

## HIPAA Policy 4

### Uses and Disclosures Policy and Procedure Special Circumstances and Exceptions – No Authorization Required

#### Policy:

In certain special circumstances, uses and disclosures (other than for those routine purposes discussed in Policy 3) may be made without obtaining an authorization from the patient.

The purpose of this policy is to discuss the types of uses and disclosures that are excepted from the HIPAA prohibition on disclosures outside of the practice. These disclosures are also exceptions to the general requirement that a patient must sign an authorization for disclosures other than treatment, payment or health care operations. Due to the nature of these uses and disclosures and the need to understand the nuances of the HIPAA requirements, requests for uses and disclosures set forth in this policy should ultimately be directed to the Privacy Officer who will analyze the facts of each situation and confirm that the specific regulatory language allows for the proposed use or disclosure.

#### 3.1 Uses and Disclosures Required by Law, Public Policy, or Health Oversight

Protected Health Information may be used or disclosed in the following circumstances without obtaining authorization:

- The use or disclosure is **required by law**.
- The use or disclosure is **to 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 (e.g. the MDCH).
- To **report abuse, neglect, or domestic violence** to an appropriate health or governmental authority
  - Reports of child abuse are permissive even if they are not mandated by law or permission of the patient is not obtained.
  - Reports of abuse, neglect or domestic violence for a patient who is not a child are permitted without authorization under three circumstances:
    1. where reports of suspected abuse are required by law;
    2. the report is not required by law, but the individual agrees to such disclosure; or
    3. the report is not required by law but is permitted by law and: (1) the practice believes (based upon professional judgment) that disclosure is necessary to prevent serious harm (to the patient or other victims) or (2) the individual is incapacitated, a law enforcement official represents that the disclosure is not going to be used against the patient and enforcement efforts will be

materially and adversely affected if the practice waits until the individual can agree.

Under each of these three circumstances, the patient must be notified that the report has been made except where the practice determines, based upon professional judgment, that the notification would place the patient at harm or the patient is incapacitated and the personal representative who would receive such information on behalf of the patient is the suspected abuser.

- To report **adverse events**, etc. to the FDA.
- To notify a person that he or she has been exposed to a **communicable disease** (if otherwise permitted by law to make this disclosure).
- To notify **an employer** of medical information related to an employee if:
  - the covered entity was providing services at the request of an employer for medical surveillance or to evaluate whether an employee has a work-related injury or illness,
  - the use or disclosure of information is related to these purposes,
  - the use and disclosure is required for the employer to comply with its legal obligations,
  - and the patient/employee is given notice that the information will be disclosed (notice can be handed to the patient or, if the health care is provide on the worksite, prominently displayed at the location where health care is provided).
- To disclose information to a **health oversight agency** for oversight activities related to the practice as authorized by law, including:
  - Audits
  - Civil, administrative or criminal investigations, proceedings, or actions
  - Inspections
  - Licensure or disciplinary actions
  - Other oversight activities
- To disclose information to a **health oversight agency** for oversight activities related to the investigation of a patient, as authorized by law, and only where the investigation arises out of the receipt of health care or a claim for or qualification for public benefits related to health or where health is an issue.
- To disclose information in response to the **order of a court or administrative tribunal**.
- To disclose information to **law enforcement officials** in the following situations:
  - Subject to reporting laws
  - In compliance with a court order, court-ordered warrant, subpoena or summons issued by a judicial officer
  - In response to a grand jury subpoena
  - In response to an administrative or civil subpoena, summons or demand, provided that: (1) the information sought is relevant and material to a legitimate law enforcement inquiry; (2) the information sought is as specific and narrowly drawn as practicable; and (3) de-identified

information could not reasonably have been used to meet the purpose of the request

- Limited identifying information requested by a law enforcement official, but only the following may be disclosed:
  - Name and address
  - Date and place of birth
  - Social Security Number
  - ABO blood type and rh factor
  - Type of injury
  - Date and time of treatment
  - Date and time of death, if applicable
  - Description of distinguishing physical characteristics (including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos)
- To disclose **PHI of a suspected victim** to the extent required by law or, if not required by law, with the individual's consent. If consent cannot be obtained because of an emergency circumstance or incapacity and the disclosure is not required by law, disclosure may still be made under the following circumstances:
  - The law enforcement official represents that the information is needed to determine whether the patient was a victim of a crime and the information will not be used against the patient;
  - The law enforcement official represents that law enforcement activity will be materially and adversely affected by waiting for the victim to give consent; and
  - The practice (in the exercise of professional judgment) determines that the disclosure will be in the patient's best interests.
- To disclose PHI of a patient who has died to a law enforcement official if the practice suspects that the **patient's death was the result of criminal conduct**
- To disclose PHI to a law enforcement official related to a **crime reasonably believed to have been conducted on the premises** of the practice
- To disclose PHI of a deceased to a **coroner or medical examiner** as authorized by law or to a **funeral director** to the extent that the funeral director needs the information to provide services to the decedent
- To disclose PHI to **organ procurement agencies**
- To use or disclose PHI to **avert a serious threat to health or safety** including:
  - disclosure to a person who can reasonably avert, prevent or lessen the threat (including the target of the threat)
  - disclosure to law enforcement officials to identify or apprehend an individual who has made statements admitting participation in a violent crime reasonably believed to have caused physical harm to a victim or where it appears that the individual has escaped from a correctional institution or from lawful custody (unless the information regarding the commission of the crime was disclosed as a result of the individual seeking treatment to affect his or her propensity to commit the criminal conduct).

