

Privacy - MODEL Facility Policy

POLICY NAME: Uses and Disclosures for which an Authorization or Opportunity to Agree or Object is Not Required

DATE: (facility to insert date here)

NUMBER: (facility to insert number here)

Purpose: To facilitate compliance with the Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information (Privacy Standards), 45 CFR Parts 160 and 164, the Health Information Technology for Economic and Clinical Health Act (HITECH) component of the American Recovery and Reinvestment Act (ARRA), and any and all other Federal regulations and interpretive guidelines promulgated thereunder. To establish guidelines for situations where the facility may use and disclose protected health information (PHI) without a patient's authorization or without the patient's agreement or objection, as defined by the HIPAA Privacy Standards.

Policy: Prior to the use or disclosure of PHI, the facility must follow the procedures outlined below, comply with the requirements of another policy (if applicable) such as the Uses and Disclosures Required by Law Policy or all other pertinent policies permitting uses and disclosures for Treatment, Payment, Operations (TPO), to friends and family under 164.510 or other parts of 164.502 not covered here—such as incidental disclosures] or obtain a patient's or patient's personal representative (as defined by state law) HIPAA compliant authorization.

Most states have separate patient privacy laws that may apply additional legal requirements. Consult your Operations Counsel to identify and comply with any such additional legal mandates.

Refer to the HIPAA Privacy Standards, 45 CFR Parts 160.103, 164.103 and 164.501, and IP.PRI.001, the Patient Privacy Program Requirements Policy, for definitions.

Procedure:

All disclosures made under this Policy must comply with one section of Section I below and Section II.

I. Exceptions to the need for an Authorization or Opportunity to Agree or Object

Disclosures for Public Health Activities (§164.512(b))

The facility may disclose PHI for public health activities and purposes to:

- a. A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
- b. A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

- c. A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:
 - i. To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;
 - ii. To track FDA-regulated products;
 - iii. To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or
 - iv. To conduct post marketing surveillance.
- d. A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation;
- e. An employer, about an individual who is a member of the workforce of the employer, if:
 - i. The covered entity is a covered health care provider who provides health care to the individual at the request of the employer: (1) To conduct an evaluation relating to medical surveillance of the workplace; or (2) To evaluate whether the individual has a work-related illness or injury;
 - ii. The PHI that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
 - iii. The employer needs such findings in order to comply with its obligations, under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and
 - iv. The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:
 - (1) By giving a copy of the notice to the individual at the time the health care is provided; or
 - (2) If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.
- f. A school, about an individual who is a student or prospective student of the school, if:
 - i. The PHI that is disclosed is limited to proof of immunization;
 - ii. The school is required by State or other law to have such proof of immunization prior to admitting the individual; and
 - iii. The covered entity obtains and documents the agreement to the disclosure from either:
 - (1) A parent, guardian, or other person acting in *loco parentis* of the individual, if the individual is an unemancipated minor; or
 - (2) The individual, if the individual is an adult or emancipated minor.

Disclosures for Health Oversight Activities (§164.512(d))

If the facility receives a valid attestation (as described in Section II below), the facility may disclose PHI to a health oversight agency for oversight activities (e.g., audits, investigations,

inspections, licensure or disciplinary actions) authorized by law or other activities necessary for appropriate oversight of:

- a. The health care system;
- b. Government benefit programs for which PHI is relevant to beneficiary eligibility;
- c. Entities subject to government regulatory programs for which PHI is necessary for determining compliance with program standards; or
- d. Entities subject to civil rights laws for which PHI is necessary for determine compliance.

As used in this section, health “oversight activity” does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

- The receipt of health care;
- A claim for public benefits related to health; or
- Qualification for, or receipt of, public benefits or services when a patient’s health is integral to the claim for public benefits or services.

Disclosures About Decedents (§164.512(g), (h) and (i)(1)(iii))

The facility may disclose PHI to:

- a. A coroner or medical examiner, if the facility receives a valid attestation (as described in Section II below), for the purpose of:
 - i. Identifying a deceased person;
 - ii. Determining a cause of death; or
 - iii. Other duties as authorized by law.
- b. A funeral director as necessary to carry out their duties with respect to the decedent. If necessary for the funeral director to carry out their duties the facility may disclose the PHI prior to, and in reasonable anticipation of, the patient’s death.
- c. To organ procurement organizations or other entities engaged in the procurement, banking or transplantation of cadaveric organs, eyes or tissue for the purpose of facilitating the donation and transplantation.
- d. A researcher, including a Principal Investigator, if:
 - i. The researcher represents the use or disclosure is sought solely for research on the PHI of decedents,
 - ii. The facility receives confirmation or documentation of the death of such individuals, and
 - iii. The PHI being sought is necessary for research purposes.

Reviews Preparatory to Research (§164.512(i)(1)(ii))

1. The facility may disclose PHI for preparatory research if it obtains researcher representations that:
 - a. The use or disclosure is sought solely to review PHI as necessary to prepare a research protocol or for similar purposes preparatory to research,
 - b. The PHI will not be removed from the facility in the course of the review, and
 - c. The PHI for which the use or disclosure is sought is necessary for the research purposes.

2. A researcher who is a member of the covered entity's workforce (or that of a business associate of the covered entity) may use its own PHI to contact prospective research subjects; however, a researcher that is not an employee or a member of the covered entity's workforce may not contact individuals for recruitment purposes without a written privacy waiver from an IRB (subject to further facility review and approval) or an authorization from each individual.

