to identify or apprehend an individual who poses such a threat shall be directed by HHSC policy on Disclosure of PHI to Avert a Serious Threat to Health or Safety (CMP 030A).
- N. *Judicial and administrative proceedings:* PHI (other than Specially Protected Information) may be disclosed to a law enforcement official in response to a valid court order, warrant, subpoena or summons. Such disclosures shall be directed by the HHSC policy on Disclosures for Judicial and Administrative Proceedings (CMP 038A).
- O. *Specialized government functions related to law enforcement:* PHI may be disclosed in response to a law enforcement official's request related to national security and intelligence activities. Any disclosures shall be directed by HHSC policy on Disclosure of PHI for Specialized Government Functions (CMP 036A).
- P. *Verification:* HHSC will verify the identity and authority of the requestor in accordance with HHSC policy on Verification (CMP 04A) prior to any release of PHI.
- Q. *Accounting for Disclosure:* An accounting of any disclosures under this policy will be made as directed by HHSC policy on Accounting for Disclosures (CMP 040A).
- R. *Related Policies:* This policy does not cover disclosures for the following purposes:
 - 1. Disclosure to governmental officials for public health activities (CMP 045A).
 - 2. Disclosure about victims of abuse, neglect, or domestic violence (CMP 048A).
 - 3. Disclosures for judicial and administrative proceedings (CMP 038A).
 - 4. Disclosures to avert a serious threat to health or safety (CMP 030A).
 - 5. Disclosures for specialized government functions (CMP 036A).
- S. HHSC facilities shall implement procedures to operationalize this Policy.

IV. APPLICABILITY: This Policy applies to all HHSC facilities.

V. AUTHORITY: Hawaii Revised Statutes (HRS) Section 453-14; HRS 291E-12, 291E-14, 291E-21, 291E-61; HRS 663-1.9; HRS 321-161; HRS 132D-21; Hawaii Administrative Rules, Department of Health, Title 11, Chapter 114; Standards for Privacy of Individually Identifiable Health Information (HIPAA), 45 C.F.R., Sections 164.501, 164.502(j)(2), 64.512(f), 164.512(k)(5).

VI. ATTACHMENT: None.