

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

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SECTION: Emergency Medical Services

TITLE: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

NUMBER: 1300-007

### **A. POLICY**

1. It is the policy of Bend Fire & Rescue (BF&R) to recognize and establish the rights of patients transported or cared for by the BF&R's personnel. These rights are in addition to any other rights provided for in law.
2. Federal law mandates that all employees will uphold this policy.
  - In this PPI the following abbreviations will be used.
  - HIPAA - Health Insurance Portability and Accountability Act of 1996.
  - EPCR- Electronic Patient Care Report
  - PHI – Protected Health Information.
  - GCS – Glasgow Coma Scale.
  - OSHA – Occupational Safety and Health Administration.
  - FARS – Fatality Analysis Report System.
  - SARS – Severe Acute Respiratory Syndrome.
3. PHI includes, but is not limited to; name, address, date of birth, age, social security number, phone number, gender and all information relating to the medical care of the patient, including the geographic location of the incident smaller than a State.
4. BF&R falls under the provision of HIPAA as the BF&R transmits health information in an electronic form due to Medicare/Medicaid billing.

### **B. PATIENT RIGHTS**

1. All patients shall be treated with consideration, respect, and with full recognition of human dignity and individuality; regardless to race, religion, color, creed, national origin, age, sex, disability, or the ability to pay.

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

2. All patients have the right to a reasonable response to a request for services once the ambulance service is engaged to provide service and service that is within reasonable limits of the scheduled pickup and delivery times.
3. Patients will be provided the opportunity to consent to transport and receive emergency medical care. All patients will have the opportunity to refuse transportation or care when apparently competent to do so. Patients refusing care or transportation will be informed of the potential consequences of their action.
4. All patients shall receive reasonable continuity of care once our personnel have established patient contact.
5. All patients shall be transported in an ambulance that is free from recognized hazards and unreasonable annoyances.
6. BF&R will strive to conform to the regulations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The DC of EMS shall be the designated HIPAA Privacy Officer and shall handle privacy complaints and questions.

**C. PROCEDURES**

1. Patients shall have the right to access their medical information.
  1. Patients wanting to see their records may:
    - ♦ Stop at the BF&R Administration office and request a "Request for Medical Records Form". Specific instructions are listed on the form.
    - ♦ May request that we email, fax or mail a copy of the request for Medical Records Form.
  2. Patients wishing to amend their records should make the requested changes to a copy of their Electronic Patient Care Report (EPCR). The proposed EPCR amendments should be sent to the Privacy Officer along with any explanations of why the report should be amended.
  3. Within 60 days the Privacy Officer will make a decision and will notify the patient. If the report is to be amended the Privacy Officer will refer the report back to the author unless the amended information is non-medical in nature: i.e. name, address, phone number corrections.
    - BF&R is under no obligation to amend any report.
    - Patients may request an accounting of who their medical records have been disclosed to for the last ten years. This accounting does not need to include disclosures that relate to treatment, payment, or health care operations. Examples of disclosures that the patient may receive include

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

records relating to civil or criminal court cases. Disclosures can also include requests for records that were requested on the "Request for Medical Records Form".

- All written requests for records will be tracked by the ambulance billing division and/or the privacy officer.
2. Parents may request copies of medical records of their children by using the "Request for Medical Records Form". The parent's requests will not be honored if the minor has a medical condition that does not have to be disclosed by State law such as:
- Any sexually transmitted disease (STD) regardless of the child's age. (ORS 109.650, 109.610 and Section E.3 Oregon Health Division Family Planning Program Manual- September 1995)
  - Any birth control including abortion regardless of the child's age. (ORS 109.640 and Section E.3 Oregon Health Division Family Planning Program Manual- September 1995)
  - No parent will be given a record of a minor child if the minor child is legally married. (ORS 109.510 and 109.520).
  - No parent will be given a record of a minor child if the minor child is at least 16 years of age and has a decree of emancipation.
  - The BF&R employee who is reviewing the record must read the report to ensure that none of the specific medical conditions listed in 3.2 are present on the minor's medical report, prior to releasing the record to the parent.
3. BF&R shall provide to each patient a copy of the BF&R patient privacy notice and shall attempt to obtain a signature from the patient that acknowledges receipt of the privacy notice. The process is as follows:
- For all patients, a copy of the HIPAA policy will be mailed to the individual
4. A copy of the BF&R privacy policy shall be provided to anyone upon request and shall be maintained on the web site. A copy of the privacy policy will be posted in the lower reception area of the BF&R Administration building.
5. All current BF&R employees and volunteers will be trained in HIPAA compliance. HIPAA compliance will be taught to all new employees. All employees and volunteers must sign a confidentiality agreement after completion of their HIPAA training. Any non-BF&R employee wishing to ride along must view the HIPAA DVD or tape and pass the written test with a 70% or better passing score. The test will be administered by the EMS Captain/BLS Program Manager.
6. Any patient may file a privacy complaint using their own letterhead or stationery. The privacy officer upon receipt will make a copy of the letter, place the date and time upon the copy and will return the letter to the sender with a note that the

