



DONOR NETWORK OF ARIZONA RESPONSE TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) REGULATIONS

A question has been raised by hospitals in Arizona as to whether they may disclose “protected health information” (essentially, confidential health information) to Donor Network of Arizona without patient consent or authorization. This question was raised in regard to HIPAA regulations. The following is a summary of the HIPAA regulations addressing organ and tissue procurement.

DONOR NETWORK OF ARIZONA (DNA) IS EXEMPT FROM HIPAA REGULATIONS

The final HIPAA regulations state that the procurement or banking of organs, blood, sperm, and eyes or any other tissue or human product “is not considered to be health care.” As a result, the organizations that perform these activities “would not be considered health care providers when conducting these functions.” Accordingly, DNA’s organ procurement and tissue and eye recovery functions seem clearly excluded from the definition of “health care.” Consequently, DNA should not be regarded as a “Health Care Provider” and therefore, should not be considered to be a “Covered Entity” and subject to HIPAA.

HOSPITALS MAY RELEASE CONFIDENTIAL HEALTH INFORMATION TO DONOR NETWORK OF ARIZONA (DNA)

HIPAA specifically allows Covered Entities to disclose protected health information to organ procurement organizations (OPOs), or other entities engaged in the procurement, banking or transplantation of cadaveric organs, eyes, or tissue for donation and transplantation. This provision is specifically “intended to allow covered entities to initiate contact with organ and tissue donation and transplantation organizations to facilitate transplantation of cadaveric organs, eyes, and tissues.” Therefore, while donor hospitals in Arizona are Covered Entities, they are not bound by HIPAA’s consent and authorization requirements for use and disclosure of protected health information to organ and tissue procurement centers such as DNA.

Hospitals have questioned whether DNA is a “Business Associate” that needs to comply with certain HIPAA requirements and agree to certain written contract terms with the Covered Entity. The final regulations state that “organ procurement organizations and tissue banks are generally not business associates of hospitals.” When an OPO is receiving information from a hospital, it is not considered a Business Associate of the hospital and is not required to comply with HIPAA’s Business Associate provisions. Consequently, DNA is not required to comply with HIPAA’s business associate provision in carrying out the organ and tissue procurement functions described above.

PLEASE DIRECT ANY QUESTIONS TO:

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