Disclosures to Avert a Serious Threat to Health or Safety (§164.512(j))

The facility may, consistent with applicable law and standards of ethical conduct, use or disclose PHI, if the facility believes in good faith that use or disclosure of PHI:

1. Is necessary to prevent or lessen imminent threat to health or safety of person or public and is made to a person able to prevent or lessen the threat; and is to a person or persons reasonably able to lessen the threat, including the target of the threat; or
2. Is necessary for law enforcement to identify or apprehend an individual because of a statement by the individual admitting participation in a violent crime that the facility reasonably believes may have caused serious physical harm to the victim or where it appears the individual has escaped from custody of a correctional institution or lawful custody.

Use or disclosure is not permitted if the information is learned (i) in course of treatment to affect the propensity to commit the criminal conduct that is the basis of the disclosure or counseling or therapy; or (ii) through a request by the individual to initiate or to be referred for such treatment, counseling or therapy.

Disclosures for Specialized Government Functions (§164.512(k))

1. Military and veterans activities.
 - a. Armed Forces personnel. A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:
 - i. Appropriate military command authorities; and
 - ii. The purposes for which the protected health information may be used or disclosed.
 - b. Separation or discharge from military service. A covered entity that is a component of the Departments of Defense or Homeland Security may disclose to the Department of Veterans Affairs (DVA) the protected health information of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.
 - c. Veterans. A covered entity that is a component of the DVA may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.
 - d. Foreign military personnel. A covered entity may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to paragraph (k)(1)(i) of this section.

2. National security and intelligence activities. A covered entity may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).
3. Protective services for the President and others. A covered entity may disclose protected health information to authorized federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or to for the conduct of investigations authorized by 18 U.S.C. 871 and 879.
4. Medical suitability determinations. A covered entity that is a component of the Department of State may use protected health information to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:
 - a. For the purpose of a required security clearance conducted pursuant to Executive Orders 10450 and 12698;
 - b. As necessary to determine worldwide availability or availability for mandatory service abroad under sections 101(a)(4) and 504 of the Foreign Service Act; or
 - c. For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.
5. Correctional institutions and other law enforcement custodial situations.
 - a. Permitted disclosures. A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:
 - i. The provision of health care to such individuals;
 - ii. The health and safety of such individual or other inmates;
 - iii. The health and safety of the officers or employees of or others at the correctional institution;
 - iv. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
 - v. Law enforcement on the premises of the correctional institution; or
 - vi. The administration and maintenance of the safety, security, and good order of the correctional institution.
 - b. Permitted uses. A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.
 - c. No application after release. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.
6. Covered entities that are government programs providing public benefits.
 - a. A health plan that is a government program providing public benefits may disclose protected health information relating to eligibility for or enrollment in the health plan to

another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.

- b. A covered entity that is a government agency administering a government program providing public benefits may disclose protected health information relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

Disclosures for Workers' Compensation (§164.512(l))

The facility may disclose PHI as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

Disclosures for Law Enforcement Purposes (§164.512(f)).

The facility may disclose PHI as permitted by the Uses and Disclosures Required by Law Policy, which sets forth requirements for disclosing PHI to law enforcement as required by law and as permitted by law in certain circumstances.

Disclosures About Victims of Abuse, Neglect or Domestic Violence (§164.512(c))

The facility may disclose PHI as permitted by the Uses and Disclosures Required by Law Policy, which sets forth requirements for disclosing PHI about an individual the facility reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority when required by law and as permitted by law in certain circumstances.

Disclosures for Judicial and Administrative Proceedings (§164.512((e))

The facility may disclose PHI as permitted by the Uses and Disclosures Required by Law Policy, which sets forth requirements for disclosing PHI in response to a court order, administrative order, subpoena, discovery request or other lawful process.

II. *Additional Requirements Related to Reproductive Health Care*

In addition to the requirements above, all uses and disclosures under this Policy must comply with the Prohibited Uses and Disclosures Related to Reproductive Health Care and Uses and Disclosures That Require an Attestation Policy. This Policy prohibits the use or disclosure of PHI for certain purposes related to seeking, obtaining, providing or facilitating reproductive health care.

Also, when required by the Prohibited Uses and Disclosures Related to Reproductive Health Care and Uses and Disclosures That Require an Attestation Policy, the facility must obtain a valid attestation that the use or disclosure is not prohibited by HIPAA before disclosing PHI under the following parts of Section I above:

- Disclosures for Health Oversight Activities,
- Disclosures About Decedents (if to a coroner or medical examiner),
- Disclosures for Law Enforcement Purposes and
- Disclosures for Judicial and Administrative Proceedings.

References:

Patient Privacy Program Requirements Policy, IP.PRI.001

Authorization for Uses and Disclosures of Protected Health Information Policy, IP.PRI.010

Uses and Disclosures Required by Law Policy

Prohibited Uses and Disclosures Related to Reproductive Health Care and Uses and

Disclosures That Require an Attestation Policy

COG.RSH.004 Use of and Relationship with Institutional Review Boards

Health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of

Individually Identifiable Health Information 45 CFR Part 164

American Reinvestment and Recovery Act of 2009, Title XIII, Subtitle D