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

complaint will be dealt with within 30 days. The note will also inform the patient that they may file a complaint with the Secretary of the United States Department of Health and Human Services. The address will also be provided for the patient. A copy of the patient complaint will be filed with the patient EPCR. The note must also state the patient will be free from retaliation due to the complaint.

- Within the 30 day time period the Privacy Officer will investigate the complaint and will respond to the patient in writing. A copy of the response will be placed with the Pre-Hospital Care Report Form EPCR. If the Privacy Officer cannot resolve the patient's complaint the patient will be notified in the response of their appeal rights.
7. If a patient wishes to appeal the decision of the Privacy Officer, they may make an appointment with the Privacy Officer and the Deputy Chief of Operations. The DC of Operations will decide if the patient appeal will be granted.
  8. If the patient is unsatisfied with the decision of the DC of Operations the patient may make an appointment with the Fire Chief and the Privacy Officer. The decision of the Fire Chief will be final, unless the patient chooses to file the complaint with the Secretary of the United States Department of Health and Human Services.

**D. PROTECTED HEALTH INFORMATION (PHI)**

1. This section contains the way that PHI is obtained, used, stored and disposed of.
2. Initial request for service will come to BF&R via 911 dispatch notes, phone request, radio reports or walk in patients.
3. Any fax transmission of PHI will be done on a BF&R fax cover sheet that has the following information:
  - “The information contained in this fax belongs to BF&R and is privileged, confidential and exempt from disclosure and is intended solely for the use of the recipient named above. If you are not the intended recipient, you are hereby notified that any disclosure, dissemination, distribution or copying of this information is strictly prohibited. If you have received this fax in error, please immediately notify the sender by telephone and return the original fax to the sender by US mail. Collect calls will be accepted and your expense will be reimbursed”.
4. A dedicated fax for PHI will be located in a locked office of the Ambulance Billing Supervisor in the ambulance billing building and will be used for PHI. Office staff will check the other fax machines periodically for any PHI that is shipped to us by other medical agencies. If BF&R members find a PHI at a non-PHI authorized fax machine they will notify the ambulance billing supervisor.
5. Every attempt will be made to reduce the amount of incidental PHI disclosures.

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

- Medics on scene should be aware and adjust their voice level so that bystanders do not hear PHI. This process should be followed at the hospital and other locations where the crew is discussing the call.
  - Medics involved with a patient cannot discuss PHI with other medics who were not on the call.
  - The following are exceptions. In discussing the patient only, the minimum necessary information should be passed on to the oncoming crew. Medics should self-police themselves on not releasing PHI unless there is a strong necessity. Examples of what is allowed can include:
    - ♦ There is a reasonable likelihood that the oncoming crew will be responding to the same patient.
    - ♦ Disclosure of minimum necessary PHI can provide training or learning experience for the oncoming crew.
    - ♦ The off-duty crew would like the on-duty crew to do a welfare check on the patient during their shift.
    - ♦ Formal case reviews with a physician.
    - ♦ BF&R Quality Assurance Committee reviews and interviews.
    - ♦ Region 7 Area Trauma Advisory Board reviews and interviews.
    - ♦ Critical Incident Stress Debriefing Session.
6. Firemed applications that are sent to patients are considered an alternative form of payment plan to BF&R and thus do not constitute outside marketing.

