

Privacy - MODEL Facility Policy

POLICY NAME: Uses and Disclosures Required by Law

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, and any and all other Federal regulations and interpretive guidelines promulgated thereunder. To establish guidelines for situations where the facility may disclose protected health information (PHI) as required by law (§164.512(a)) without a patient's authorization or without the patient's agreement or objection, as defined by the HIPAA Privacy Standards.

Policy: Requests for and disclosures made pursuant to a "requirement of law" must follow the procedure below or the facility must obtain a HIPAA compliant authorization from the patient or the patient's personal representative (as defined by state law).

Some 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 §§160.103, 164.103 and 164.501, and IP.PRI.001, the Patient Privacy Program Requirements Policy, for definitions.

Procedure:

1. The facility may use or disclose PHI as required by law as long as (I) the use or disclosure is limited to the relevant requirements of the law; (II) the use or disclosure complies with Section 2 below; and (III) if applicable, the use or disclosure complies with the following requirements:
 - a. Uses and disclosures about victims of abuse, neglect or domestic violence. Per 45 CFR §164.512(c), the facility may disclose PHI about an individual the facility reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority (e.g., social service, protective services agency) authorized by law to receive such reports to the extent the disclosure complies with and is limited to the relevant requirements of the law. In addition, the facility may make such disclosures (even if not required by law) if:
 - i. The patient or patient's personal representative agrees, **or**
 - ii. The disclosure is expressly authorized by statute or regulation, **and**
 - (1) The facility, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the patient or other potential victims; **or**
 - (2) If the patient is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the PHI is not intended to be used against the patient and that an immediate enforcement

activity that depends on the disclosure would be materially and adversely affected by waiting until the patient is able to agree.

- iii. If the facility makes a permitted disclosure under this section, the facility must inform the patient that such a report has been or will be made, except if:
 - (1) The facility, in the exercise of professional judgment, believes informing the patient would place the patient at risk of serious harm; or
 - (2) The facility would be informing a personal representative, and the facility reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing such person would not be in the best interests of the patient as determined by the facility, in the exercise of professional judgment.
- iv. This section does NOT permit disclosures prohibited by the Prohibited Uses and Disclosures Related to Reproductive Health Care and Uses and Disclosures That Require an Attestation Policy, when the sole basis of the report of abuse, neglect or domestic violence is the provision or facilitation of reproductive health care.
- b. Disclosures for Judicial and Administrative Proceedings. Per 45 CFR §164.512(e), the facility may disclose PHI in the course of any judicial or administrative proceeding if the facility receives a valid attestation (as described in Section 2 below) and if item (i) or item (ii) applies:
 - i. PHI may be disclosed in response to a court, or administrative tribunal, provided that only the PHI expressly authorized by the order is disclosed.
 - ii. PHI may be disclosed via a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal if:
 - (1) The facility receives written satisfactory assurance from the party seeking the PHI that the patient or the patient's personal representative (as defined by state law) has been given notice of the request as demonstrated by the following, or
 - (a) The party issuing the subpoena has made a good faith attempt to provide written notice to the patient or the patient's personal representative;
 - (b) The written notice included sufficient information about the litigation or proceeding to permit the patient or the patient's personal representative to raise an objection to the court or administrative tribunal; and
 - (c) The time for the patient to object has elapsed, and no objections were filed, or any objections filed were resolved by the court or administrative tribunal and the disclosures are consistent with that resolution.
 - (2) The facility receives written satisfactory assurances from the party seeking the information that:
 - (a) The parties to the dispute have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
 - (b) The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.
 - (3) If the requestor cannot demonstrate satisfactory assurance as noted above, the facility may:
 - (a) Make reasonable efforts to provide notice to the patient sufficient to meet the satisfactory assurances section above or to seek a qualified protective order; or

- (b) A notice in writing should be provided to the requestor stating that records will not be produced until HIPAA compliance is demonstrated (e.g., satisfactory assurances, qualified protective order, order of the court or administrative tribunal, patient or patient's personal representative's HIPAA compliant authorization).
- c. Disclosures for Law Enforcement Purposes. Per 45 CFR §164.512(f), the facility may disclose PHI for a law enforcement purpose to a law enforcement official if the facility receives a valid attestation (as described in Section 2 below) and if :
 - i. Required by law, including the reporting of certain types of wounds or other physical injuries, except for abuse, neglect and domestic violence reporting laws subject to Section 1.a above (45 CFR §164.512(c)(1)(i)) and child abuse reporting laws (addressed in the public health activity section of the Uses and Disclosures for which an Authorization or Opportunity to Agree or Object is Not Required Policy (45 CFR §164.512(b)(1)(ii)) , or
 - ii. In compliance with and as limited by the relevant requirements of:
 - (1) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
 - (2) A grand jury subpoena; or
 - (3) An administrative request for which response is required by law , including an administrative subpoena or summons, a civil or an authorized investigative demand or similar process authorized under law:
 - (a) The information sought is relevant and material to a legitimate law enforcement inquiry;
 - (b) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - (c) De-identified information could not be reasonably used.
 These Section 1.c(ii)(3)(a-c) conditions can be verified through the statements set forth in the administrative subpoena or similar process document or by a separate written statement that on its face demonstrates these have been met.
 - iii. The disclosure is in response to law enforcement official's request for PHI for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:
 - (1) Only the following information is disclosed:
 - (a) Name and address;
 - (b) Date and place of birth;
 - (c) Social security number;
 - (d) ABO blood type and rh factor;
 - (e) Type of injury;
 - (f) Date and time of treatment and or death; and
 - (g) A description of distinguishing physical characteristics (height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos).
 - (2) No information may be disclosed as it relates to the patient's DNA, DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.
 - iv. The disclosure is in response to law enforcement official's request for and individual's PHI, and the individual is or is suspected to be a victim of a crime, if:
 - (1) The individual aggress, or

- (2) The facility is unable to obtain the patient's agreement because of incapacity or other emergency circumstances, provided that:
 - (a) The law enforcement official represents that such PHI is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
 - (b) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the patient is able to agree to the disclosure; and
 - (c) The disclosure is in the best interests of the patient as determined by the facility, in the exercise of professional judgment.
- v. The purpose is to alert law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.
- vi. The PHI disclosed to law enforcement is PHI the facility believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the facility.
- vii. The facility is providing emergency health care in response to a medical emergency, other such emergency on the premises of the facility, if the disclosure appears necessary to alert law enforcement to:
 - (1) The commission and nature of a crime;
 - (2) The location of such crime or of the victim(s) of such crime; and
 - (3) The identity, description, and location of the perpetrator of such crime.
 However, if the facility believes the medical emergency is the result of abuse, neglect and domestic violence of the patient needing emergency care, this section does not apply, and the facility must follow the requirements of Section 1.a above instead.
2. All uses and disclosures under this Policy must also 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 Judicial and Administrative Proceedings (Section 1(b) above)
- Disclosures for Law Enforcement Purposes (Section 1(c) above).

References:

Patient Privacy Program Requirements Policy, IP.PRI.001
 Health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of Individually Identifiable Health Information 45 CFR Part 164
 Verification of External Requestors Policy
 Determination of, and Uses and Disclosures of De-Identified Information Policy
 Uses and Disclosures for which an Authorization or Opportunity to Agree or Object is Not Required Policy
 Prohibited Uses and Disclosures Related to Reproductive Health Care and Uses and Disclosures That Require an Attestation Policy