



Wintergreen Fire and Rescue Standard Administrative Policy	
Subject:	PHI to Law Enforcement
Reference Number:	ADM 05-020
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Last Revision Date:	
Signature of Approval	Curtis Sheets, Chief

Purpose:

Protected health information (“PHI”) may only be released to law enforcement officials under specific and limited circumstances under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). This policy provides consistent guidelines for Wintergreen Rescue Squad staff and volunteer members to follow regarding the release of PHI to law enforcement when the law enforcement official does not serve some type of legal process, such as a summons, subpoena, or warrant, so that staff only release PHI in accordance with HIPAA.

Scope:

This policy applies to all Wintergreen Rescue Squad volunteer and staff members who may come in contact with law enforcement including field personnel who may encounter law enforcement officials at the scene of an incident and other staff who may be approached by law enforcement directly after an incident. This policy applies to situations where law enforcement is seeking PHI from a staff or volunteer member and the law enforcement official does not present Wintergreen Rescue Squad with a legal process, such as a subpoena, summons or warrant. Wintergreen Rescue Squad’s Policy on Release of Protected Information Pursuant to Warrant, Subpoena, Summons or Administrative Request applies to situations where law enforcement or other parties are seeking information pursuant to legal process.

Procedure:

General Procedure for Handling Requests

1. If a staff or volunteer member of Wintergreen Rescue Squad is approached by a law enforcement official and the official makes a request for PHI about a patient from the member, the member should verify the identity of the law enforcement official and ask the official what is the purpose for which the request is being made.
2. If the request is being made for one of the purposes listed in this policy, then the member may release the PHI to the law enforcement official, in accordance with this policy. Formal written patient authorization is not required when releasing PHI pursuant to one of the purposes listed in this policy; however, where the patient is readily available and able to consent to the disclosure, the law enforcement officer should be directed to the patient so long as it doesn’t delay necessary patient care.
3. If the member is unsure about whether the release of PHI is proper, the staff member should direct law enforcement to the most senior personnel on scene for

- guidance. Under no circumstance should any member release PHI to law enforcement if the member is unsure about the appropriateness of the disclosure.
4. If the request for PHI does not fall under one of the purposes listed in this policy, the staff member should inform the law enforcement officer that s/he is not permitted under HIPAA to release the information. The member may inform the law enforcement official of the following two options:
 - a. The law enforcement official may obtain legal process, such as a warrant, summons, or subpoena, to obtain the information from Wintergreen Rescue Squad.
 - b. The law enforcement official may obtain the information directly from the patient if the patient is stable and willing to speak with the official. Members should only provide this option to a law enforcement official when doing so would not impede patient care and where the patient is willing to speak with the official. For a stable patient, the member should first consult with the patient to determine whether the patient is willing to speak with the official. If the patient declines to speak with the official, the staff member should inform the enforcement official.
 5. Members should record, at a minimum, the following information about all law enforcement requests that are unaccompanied by legal process:
 - a. The name of the law enforcement official;
 - b. The date and time of the request;
 - c. The purposes for which the request was made (if provided);
 - d. What information the law enforcement official requested;
 - e. Whether the patient was consulted about the request and the patient's response;
 - f. Whether the HIPAA Compliance Officer or other individual at Wintergreen Rescue Squad was consulted about the request;
 - g. Whether the law enforcement official made any representations to Wintergreen Rescue Squad;
 - h. Whether PHI was released and what PHI was released; and
 - i. The reason(s) why the PHI was released.

Purposes for Which Disclosure Can Be Made to Law Enforcement Without Legal Process

Disclosures of PHI Required by State Reporting Law

1. Virginia State law requires that Wintergreen Rescue Squad staff members report the following types of incidents to law enforcement agencies in Virginia:
 - When the individual is the victim of a crime or;
 - When the individual has been arrested and has received emergency medical services or has refused emergency medical services and the health records consist of the prehospital patient care report required by § 32.1-116.1
 - In response to their request, for the purpose of identifying or locating a suspect, fugitive, person required to register pursuant to

§ 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information may be disclosed:

- name and address of the person,
 - date and place of birth of the person,
 - social security number of the person,
 - date and time of treatment received by the person,
 - date and time of death of the person, where applicable,
 - description of distinguishing physical characteristics of the person (i.e. weight, hair color, eye color, gender, facial hair, scars and tattoos), and
 - type of injury sustained by the person;
- To law-enforcement officials regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct;
 - To law-enforcement officials if the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises;
2. If there is any doubt regarding whether or not Virginia requires reporting of a particular injury or incident, the member should contact a supervisor for a list of incidents that must be reported under Virginia law.