**E. DISCLOSURE OF PHI TO LAW ENFORCEMENT OR OTHER GOVERNMENT AGENCIES**

1. Under HIPAA, EMS is considered to be an advocate of the patient and not a tool for law enforcement. Unlawful disclosure of PHI to law enforcement places BF&R and the medic at risk for litigation. Unlawful disclosure can also result in evidence becoming tainted and it can risk the ability for prosecution.
  - PHI may be disclosed to law enforcement without the individual's agreement due to the individual's incapacity or other emergency, and if the law enforcement officer needs the information to determine whether a violation of law has occurred. Due to HIPAA regulations the medic must ask if the PHI information will be used against the victim. Law enforcement must assure the medic that the information will not be used against the victim. Law enforcement also must represent that waiting until the patient is capable of agreeing to the disclosure would compromise an immediate law enforcement activity. In this instance, the medic must use professional judgment to determine whether the disclosure would be in the best interest of the individual. If law enforcement fails to provide the required items

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

above, the medic cannot release the PHI. The disclosure and rationale must be documented on the PHCRF.

- For example, let us assume the police needed to know if someone other than the victim committed a crime, such as the victim's roommates. A specific example is you find a psychiatric acting patient who is showing behavior very similar to other patients who have been taking a deadly tainted illegal drug that has just hit the street. There is no physical evidence of drug abuse or possession. In this case, because you suspect illegal activity (even though there is no physical evidence) you could, (if asked by law enforcement) disclose the patient's address which would allow the police to obtain search warrants for the arrest of the patient's roommates for possession and distribution of drugs. Once again you can only release the PHI if you get assurance that the specific information disclosed will not be used against the patient to charge them with a crime.
2. Medics are not to release any PHI as defined in 1.3 of this PPI unless law enforcement is directly involved with the medical treatment of the patient. PHI that is released should be the "minimum necessary" information that law enforcement needs for their report. For example: if an officer assists with the medical care of the patient it would be appropriate to give the patient's name and address, but it would not be appropriate to tell law enforcement details about the patient's drug use five years ago.
  3. If law enforcement asks you for PHI, and is not directly involved with patient care, you may ask the patient if the PHI can be disclosed to law enforcement. Regardless of the patient's answer the request and the patient's answer must be documented on the EPCR and the name of a witness besides the medic must be listed on the form as well. If in doubt if PHI can be released the medic should refuse to release the PHI until the Privacy Officer can be contacted.
  4. Law enforcement may obtain a copy of the EPCR by presenting a valid subpoena to the BF&R Administration Office.
  5. Disclosure of PHI to a law enforcement official is allowed for purposes of identifying or locating a suspect, fugitive, material witness or missing person. However, the only PHI that may be released for such purposes includes name, address, date, social security number, type of injury, date and time of treatment, and a description of distinguishing physical characteristics such as weight, hair color, eye color, gender, presence or absence of facial hair, scars and tattoos.
    - An example would be: you treat and release a patient for a laceration. You later learn that the police are looking for an individual who was in a knife fight in the area of town where you treated the patient. Based on the fact that you know suspects that your patient may be a suspect, or a material witness, you may disclose the information allowed in the paragraph above.

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

You can not disclose items such as past medical history and current legal and illegal drugs use.

