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April 11, 2020

To: West Virginia Fire Service Leaders

Re: Request for Listing of Individuals with Positive Contraction of COVID-19 Virus

Dear Fire Service Leaders:

I'd like to thank you for the valiant service you're providing to your community and others during these challenging times. Questions have recently arisen as to whether fire department first responders should have access to a list of private individuals who have contracted the COVID-19 virus. Understandably, fire department first responders, as other first responders, have concerns that there are adequate safeguards in place in its contacts with members of the public, wherever that contact may occur.

The U.S. Department of Health and Human Services' Office of Civil Rights ("OCR") has published documents relating to the intersection of COVID-19 and the Health Insurance Portability and Accountability Act ("HIPAA") as it relates to what information may be disclosed by a HIPAA covered entity, such as a hospital, to various state and local officials.

First, the OCR published the bulletin entitled "HIPAA Privacy and Novel Coronavirus." This bulletin was published to address issues arising from the appropriate sharing of protected health information ("PHI") in an outbreak of infectious disease. The OCR cautions that the protections of HIPAA are not set aside during an emergency. Further, the OCR instructs that, for most disclosures, a HIPAA covered entity must make reasonable efforts to limit the information disclosed to that which is the "minimum necessary" to accomplish the purpose.

Second, the OCR published additional guidance entitled "COVID-19 and HIPAA: Disclosures to law enforcement, paramedics, other first responders and public health authorities." This document provides specific guidance related to the minimum necessary disclosures for various first responders, and it specifically addresses the question as to whether the HIPAA Privacy Rule allows covered entities to share the names or other identifying information of an individual who has been infected with, or exposed to, COVID-19 with various first responders. This document does acknowledge that certain disclosures are authorized for purposes of preventing or controlling the spread of COVID-19 or to prevent or lessen a serious and imminent threat to the health and safety of a person or the public. The document instructs that all such disclosures must be consistent with applicable law and standards of ethical conduct.

While these documents recognize the authorization of certain disclosures of PHI to first responders, the guidance cautions against public distribution of lists of names and addresses of all individuals known to have tested positive or who have received treatment for COVID-19. The guidance advises, for example, that while such a list may potentially be provided to an EMS dispatch, such information should typically not be distributed to EMS personnel.

Instead, the information should be used on a per-call basis. Sharing the lists or disclosing the contents publicly would not ordinarily constitute the minimum necessary to accomplish the purpose of the disclosure.

Considering this above, it is my opinion that the publication or distribution of lists of persons infected with or treated for the COVID-19 virus to individual fire personnel would be contrary to the OCR guidance and HIPAA.

There may be the potential in the future of 911 Centers having access to information that may assist you with the said concerns you have on a call by call basis. Please reach out to your respective County's 911 Center to inquire if such information is potentially available.

During these times of immense challenges and concerns, I do hope that during your valiant efforts to serve your community, you know of my hope for your safeguard and protection.

Sincerely,

A handwritten signature in blue ink, appearing to read "KEE Jr.", with a stylized flourish at the end.

Kenneth E. Tyree Jr.
State Fire Marshal