

Archer City EMS

ADMINISTRATIVE POLICY AND PROCEDURE

SECTION: FIRE AND EMERGENCY MEDICAL SERVICE

TOPIC: COMPLIANCE WITH HEALTH INFORMATION PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) and TEXAS HEALTH RECORDS PRIVACY ACT, TEXAS HEALTH AND SAFETY CODE CHAPTER 181.

REFERENCE: Public Law 104-191, 42 U.S.C. 1301 *et seq.*; 45 C.F.R. 160.001 *et seq.* and Texas Health and Safety Code Chapter 181.001 *et seq.*

I. PURPOSE

The purpose of this policy is to set forth guidelines for compliance with the Health Insurance Portability and Accountability Act of 1966, hereafter called "HIPAA," and The Texas Health Records Privacy Act, by Archer City EMS, hereinafter referred to for all purposes as EMS.

II. POLICY

It is the policy of Archer City EMS to comply with the provisions of HIPAA and to protect Individually Identifiable Health Information (IIHI), also herein referred to as Protected Health Information (PHI) gathered in the course of providing Emergency Medical Services; all employees and agents of the Archer City EMS shall at all times maintain the highest level of confidentiality and information and protected health information gained from patients in the course of EMS assessment and treatment and kept in any form by the Archer City EMS.

III. DEFINITIONS

A. **Employee** – Any person employed by the Archer City EMS including those employed full-time, part-time or on a seasonal basis.

B. **Individual** – Any person using the services of Archer City EMS.

C. **Individually Identifiable Health Information (IIHI)** –

Is information that is a subset of health information, including demographic information collected from an individual, and:

- (1) Is created or received by a health care provider
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (i) That identifies the individual; or
 - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (3) Individually Identifiable Health Information is also referred to herein as Protected Health Information (PHI) and the two terms shall have the same meaning.

D. **Business Associate** - One who uses individually identifiable health information for:

- Claims processing for Archer City EMS
- Medical direction
- Education in an affiliated EMS education program
- a Citizens Fire Academy experience
- Utilization review
- Quality assurance or improvement
- Billing
- Benefit management
- Legal advice
- Accounting and auditing
- Consulting
- Data aggregation
- Data management
- Accreditation
- Financial services
- Collection agency
- {add *any other applicable business associate*}

E. **Health Care** – Emergency or non-emergency assessment, treatment, or procedures with respect to physical or mental condition or functional status of an individual or that affects the structure or function of the body; use or dispensing of a drug, device, supply item, equipment or other item from a prescription or under medical protocols

F. **Information** -- Any information, recorded in any way whatsoever that is

- Created or received by a provider
- Relates to past, present or future physical mental health or condition
- Related to provision of health care
- Related to payment for services

- G. **Standard** --A rule or requirement which employs IIHI for describing information for the classification of components, specification of materials, performance, or operations, or a description of procedures
- H. **Designated Record** – A set of one patient’s records which include medical records and billing
- I. **Disclosure** - Release, transfer, divulging, or providing access to IIHI and PHI to anyone other than the Archer City EMS for the purposes of billing, conducting quality assessment and improvement activities, outcome evaluations, legal consultations, developing clinical guidelines, protocol development, unit and personnel deployment strategies, case management and care coordination, student and employee education, and release of information to law enforcement, governmental agencies, and media as permitted or required by law, customer service, auditing, fraud and abuse studies, complaint resolution, employee discipline, transfer to another entity if such entity replaces Archer City EMS as an ambulance provider, and all other like disclosures
- J. **EMS** –Archer City EMS and Fire Department
- K. **Minimum Necessary Standard** - The minimum necessary amount of IIHI or PHI that is needed by an individual to carry out that individual's job function
- L. **Protected Health Information (PHI)** - Any individually identifiable health information (IIHI) or other information in the possession of Archer City EMS which is protected by HIPAA; or Texas Health and Safety Code Chapter 181, called The Texas Health Records Privacy Act; or Texas Health and Safety Code Chapter 773, called the Texas Emergency Medical Service Act; or by any other pertinent statute or regulation.

M. **Designated Record Set (DRS)** - A designated record set means all records containing protected health information (PHI) which relates to a patient. DRS should include the patient care report and all its parts, including billing documents, ECG monitor strips, medication records, treatment records, physician statements of medical necessity, transfer records, photographs, x-rays, or any other materials or data which are a part of the patient care record. Similarly, records of claims, whether paper or electronic, all correspondence and documents from or with insurance payers, and amendments of patient records, statements of disagreement by the patient requesting amendment when patient request for amendment is denied, summaries of patient records, and copies of patient request forms and EMS responses to them. DRS should also include copies of records created by and received from other health care providers.

DRS should not include quality assurance/quality improvement data, accident reports, incident reports, or peer review documents or materials.

GENERAL PROVISIONS

A. **PRIVACY OFFICER** -- Archer City EMS will maintain a designated Privacy Officer to oversee all confidentiality issues and to serve as a contact point for patients and their families to voice concerns, complaints, to access records, or to request that amendments be made to their patient records. All requests for patient information/records should be referred to the Privacy Officer.