6. Disclosure of PHI can also be given to law enforcement regarding victims of a crime if the affected individual agrees to the disclosure. HIPAA does not apply to deceased victims if the death is from suspected criminal conduct. Disclosure of this PHI must be documented on the EPCR and a witness should be present and their name documented.
7. Law enforcement may be notified if the medics find evidence of criminal conduct on the premises of a call, or they observe a crime in progress. This includes the ability to disclose PHI if the patient is the suspected criminal and flees the location.
8. Inmates or persons under arrest have their HIPAA rights transferred to law enforcement. Medics may discuss medical conditions with law enforcement as long as the information being discussed has been obtained during the time of arrest or incarceration. Information obtained prior to an arrest can only be provided to law enforcement with the permission of the patient. [ 45 Code of Federal Regulations (C.F.R.) 164.52 (k) (5) (i) ]
  - PHI may be released to the police if it appears that the patient has escaped from custody.
9. Non law enforcement agencies may request PHI if they are authorized by local, state or federal law to make such requests. OSHA, FARS, Oregon Health Division, State Medical Examiner's Office, etc. are examples of the types of agencies who might be able to make a request for PHI. All requests under 5.10 must be handled by the DC EMS.
  - The DC EMS must ensure that the requesting agency has the legal authority to make the legal request. The DC EMS must then only release the minimum necessary information to fulfill the request.
10. When a patient is injured at a commercial location the medics are not allowed to provide the commercial management with PHI.
11. PHI may be released to coroners and funeral director for non-crime related deaths.
12. PHI can be released to an appropriate authority to prevent or lessen a serious or imminent threat to the health or safety of a person or public. The disclosure of PHI must be to a person who is reasonably able to prevent or lessen the threat.
13. Individual medics who provide contracted first aid medical coverage on their own at sporting and musical events, etc. do not fall under the provisions of HIPAA, but would be wise to follow the provisions of HIPAA.
14. Agencies acting in loco parentis may have access to PHI for minors. Examples of some agencies that may have this right include schools, day care centers, and church organizations. Agencies with loco parentis should have on file medical

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

releases giving them permission to act as the parent in respect to the health care of the minor.

- State sponsored foster parents have loco parentis rights as well.
- Medics do not need to share PHI with parents or foster parents or representatives of agencies who have loco parentis rights if the medic believes that the minor has been subject to abuse, neglect or domestic violence by the parent, foster parent or agency representative.

15. All requests for PHI for a deceased person should be routed to the DC of EMS to determine the legal authority of the individual making the request. Under HIPAA with regards to deceased individuals, an executor, administrator, or other such person with legal authority to act on behalf of a deceased individual or of the individual's estate may act as the decedent's personal representative with respect to PHI under HIPAA. Another "such person with legal authority" may act as the deceased individual's representative with respect to PHI under HIPAA only if there is no legally authorized executor or administrator of the individual's estate. Under these circumstances, "such person with legal authority" includes the surviving spouse of the deceased individual, or another qualifying person under ORS 192.573.

## **F. REPORTABLE MEDICAL CONDITIONS**

1. Many diseases must be reported to the Oregon Health Division and are not a violation of HIPAA. Many of the diseases require a physician diagnosis and thus do not pertain to prehospital care providers. Due to the emergent need to provide preventive care to our own staff the following suspected diseases or events should be reported at once to the BF&R Infection Control Officer and the DC of EMS:
  - Measles (rubella).
  - Meningococcal disease.
  - Active Tuberculosis
  - SARS (Severe Acute Respiratory Syndrome)
  - Any direct exposure to body fluids should follow the procedures in the Infection Control Manual.
2. The following conditions should be reported to the following agencies:
  - Any animal bite – Law enforcement.
  - Pesticide poisoning – County Health Dept.



CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

- Senior citizen self-abuse or self-neglect of living conditions – Oregon Dept of Human Services Adult protective service 693-2707 (Ask for screener).
- Accidental gunshot wound – Law enforcement.
- Patient admits their injury was a result of committing a crime – Law enforcement.
- Patient admits they injured another party – the name of the injury party may be released to law enforcement.

**G. BUSINESS ASSOCIATE AGREEMENTS**

1. The BF&R must have on file from the following organizations and individuals a business association agreement. The signer of the agreement must agree not to disclose PHI except as permitted under law. They must also provide appropriate safeguards to prevent disclosure of PHI and must provide proper destruction methods when PHI is no longer needed:
  - Physician advisors.
  - City of Bend Finance Dept.
  - City of Bend Information Services.
  - HTE
  - Any collection agency.
  - City of Bend attorneys of record.

