

## **HIPAA does not slow criminal prosecution**

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The Health Insurance Portability and Accountability Act (HIPAA) limits the dissemination of patient information by health plans, healthcare clearinghouses, and healthcare providers. But two ambulance service providers convicted of fraud charges in a federal court in Houston, Texas found out the hard way that law enforcement entities are not bound by HIPAA and may use patients' information in prosecution.

The ambulance providers operated an ambulance service transporting patients suffering from end-stage renal disease to and from nonemergency dialysis treatments. They were convicted of conspiracy to defraud Medicare and Medicaid, false billing, money laundering, and anti-kick back violations. The convicted providers were held on bond, sentenced each to imprisonment for 30 months, and ordered to pay restitution to Medicare and Medicaid of \$637,425.79.

In a motion filed after the trial, the ambulance providers argued the search warrant which led to the discovery of the key evidence against them should not have been issued. The information the FBI cited to obtain the warrant included a "run sheet" from the ambulance providers' medical care operations, which the FBI obtained from a paid confidential informant. The ambulance providers argued the informant disclosed the information in violation of HIPAA, the FBI should have reported the HIPAA violation, and the FBI was precluded under HIPAA from using the evidence in support of a search warrant.

Per its statutory language, HIPAA applies to "a health plan," "a healthcare clearinghouse," and "a healthcare provider who transmits any health information in [certain] electronic form[s]." Because the FBI is not among those entities, the court concluded that the ambulance providers would not be able to convince an appeals court that the FBI's use of patient medical information violated HIPAA.

Additionally, the court concluded that any argument that the confidential informant had violated HIPAA's criminal provisions on receiving or using protected health care information would also likely be rejected by the appeals court. Although individuals have been held criminally liable for HIPAA violations, this almost always results from a conspiracy with a HIPAA-covered entity. Here, there was no evidence of a conspiracy – especially since the disclosure of the medical records appears to be directly contrary to the HIPAA-covered entity's interest.

This decision underscores the possibility that courts will not prevent the disclosure of patient information by entities which are not bound by HIPAA. Although this case involves a criminal action, the proposition may have application in other matters. Therefore, merely complying with HIPAA is not necessarily enough to protect health care providers and entities from the adverse consequences of the disclosure of patient information.

*U.S. v. Abdallah*, Criminal Action No. H-07-155, USDC, SD Tex, Houston Div, July 1, 2009

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