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MEMORANDUM

DATE: April 17, 2013

TO: Wisconsin Hospitals

FROM: Karen McKeown, Administrator
Division of Public Health
Wisconsin Department of Health Services

Release of EMS Reports to Organ and Tissue Procurement Organizations

Every year thousands of Wisconsin lives are saved and healed through organ and tissue donation. Wisconsin hospitals play a vital role in this life-saving work by working closely with procurement organizations. Earlier this year, representatives of these organizations asked the Department to clarify the legal authority for procurement organizations to obtain EMS reports from hospitals. The request was in response to several instances in which EMS reports were withheld from procurement organizations and, despite the legal authorization of the donor and wishes of the donor's family, donation was not possible. This memo addresses this request and states the Department's position that procurement organizations have legal authority to obtain EMS reports from hospitals.

A Wisconsin ambulance service provider is required to submit a report to the receiving hospital upon delivering a patient and a complete patient care report to the hospital within 24 hours of patient delivery. Wis. Admin. Code § DHS 110.34 (7). Although an ambulance run report is a confidential patient health care record under Wis. Stat. § 146.81 (4), and is protected from disclosure without consent under Wis. Stat. § 146.82, there is a specific exception to the requirement for patient consent if the requestor is an organ procurement organization:

146.82 Confidentiality of patient health care records.

- (1) CONFIDENTIALITY.** All patient health care records shall remain confidential. Patient health care records may be released only to persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. . . .
- (2) ACCESS WITHOUT INFORMED CONSENT.** (a) Notwithstanding sub. (1), patient health care records shall be released upon request without informed consent in the following circumstances.
- . . .

19. To a procurement organization, as defined in s. 157.06 (2) (p) , for the purpose of conducting an examination to ensure the medical suitability of a body part that is or could be the subject of an anatomical gift under s. 157.06.

Section 157.06 (2) (p), Stats., defines procurement organization to mean an eye bank, organ procurement organization, or tissue bank. Under Wis. Stat. § 157.06 (14), when a hospital refers an individual at or near death to a procurement organization, the procurement organization has a right to examine “all of the individual’s medical or dental records,” unless otherwise prohibited by law:

157.06 Anatomical gifts.

...

(14) RIGHTS OF PROCUREMENT ORGANIZATIONS AND OTHERS. (b) When a hospital refers an individual at or near death to a procurement organization, the procurement organization may conduct any reasonable examination to determine whether a part of the individual that is or could be the subject of an anatomical gift is medically suitable for transplantation, therapy, research, or education. Unless otherwise prohibited by law, an examination under this paragraph may include an examination of all of the individual’s medical or dental records.

We are unaware of any legal prohibition against a hospital releasing EMS reports to a procurement organization. Section 157.06 (14), Stats., is consistent with HIPAA's Privacy Rule at 42 C.F.R. § 164.512 (h), which provides that a covered entity may disclose protected health information to organ procurement organizations or other entities engaged in procurement, banking, or transplantation of organs, eyes, or tissue for the purpose of donation and transplantation.

In conclusion, it is the Department’s position that a hospital should release EMS records, as well as other patient health care records, to a procurement organization as provided under Wis. Stat. § 157.06 (14).

We appreciate the work you do in making donation and transplantation possible. With continued partnership and collaboration, Wisconsin will remain a leader in organ, tissue and eye donation and transplantation.