Disclosing PHI About Crime Victims

1. PHI about crime victims may be disclosed to law enforcement only upon request of a law enforcement official. The disclosure may not be initiated by Wintergreen Rescue Squad.
2. Wintergreen Rescue Squad may disclose PHI about a crime victim to a law enforcement official if the individual agrees to the disclosure. If the patient is conscious and alert, and it would not impede the provision of care, the staff member should ask the patient if it is acceptable to disclose the PHI to law enforcement. If the patient does not consent to the disclosure, then PHI should not be disclosed and law enforcement should be informed of that fact. If the victim does consent to the disclosure, the PHI may be released in accordance with the patient's wishes. The consent may be verbal, but it should be documented on a patient care report or other document.
3. If the patient is unable to consent, due to incapacity or other reason, the member should ask law enforcement if they can wait until the patient is able to consent to the release of the PHI. If the law enforcement official represents that waiting until the patient is capable of agreeing to the disclosure would compromise an immediate law enforcement activity, then PHI may be disclosed to law enforcement provided the following conditions are met:
 - a. The member, in the exercise of professional judgment, determines that disclosure would be in the best interests of the crime victim;

- b. The law enforcement officer needs the information to determine whether a violation of law has occurred; and
 - c. The law enforcement officer represents that the information requested is not intended to be used against the crime victim.
- Representations from law enforcement may be verbal and should be documented in a patient care report or other document.

Disclosing PHI Regarding Victims of Abuse, Neglect, or Domestic Violence

1. If law enforcement makes a request for PHI regarding someone who a Wintergreen Rescue Squad member reasonably believes to be the victim of violence or abuse, Wintergreen Rescue Squad may release PHI to law enforcement if the patient agrees to the disclosures. The staff member should first ask the patient for his/her consent to release the information. If the patient does not consent to the disclosure, no PHI should be provided to law enforcement and law enforcement should be informed of this fact. If the individual agrees to the disclosure of PHI, the staff member may give the PHI to law enforcement in accordance with the patient's consent. This consent can be verbal but it should be documented on the patient care report.
2. If the individual is unable to consent to the disclosures due to incapacity, mental condition, etc., and the laws of Virginia expressly authorize reporting of this type of information to law enforcement, Wintergreen Rescue Squad members may release PHI to law enforcement provided that either of the following conditions are met:
 - a. The member, in the exercise of professional judgment, believes that the disclosure is necessary to prevent serious harm to the patient or other potential victims; or
 - b. Law enforcement assures the staff member that the PHI will not be used against the victim and represents that an immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
3. Representations from law enforcement may be verbal and should be documented in a patient care report by the staff member along with all details regarding the disclosure including the identity of the requestor, the purpose of the request, the date and time of the request, and the PHI released about the victim.
4. If Wintergreen Rescue Squad discloses PHI without the patient's consent because the patient was unable to consent, the HIPAA Compliance Officer must contact the patient and alert them of the disclosure, unless Wintergreen Rescue Squad believes contacting the patient will only put the patient at greater risk.

Disclosing PHI Regarding Decedents

1. PHI can be released to law enforcement about decedents without a request for PHI from a law enforcement official (*i.e.*, Wintergreen Rescue Squad may initiate this type of disclosure).
2. Wintergreen Rescue Squad members may disclose limited PHI to law enforcement about an individual who has died when staff members have a reasonable, good faith belief that the death may have resulted from criminal conduct. The member does

- not necessarily have to come to a legal conclusion, or know with complete certainty, that the death resulted from a crime. This includes any type of crime.
3. Disclosure regarding suspected victims of a crime should be limited to basic facts about the victim and the circumstances of the death.

Disclosing PHI to Report a Crime in an Emergency

1. Wintergreen Rescue Squad may initiate this type of disclosure to law enforcement absent a request from a law enforcement official.
2. Wintergreen Rescue Squad members may disclose PHI to law enforcement when they believe it is necessary to alert law enforcement to:
 - The commission of a crime
 - The nature of a crime
 - The location of the crime
 - The location of a crime victim
 - The identity, description, and location of the perpetrator of a crime
3. Disclosures of PHI to report a crime in an emergency should be limited to necessary information about the nature of the crime and information about the suspect(s).

Disclosure of PHI to Avert a Serious Threat to Health or Safety

1. Wintergreen Rescue Squad may initiate this type of disclosure to law enforcement absent a request from a law enforcement official.
2. Wintergreen Rescue Squad members may disclose PHI to avert a serious threat to health or safety so long as a staff member believes that the disclosure is necessary to:
 - a. Avert a serious and imminent threat to a person's safety or the public at large;
 - b. Identify or apprehend an individual because that individual admitted to participating in a violent crime that may have caused serious harm to someone; or
 - c. Identify or apprehend someone who escaped from a correctional institution or from lawful custody.
3. Disclosures of PHI to prevent or lessen a serious and imminent threat to the health or safety should only be made to alert persons who are reasonably able to prevent or lessen the threat.
4. Disclosures of PHI to prevent or lessen a serious threat to health or safety should be limited to necessary information to prevent or lessen the threat, and necessary information about the individual who poses the threat.