



Thursday, April 16, 2020

To: Indiana EMS Officials
From: Kraig Kinney, J.D., State EMS Director and Counsel of EMS
Kelly MacKinnon, J.D., Counsel Indiana State Department of Health
Re: EMS First Responders and Covid-19 Disclosures by Hospitals

** Updated guidance as of April 15, 2020

Issue:

Is an Indiana hospital or other “covered entity” under HIPAA required to provide notification to emergency medical services (EMS) personnel when a patient transported by EMS has a positive or negative test for COVID-19?

Discussion:

The Ryan White Act of 2009 (summarized at <https://www.cdc.gov/niosh/topics/ryanwhite/>) addresses notification of emergency responders in Part G and requires that medical facilities of exposure to potentially life-threatening illness so that responders can make informed decisions about how to follow-up.

The Act requires a facility like a hospital or other covered entity to respond to two situations:

- 1) When a responder submits an inquiry based upon a potential exposure; or
- 2) When the medical facility determines the patient with an emergency has a listed airborne or aerosolized infectious disease.

The facility should have a Designated Officer that would initiate notification of name of the infectious disease and the date of the transport. The requirement is notification as soon as practicable, but no later than 48 hours after a request or a determination.

The National Institute for Occupational Safety and Health (NIOSH), as required, has determined the list of potentially life-threatening disease that includes severe acute respiratory syndrome (SARS-CoV). <https://www.cdc.gov/niosh/updates/upd-11-02-11.html> The current Public Health Emergency addresses the commonly known COVID-19 which is also known as SARS-CoV 2 so it falls within the Ryan White Act for notification procedures for EMS responders.

Indiana has one key statute that addresses the notification for infectious disease for EMS responders:

IC 16-41-10-4 Disclosure of exposure to infectious disease; treatment and counseling

Sec. 4. (a) A medical director or physician notified under section 3 of this chapter shall, not more than forty-eight (48) hours after receiving the notification under section 3 of this chapter, contact the emergency medical services provider or law enforcement officer described in section 2 of this chapter to do the following:

- (1) Explain, without disclosing information about the patient, the dangerous communicable disease to which the emergency medical services provider or law enforcement officer was exposed.
- (2) Provide for any medically necessary treatment and counseling to the emergency medical services provider or law enforcement officer.

(b) Expenses of testing or treatment and counseling are the responsibility of the emergency medical services provider or the provider's or law enforcement officer's employer.

However, the limitations of this statute during a Public Health Emergency is that it requires each healthcare provider to submit an individual request and comes from the responder and not from the healthcare facility. This would unduly task the healthcare facilities with tracking down requests for many, if not all, transports, rather than the information coming from the facility itself for positive COVID-19 cases.

Furthermore, the Office of Civil Rights, which is tasked with HIPAA compliance directly addresses the confidentiality issue in its Guidance issued March 24, 2020. The guidance indicates that “disclosure to first responders to prevent a serious and imminent threat to the health and safety of a person or the public” is permitted under HIPAA. Given the community nature and spread of the COVID-19 virus, it is vital that our EMS responders are notified of encounters where they were potentially exposed so that those providers can seek guidance on issues such as quarantine and further protect the public at large by not allowing EMS providers to continue blindly treating patients when they may be contagious.

Summary

Due to the nature of the COVID-19 as a SARS-CoV 2, a respiratory and airborne droplet illness, ISDH and IDHS consider this to be covered by the Ryan White Act and direct hospitals and other covered entities to follow the Ryan White Act in terms of notifying EMS responders of a positive COVID-19 patient within a reasonable amount of time (preferably within a few hours) in order to curtail the further spread of this virus. This notification should be as simple as a COVID-19 positive patient as the disease and then the date of the transport. It is also vital that healthcare facilities notify crews that will be handling COVID-19 patients before the crew arrives if possible so that appropriate PPE can be worn.

Addendum 4/15/2020

Additional clarifications on this Guidance:

- EMS responders should only need to request notification of COVID-19 status when they were the direct patient caregivers AND there was a potential exposure—meaning that the patient appeared to be a COVID-19 patient based upon presentation and history as well the EMS responder did not have appropriate PPE for the types of care provided as determined by current CDC guidelines.
- Although the initial guidance references COVID-19 positive patients, the guidance was intended for a notification of some kind whether the patient was COVID-19 positive or negative. Either notification would permit EMS responders to quarantine or take other actions as necessary.
- Although the initial guidance references as simple a notification as possible, it should be sufficient enough for an EMS responder or their organization to determine which crew members were exposed. A simple date may not be sufficient. Other identifiers such as Incident / Response number or time of transport would also be a simple means of identifying the response without having to divulge the patient's other protected health information (PHI). Furthermore, a response number or time, would be identifiable for the crew involved but would not be traceable to the patient outside the EMS records, that are protected by HIPAA.

This directive has been approved by Dr. Lindsay Weaver, Chief Medical Officer, Indiana State Department of Health, and Dr. Michael Kaufmann, State EMS Medical Director, in conjunction with their counsel.