- To disclose information regarding **Armed Forces personnel** to assure proper execution of the military mission
- To disclose information for **National Security** and for the provision of **protective services to the President** as required by law
- To disclose information regarding an **inmate** to a correctional institution or law enforcement official having lawful custody of the inmate if the institution or official represents that the information is necessary for provision of health care to the inmate, is necessary for the health and safety of the inmate, other inmates, officials responsible for transporting the inmate, law enforcement officials, or the administration and maintenance of the safety, security and good order of the correctional institution
- To disclose information as authorized by the **worker's compensation** laws.
- To disclose information to a school about a student or prospective student for **proof of immunization** that is required for the student/prospective student to attend the school and the student or personal representative consents to the disclosure.

### 3.2 Tracking Disclosures and Right to Accounting

3.2.1 Patient's right to an accounting. Disclosures made for the reasons set forth in this policy (HIPAA Policy No. 4) must be tracked and provided to the patient upon request, unless the disclosure is made for national security or to a correctional facility or law enforcement officer about an inmate.

Health oversight agencies and law enforcement officers may request that the patient's right to receive an accounting be suspended if the accounting would impede an investigation involving the individual. The request can be written or oral, but an oral request for suspension must be limited to thirty (30) days.

3.2.2 Content of accounting. If a patient requests an accounting, disclosures made during the six years prior to the patient's request must be provided.

The accounting of disclosure must consist of the following information:

- Date of the disclosure
- Name of entity or person who received the information and address if known
- Brief description of the protected health information disclosed
- Brief statement of the purpose of the disclosure

If there are multiple disclosures to the same person or entity for the same purpose, only the first disclosure needs to be documented in the format listed above (date, name, description, purpose). All other disclosures during the time period can be summarized by providing the following:

- The frequency, periodicity, or number of disclosures made during the accounting period
- The date of the last such disclosure during the accounting period

3.2.3 Deadline for providing requested accounting. When a patient requests an accounting of disclosures, the practice has sixty (60) days to provide the information. The practice can obtain an extension of up to thirty (30) days per request by notifying the patient of the reason for delay and the estimated completion date.

3.2.4 Fees for Accounting. The patient's first accounting during a twelve (12) month period must be provided free of charge. If the patient requests more than one accounting of disclosures within a twelve (12) month period, the practice can impose a reasonable cost-based charge. If a charge is imposed, the patient must be informed of the charge and given an opportunity to withdraw his or her request.

3.2.5 Documentation. Information on disclosures that are subject to the accounting and documentation that is provided to the patient must be kept for a period of at least six (6) years.

**Procedure:**

1. All requests for uses and disclosures set forth in this policy should be referred to the Privacy Officer to determine whether the use or disclosure should be made.
2. All consents for disclosures of immunization records will be kept in the medical record (or, in the case of oral consent, will be documented in the medical record).
3. When a disclosure is made for any of the reasons set forth in this policy, it should be documented in a manner that will allow easy retrieval should a patient request an "accounting of disclosures".
4. If a patient requests an accounting of disclosures, the Privacy Officer must be informed of this request and will compile the information and provide it to the patient within sixty (60) days of the request. If the Privacy Officer cannot meet the sixty (60) day deadline, he or she will send a letter informing the patient of the inability to meet the deadline, the reason why, and the estimated completion date (not to exceed thirty (30) days after the initial sixty (60) day deadline).
5. If the patient has requested an accounting of disclosures within the past twelve (12) months, the Privacy Officer may inform the patient that reasonable cost-based charges will be imposed, and if the patient still wants the disclosure, the Privacy Officer may prepare an invoice setting forth these charges and request payment at the time the disclosure is made.
6. The Privacy Officer will maintain a copy of all disclosures and documentation that is provided to the patient for at least six (6) years.

**Authorities:** 45 CFR §164.512 (uses and disclosures not requiring authorization)  
45 CFR §164.528 (accounting of disclosures)  
45 CFR §164.530 (documentation)