



Cherie K. Berry
Commissioner

Legal Affairs Division

MEMORANDUM

TO: All “Covered Entities” Under HIPAA
FROM: NCDOL – Legal Affairs Division
RE: HIPAA – Release of PHI to NCDOL – Elevator and Amusement Device Inspectors
DATE: November 2005

The Health Insurance Portability and Accountability Act (“HIPAA”) was created for the purpose of securing the transfer of patient information to various covered entities, i.e., health plans, health care clearinghouses, and health care providers. Under HIPAA, a covered entity may disclose protected health information (“PHI”) to third parties without first obtaining the patient’s consent, authorization or allowing the patient an opportunity to agree or object to such disclosure, in a few limited situations, including for law enforcement purposes. The “Law Enforcement Purpose” exception states that a covered entity may disclose PHI to a law enforcement official pursuant to an administrative request, including an administrative subpoena or summons, 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.

45 C.F.R. 164.512(f)(1)(ii)(C). A law enforcement official is defined as an officer or employee of any agency or authority who is empowered by law to: (1) investigate or conduct an official inquiry into a potential violation of law or (2) prosecute or otherwise conduct a criminal, civil or administrative proceeding arising from an alleged violation of law. 45 C.F.R. 164.501.

The N.C. Department of Labor (“NCDOL”), through its Elevator and Amusement Device Bureau (“EAD Bureau”), conducts investigations of accidents involving lifting devices pursuant to N.C. Gen. Stat. § 95-110.5. In order to carry out this function, employees of the EAD Bureau are, pursuant to Chapter 95, Article 14A of the N.C. General Statutes, authorized to perform duties including, but not limited to, the following: (1) enforce rules and regulations; (2) inspect and have tested for acceptance all new, altered or relocated devices or equipment subject to the provisions of as often as every six months; (3) make maintenance and periodic inspections and tests of all devices and equipment as often as every six months; (4) to issue certificates of operation which certify for use such devices and equipment as are found to be in compliance with the required rules and regulations; (5) to have free access, with or without notice, to the devices and equipment, during reasonable hours, for purposes of inspection or testing; (6) to obtain an Administrative Search and Inspection Warrant in accordance with the provisions of Article 4A of Chapter 15 of the N.C. General Statutes; (7) to investigate accidents involving devices and equipment to determine the cause of such accident, and shall have full subpoena powers in conducting such investigation; and (8) to institute proceedings in the civil or criminal courts of this State, when a provision Chapter 95, Article 95A of the N.C. General Statutes or the rules and regulations promulgated thereunder has been violated.

As a result of established responsibilities of NCDOL and its EAD Bureau cited above, an Elevator and Amusement Device Inspector employed by NCDOL falls within the stated definition of a law enforcement official, in that he/she qualifies as an officer or employee of the State of North Carolina, who is empowered by law to: (1) investigate or conduct an official inquiry into a potential violation of state and federal elevator safety regulations; and, (2) prosecute or otherwise conduct a criminal, civil or administrative proceeding arising from an alleged violation of state and federal elevator safety regulations. Thus, an Elevator and Amusement Device Inspector employed by NCDOL is authorized to make an administrative request for PHI in order to conduct an investigation of a potential violation of elevator safety standards, and a “covered entity” is authorized to release such PHI to an Elevator and Amusement Device Inspector who is performing his/her statutory duty.

For questions or concerns regarding this matter, please contact the NCDOL–Legal Affairs Division at the number below.