**H. FILE ROOM**

1. Whereas the file room is used for records not associated with PHI, all file cabinets containing PHI will be locked. PHI contained in cardboard boxes will be sealed with packing tape. Dates of destruction will be clearly marked on the outside of each cardboard box.
2. The following individuals will have access to PHI in the file room:
  - DC of EMS.
  - Ambulance Billing Supervisor
  - Fire & EMS Reporting Coordinator
  - Light Duty Medic's assign to projects relating to PHI
3. The following individuals will have access to PHI via paper copy or electronic scans.
  - City of Bend Accounts Receivable Supervisor
  - City of Bend Billing Accounting Tech II.
  - City of Bend Collections Accounting Tech II.

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

- City of Bend Cash Receipting Tech III.
- BF&R Quality Assurance Committee.
- BF&R Physician Advisors.
- Region 7 Trauma Advisory Committee (ATAB) representative.
- Region 7 Area Trauma Advisory Committee.
- BF&R Emergency Medical Operations Committee. (EMOC)
- Participants in a Critical Incident Stress Debriefing Session.
- Light duty medics assigned to specific tasks relating to PHI.

**I. MEDIA DISCLOSURES**

1. All requests to the media of patient PHI should be referred to the DC of EMS. The press cannot be given information by BF&R about a medical event. This includes any geographic location smaller than a State. Photographs will not be provided to the media.
2. HIPAA does allow the disclosure to the media of the total number of patients and the specific name of the hospital that they were transported to. The gender and age of the patients cannot be released. A proper example is:
  - Three patients were transported from an accident scene to St. Charles Medical Center Bend.
  - The above example does not include the location of the accident, the gender or the ages of the patient.
3. Information can be released to the media in terms of crew member names or apparatus sent to the scene. Crew members should give permission to release their names to the media.

**J. WEB PAGE / BULLETIN BOARDS**

1. Photographs involving medical conditions or MVA's shall not be posted on the City of Bend web site or any social media outlet.

**K. TESTIFYING**

1. Members of BF&R will only testify about PHI when a legal subpoena has been served.

**L. BILLING SECURITY**

1. When possible, all EPCR data entry will be entered in a locked and secure room at the BF&R Administration building. If reports must be entered in a less secure area, proper screening will be used to prohibit PHI disclosures.

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

2. All documents needed by billing will be scanned. Information Services provides 3 levels of security to ensure the electronic scan cannot be viewed or intercepted by individuals not authorized by the Ambulance Billing Supervisor.
3. No staff member or member of the public will have access to the Ambulance Billing Office without being cleared by Ambulance Billing Supervisor. The biller should not meet with people in their office if PHI is visible.
4. The City of Bend Finance Dept. maintains their own set of policy and protocols dealing with security, Medicare and insurance requirements, and proper accounting procedures.
5. All electronic billings must meet the technical specifications as provided by the Federal Department of Health and Human Services.

**M. INCIDENTAL DISCLOSURE**

1. The following do not constitute violations of HIPAA.
  - Transmission of PHI over radio or cell phones as long as the disclosure is for treatment purposes.
  - Quality assurance, Critical Incident Stress Debriefing and case reviews.
  - PHI needed for payment purposes.
2. The following do not constitute violations of HIPAA and are considered incidental disclosures if PHI is overheard or seen by the public.
  - Discussing patient care at a scene, hospital, nursing home etc. if using appropriate voice volume.
  - Discussing the incident during treatment with bystanders who may have knowledge of the incident or the medical condition of the patient.
  - The use of outside speakers at the stations.
  - Information Services Technicians who must view PHI in order to service or repair computers or software.

**N. MASS CASUALTY INCIDENTS**

1. Ambulances services and other covered entities are permitted to disclose PHI without the consent or authorization of the patient in the context of "disaster relief efforts." This can include but is not limited to:
  - The posting of names and/or patient descriptions on a bulletin board that indicates the hospital that the patient was taken to.
  - The posting of the names of survivors.
  - The release of patient names to relief organizations such as the National Guard or the American Red Cross.

CITY OF BEND FIRE & RESCUE  
POLICY, PROCEDURE, AND INSTRUCTION

- The PHI that is released should be the minimum necessary to meet the need.

**O. VIOLATIONS**

1. In addition to Federal penalties, any member of the BF&R, violating this PPI will be subject to the Progressive Discipline Policy.