1. **Job Description** -- The Privacy officer will

- a. monitor employee and company {*or department*} compliance with all state and federal privacy standards,
- b. investigate complaints regarding privacy issues,
- c. follow company {*or department*} procedures in resolving complaints,
- d. implement appropriate sanctions for violation of policies and procedures,
- e. provide initial and ongoing training on privacy issues to all personnel who have direct or indirect access to PHI
- f. keep custody of and maintain the security of patient records
- g. maintain administrative, electronic, and physical barriers to access to PHI
- h. enforce the *minimum necessary standard*
- i. identify all employees and classes of employees, and all others and classes of others who have or may have access to PHI
- j. identify the level of information needed by each employee and class of

- employees necessary to carry out job function according to the *minimum necessary* standard concept
- k. insure that all employees and others have signed a Confidentiality Agreement and have attended appropriate training sessions
 - l. review all requests for disclosure and make determinations as to whether or not to grant such requests, and if granted, to what extent information shall be disclosed
 - m. receive and act on requests for access and copying of records, amendment of records, restrictions on uses and disclosures of records, and for confidential communications
 - n. resolve conflicts between members of the workforce as to uses and disclosures of PHI and act as a liaison between members of the workforce and others who may have questions and issues regarding PHI

B. Confidentiality Agreement -- All personnel, including but not limited to riders, students, first responders, office managers, billing personnel, billing agencies, administrators, legal advisors, consultants, auditors, or any other individual who may have direct or inadvertent access to patient records shall sign a confidentiality agreement that will remain in effect permanently.

C. Patient Consent Form Signatures –

Each adult patient who is, in the opinion of the medical crew responding to such patient, possessive of the present mental capacity to execute a healthcare document, shall be asked

to sign a consent to use PHI and a billing authorization/financial responsibility form.

A parent, legal guardian, or other person authorized by the Texas Family Code to make healthcare decisions for minors, shall sign a consent for a minor patient.

A legal guardian, managing conservator, or one holding a power of attorney to make healthcare decisions shall sign a consent for a patient which is legally incompetent.

Other next of kin may be allowed to sign a consent if the patient is unable to sign and has not expressed a prior desire not to sign a consent.

D. Patient Unable to Sign Consent -- When a patient or other authorized person has not signed a consent, the reason shall be documented on the consent form. A follow up letter with a consent form attached will be sent to the patient by United States Mail within a reasonable time after the incident, and the patient asked to sign and return it. A notation will be made in the Follow-Up Consent/Authorization Log showing the date and address to which the follow up letter is sent. Reasonable efforts must be documented showing that attempts to gain the patient's signature were made

E. Crew Responsibility to Obtain Consent -- Each crew member shall ensure that consents are obtained whenever possible and shall be responsible for correct documentation of failed efforts to obtain consent at the time of service.

F. Patient Authorization Form Signatures -- Each adult patient who is, in the opinion of the medical crew responding to such patient, possessive of the present mental capacity to

execute a healthcare document, may be asked to sign an authorization for disclosure of PHI.

A parent, legal guardian, or other person authorized by the Texas Family Code to make healthcare decisions for minors, shall sign an authorization for a minor patient.

A legal guardian, managing conservator, or one holding a power of attorney to make healthcare decisions shall sign an authorization for a patient which is legally incompetent.

Other next of kin may be allowed to sign an authorization if the patient is unable to sign and has not expressed a prior desire not to sign a consent.

G. Patient Unable to Sign Authorization --

When a patient or other authorized person has not signed an authorization, the reason shall be documented on the authorization form. A follow up letter with an authorization form attached will be sent to the patient by United States Mail within a reasonable time after the incident, and the patient asked to sign and return it. A notation will be made in the Follow Up Consent/Authorization Log showing the date and address to which the follow up letter is sent. Reasonable efforts must be documented showing that attempts to gain the patient's signature were made.

H. Crew Responsibility to Obtain

Authorization -- Each crew member shall ensure that authorizations are obtained whenever possible and shall be responsible for correct documentation of failed efforts to obtain authorization at the time of service. The authorization form may be deferred according to standing orders issued by appropriate supervisory personnel.

I. Patient Care Record Security –

All patient charts and associated paperwork are to be treated as highly confidential and administrative, electronic, and physical security must be maintained at all times to ensure that PHI is neither intentionally nor inadvertently disclosed to those who do NOT have the right to such information.

J. Verbal, Written, and Electronic Information Necessary for Treatment --

All PHI obtained in the course of patient assessment and treatment which is necessary for continued treatment shall be disclosed only to those persons engaged in treatment who have a need to know such information, but no PHI shall be withheld which is necessary for continued treatment of a patient.

K. Maintaining Confidentiality of Verbal and Written PHI at the Scene and During Treatment –

Archer City EMS personnel should make every effort to minimize information that can be heard or read by those who do NOT have a “need to know” or “right to know” such information to carry out treatment. This includes bystanders, law enforcement officers, and even some family members. Because it is difficult at times to determine quickly who has a right to know PHI, Archer City EMS personnel should not share information with anyone unless it is necessary to continue treatment and care for the patient. If in doubt, tactfully decline the information until proper lines of authority have been established. The

Privacy Officer shall be notified of any conflicts that arise under this section.

