

## Privacy and HIPAA – An A.R.E.S Member's responsibility

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It very important to be very well trained as A.R.E.S folks that get deployed out for emergencies and disasters. We will be out there in areas where the members of our communities are suffering. Perhaps they are suffering the loss of property. Perhaps they are suffering the loss of life. Perhaps they are suffering the loss of both.

Imagine for a while that you are a victim of the emergency or disaster. You are having an absolutely terrible day. Police and fire department personnel are in a hurry to try and mitigate the situation. You see a person over there you don't know, but they are holding radio equipment and have a shirt or vest on that says A.R.E.S on it. This A.R.E.S person is using their camera or phone to take pictures of you and your property when you are at your worst. How would you feel about that??? How would you feel if you later saw those pictures or video on Utube or other social media???

I would think that if it was us, we wouldn't like someone invading our privacy and especially during our worst times. We owe it to the community we serve to protect their privacy and not make their misery worse. A good rule to follow is if you wouldn't like or appreciate it, they most likely would not also. Let's treat the victims even better than we would expect if we were in their place. Let's think about HIPAA for a bit. What is HIPAA?

**HIPAA** is the federal Health Insurance Portability and Accountability Act of 1996. The primary goal of the law is to make it easier for people to keep health insurance, protect the confidentiality and security of healthcare information and help the healthcare industry control administrative costs.

The HIPAA Privacy Rule provides federal protections for individually identifiable health information held by covered entities and their business associates and gives patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of health information needed for patient care and other important purposes.

Please notice that HIPAA provides FEDERAL protections, this means that everywhere in the United States, HIPAA law applies. Notice that HIPAA relates to “.....covered entities and their business associates .....”. “Covered entities” includes but is not limited to police, fire departments, ambulance services, Office of Emergency Services, and others. If you are deployed at the request of a police department, fire department, or Office of Emergency Services, the law will view you as an 'unpaid business associate' of the agency that called for you. This means that since you are acting at their request, you are also liable under Federal law to abide by the HIPAA law. If you violate HIPAA law and are sued in court, you will lose.

The legal penalties for violating HIPAA can be rather severe.

### **Criminal penalties**

#### **Tier Potential jail**

#### **sentence**

Unknowingly or with  
reasonable cause Up to one year

## **Civil monetary penalties**

### **Tier Penalty**

1. Covered entity or individual did not know (and by exercising reasonable diligence would not have known) the act was a HIPAA violation. \$100-\$50,000 for each violation, up to a maximum of \$1.5 million for identical provisions during a calendar year

As amateur radio operators, it is against FCC rules to encrypt our radio transmissions. ANYTHING and EVERYTHING we transmit can be heard by folks that you do not know are listening.

News agencies can easily monitor amateur radio traffic. They do have radio scanners which can easily monitor what we say....

**BELIEVE THAT!!!** Normal citizens also have scanners and can monitor both our voice and digital traffic over amateur radio frequencies. They can quite easily call the news room and tell the news desk anything that the news folks might have missed.

An absolute truth of amateur radio: Take a second to think about what you are going to say before you transmit. If there is any question or doubt if you should say what you are about to say.....  
**DON'T SAY IT!!!**

Do not use the name of anyone that has a medical complaint over the radio. Do not say that someone has a particular medical condition, that is for a doctor to diagnose.

Remember, HIPAA “provides federal protections for individually identifiable health information.....” Anything “individually identifiable” is going to get you into **BIG TROUBLE**. When in doubt, **DON'T SAY IT** and forget you heard it.

It is ok to transmit things like:

“Net control, this is station 30, I have an elderly gentleman at my location that is in urgent need of medical attention” or

“Net control, this is station 10, I have a female in her 30's at my location saying she needs an ambulance” or

“Net control, this is station 30, I have 15 injured persons at my location and need medical to respond here”

If you are an A.R.E.S or R.A.C.E.S member who would be deployed out to an emergency or disaster scene, or a net control, it is a good idea to read up on HIPAA and understand it. Practice in your mind, that you see someone injured, and how you would tell net control over amateur radio without violating Federal HIPAA law.

Emergency planning, response, and recovery efforts are critical for all of us, including persons who may be members of the at-risk or special needs population. These individuals may have a need for assistance in a certain area, such as medical care, transportation, maintaining independence for daily living, supervision, or communication.

Persons with special needs or who are at risk in an emergency can include children, elderly persons, persons from diverse cultural origins, individuals with disabilities, individuals who are limited English speaking, persons who live in institutionalized settings, and persons who do not have access to transportation, among others. In many instances, individuals with special needs or who are at risk may be protected under the law from discrimination in an emergency.

OCR (Office for Civil Rights) enforces certain Federal laws that prohibit discrimination against individuals on the basis of race, color, national origin, disability, or age in programs and activities that receive Federal financial assistance, including emergency preparedness and response programs. Federal law also prohibits state and local government entities from [discriminating on the basis of disability](#).

Several resources exist that explain how nondiscrimination laws apply in an emergency. Many excellent resources are available to help persons with disabilities, persons with limited English proficiency, and persons from diverse cultural origins prepare for and respond to an emergency.

Emergency planners, managers, and responders can also find very useful information to better understand how to effectively consider persons with special needs or who are at risk in emergency preparedness activities. For our efforts to preserve life and property in an emergency to be successful, all of us must take action, at the individual level, as well as at the local, state, tribal, and national levels.

<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/emergencypre/index.html>

Members of A.R.E.S and R.A.C.E.S need to be well trained and prepared long before we deploy out into the field. It is just as important that we know what NOT to say over the radio, as what we need to and SHOULD say over the radio. It may be a good idea to train with your local emergency responders and hospital regarding privacy and HIPAA.

Remember..... it's always a good idea to respect the rights and privacy of others and to treat them as good or better than you would want to be treated. 73