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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

November 4, 2004

Derrick B. Balsa, Esquire  
Assistant Solicitor, Seventh Judicial Circuit  
Spartanburg County Courthouse  
180 Magnolia Street  
Spartanburg, South Carolina 29306

Dear Mr. Balsa:

In a letter to this office you indicated that the Spartanburg County Sheriff's office is having difficulty meeting with victims of crime at your local hospital. You indicated they are also meeting resistance to the execution of search warrants at the hospital. According to you, these problems relate to provisions in the HIPAA Act.

HIPAA is the Health Insurance Portability and Accountability Act of 1996, 110 Stat. 1936 (1996), and was enacted to protect the privacy of health information. Regulations were promulgated by the Department of Health and Human Services regarding the privacy standards of medical records. 45 C.F.R. parts 160 and 164. As indicated in United States v. Sutherland, 143 F.Supp. 2d 609 (W.D.Va. 2001), HIPAA regulations establish the circumstances under which patient medical records may be revealed by health plans, health care clearinghouses, and most health care providers. As noted in an opinion of the Arkansas Attorney General dated August 23, 2002, the regulations generally,

prohibit the disclosure by covered entities of protected health information without the required consent, authorization, or agreement; they require notice by covered entities of the use and disclosure of protected health information to the affected individual; they require covered entities to develop and implement privacy policies and physical standards to protect health information; they require the designation of a privacy officer within the covered entity who is to be responsible for the development and implementation of a privacy policy for the covered entity; they require the designation by covered entities of a contact person or administrative office who is to be responsible for receiving complaints concerning compliance with the privacy policy of the covered entity; and they require covered entities to impose sanctions upon members of the entity's workforce who fail to comply with the entity's privacy policies.

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Exceptions exist as to these regulations. As noted by 45 C.F.R. Section 164.512,

A covered entity<sup>1</sup> may use or disclose protected health information<sup>2</sup> without the written authorization of the individual...or the opportunity for the individual to agree or object...in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

Consistent with such, a covered entity may disclose or use protected health information without the written authority of an individual in certain different situations. As to exemptions to HIPAA for law enforcement purposes, 45 C.F.R. Section 164.512(f) provides as follows:

(f) Standard: Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:

(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or

(ii) In compliance with and as limited by the relevant requirements of:

(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;

(B) A grand jury subpoena; or

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<sup>1</sup>A "covered entity" is defined by 45 C.F.R. Section 160.103 as "...(1) a health plan, (2) a health care clearinghouse, (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered...."

<sup>2</sup>"Protected health information" is defined by 45 C.F.R. Section 160.103 as "...individually identifiable health information...(not otherwise excepted by such provision)...that is (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium...."

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(C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

(1) The information sought is relevant and material to a legitimate law enforcement inquiry;

(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

(3) De-identified information could not reasonably be used.

(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information:

(A) Name and address;

(B) Date and place of birth;

(C) Social security number;

(D) ABO blood type and rh factor;

(E) Type of injury;

(F) Date and time of treatment;

(G) Date and time of death, if applicable; and

(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of

this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

(3) Permitted disclosure: Victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

(i) The individual agrees to the disclosure; or

(ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that 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; and

(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(4) Permitted disclosure: Decedents. A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

(6) Permitted disclosure: Reporting crime in emergencies.

(i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

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- (A) The commission and nature of a crime;
- (B) The location of such crime or of the victim(s) of such crime; and
- (C) The identity, description, and location of the perpetrator of such crime.

(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement is subject to paragraph (c) of this section.

As to your difficulties with regard to victims, I am unaware of any provision that specifically addresses meeting with victims. As set forth, HIPAA was enacted to protect the privacy of health information. I am unaware of any protections under HIPAA with regard to meeting with victims. If you can cite me to such, I would be glad to review any such provisions. However, with regard to information regarding victims, section (f)(3) controls. Again, such provision states:

(3) Permitted disclosure: Victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

- (i) The individual agrees to the disclosure; or
- (ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that 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; and

(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

Additionally, as to victims of abuse, neglect or domestic violence, subsection (c) of Section 164.512 provides that :

(1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

(ii) If the individual agrees to the disclosure; or

(iii) To the extent the disclosure is expressly authorized by statute or regulation and:

(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate 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.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

Regarding your question as to resistance to the execution of search warrants, as set forth by section (f)(1)(ii)(A), a covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official:

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In compliance with and as limited by the relevant requirements of

(A) a court order or court ordered warrant, or a subpoena or summons issued by a judicial officer.

In my opinion such would be applicable to a search warrant thus permitting disclosure of protected health information in such circumstances. Again, I am unaware of any provision regarding HIPAA that specifically addresses meeting with victims so as to prohibit such.

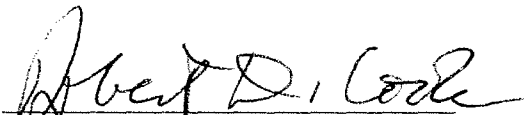
With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
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