L. Maintaining Confidentiality when Charting and Working with Patient Care Records/Medical Charts --

When working on Patient Care Records/Medical Charts all personnel shall take extra care to ensure that no PHI or records are left where they can be seen by those who have no “need to know” nor “right to know” such information.

M. Filing of Completed Records/Charts --

Completed Patient Care Records/Medical Charts shall be placed in a locked container/area provided. No record shall be left lying on a desk or in any other place where it can be read by an unauthorized person.

All personnel having a need to access to records shall at all times maintain the highest security of patient records and PHI.

N. Release of Records and PHI –

All requests for PHI or any medical records will be made to the Privacy Officer. The Privacy Officer will review all requests prior to approval or denial. Requests other than routine disclosures, state or federally mandated information releases, or other releases mandated by law will require authorization by the patient or the patient’s legal representative.

All other information release, requests for amendment, restrictions, confidential communications, or accounting shall be made utilizing the proper forms as provided by the privacy officer.

Approvals or denials for release of records or amendments to records will be made within 30 business days of the original written request. If the request cannot be acted upon within the 30 day period, the requesting person shall be so notified, the reason given for failure to provide the service requested, and the date when the request will be acted upon stated, which date shall be not later than 60 days from the date of original receipt of the request. If the request is denied, the requestor shall be so notified using the appropriate letter form, the reasons for denial given and the requestor's rights to review or appeal, if any, stated.

The Privacy Officer shall determine all matters regarding release of information, amendments to patient care records, restrictions on release, confidential communications, and access to records, based upon accepted interpretation of the HIPAA rule. The Privacy Officer shall consult the attorney for the system when necessary before making such determinations.

All documents released shall be in designated record sets as the same are defined above.

O. **Policy on Student Riders** -- All education programs affiliated with the Archer City EMS FD/EMS shall complete a Business Agreement with the City, which shall require that the education program and its students comply with all the City's policies and procedures regarding HIPAA. Each student, prior to riding out on an ambulance or fire apparatus shall complete a confidentiality agreement. It shall be the responsibility of the EMS or fire crew to which the student is assigned to adequately orient the student to HIPAA requirement and to the City's policies and procedures.

P. **Policy on Other Riders** -- All other riders on City ambulances and fire apparatus shall complete a confidentiality agreement prior to riding out. It shall be the responsibility of the EMS or fire crew to adequately orient the rider to HIPAA requirements and to the City's policies and procedures.

Q. **Policy on Peer Review and Performance Improvement** -- All PHI and records used in performance improvement and/or peer review shall be de-identified to the extent possible while still carrying out the purposes of the peer review or performance improvement. All such records shall be kept separate and apart from all other patient records and shall be subject to the same administrative, electronic, and physical barriers to information leakage as are other records and PHI. If de-identified records cannot reasonably be used, only the persons having an actual need to know the PHI involved in the peer review or performance improvement shall have access to such information.

R. **Minimum Necessary Disclosure** -- The Privacy Officer shall determine in each case the minimum necessary disclosure that shall be made when a request for disclosure is made. When the request is from a law enforcement agency, a governmental agency or other entity entitled by law to receive information, that entity's request shall be deemed the minimum necessary information needed by such entity.

S. **Requests from Attorneys** -- The Privacy Officer shall insure that all requests from attorneys for records are accompanied by the proper authorizations if the patient has not previously executed an authorization permitting disclosure to the attorney. The Privacy Officer may require that authorizations with original

signatures are provided prior to releasing information.

T. Search Warrants, Court Subpoenas, and Grand Jury Subpoenas

-- The Privacy Officer shall determine the validity of all Court and Grand Jury processes before release of information, and shall seek the advice of the City's attorney whenever necessary before complying with such process.

U. Requests from The Secretary of Health and Human Services

-- The Privacy Officer shall comply with all requests for information from The Secretary of Health and Human Services

V. Complaints -- The Privacy Officer shall receive all complaints received under HIPAA and shall take the following steps upon receipt of a complaint:

1. Evaluate the complaint to determine its validity
2. If the complaint is valid institute the necessary steps to correct the problem
3. Notify the complainant of the action taken
4. If the complaint is deemed invalid, notify the complainant of such determination and advise the complainant of his rights to file a complaint with The Secretary of Health and Human Services

5. Document all actions on complaints in the patient's files

W. **Disclosure Log** – all disclosures except for treatment, payment, operations, shall be logged in the disclosure log kept in each patient's records in order to comply with the requirements for accounting for disclosures

X. **Training** -- The Privacy Officer shall cause every member of the workforce to be trained in HIPAA compliance initially and yearly thereafter; all new hires shall be trained in HIPAA compliance as a part of their initial job orientation. Training records shall be maintained to show the dates of training and the names of each individual trained.

Date of Adoption: _____.

Director of EMS, Archer City Texas