



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services
Administration

Office of Special Programs

Rockville MD 20857

May 29, 2002



Mr. Walter Graham
Executive Director
United Network for Organ Sharing
1100 Boulders Parkway, Suite 500
Richmond, Virginia 23225-8770

Dear Mr. Graham:

Re: The OPTN's Status as a Public Health Authority for Purposes of the HIPAA
Privacy Rule

In response to a request made by your staff, this letter confirms our conclusion that the Organ Procurement and Transplantation Network (OPTN) qualifies as a public health authority for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulation, "Standards for Privacy of Individually Identifiable Health Information" (Privacy Rule), 45 C.F.R. Parts 160 and 164.¹ Under section 164.512 of the Privacy Rule, a "covered entity" (a term of art defined in the Privacy Rule) may disclose an individual's protected health information without the individual's written consent or authorization when such a disclosure is made to a public health authority that is authorized by law to collect information for the purpose of preventing or controlling disease, injury, or disability. Given the authority for and mandate of the OPTN, we have determined that a covered entity may disclose certain individually identifiable health information to the OPTN, without the written consent or authorization of the individual, when such a disclosure furthers the OPTN's statutory purposes and functions.²

The Department's Office for Civil Rights, which has responsibility for enforcement and interpretation of the Privacy Rule, and the Office of the General Counsel concur with the conclusions reached in this letter.

¹ Covered entities must comply with the Privacy Rule's requirements by April 14, 2003. Small health plans have until April 13, 2004 to comply.

² Although the Department published a Notice of Proposed Rulemaking (NPRM) on March 27, 2002, which proposes to modify certain of the Privacy Rule's standards, the analysis in this letter would not be altered by the NPRM's proposed changes to the Privacy Rule, if adopted by the Department.

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If you have any questions or would like to discuss this matter further, please feel free to call me at 301-443-5658 or Emily Marcus Levine of our Office of the General Counsel at 301-443-6659.

Sincerely,

A handwritten signature in black ink, appearing to read "L.R. Wegman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Lynn Rothberg Wegman, M.P.A.
Director
Division of Transplantation

cc: Douglas A. Heiney, UNOS
John Persons, Esq., UNOS